ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Tesoro Corporation and Tesoro Logistics Operations LLC
FTC File No. 131-0052

I. Introduction

The Federal Trade Commission (the "Commission"), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders ("Consent Agreement") with Tesoro Corporation and Tesoro Logistics Operations LLC ("Respondents"). On December 6, 2012, Respondents executed related Asset Sale and Purchase Agreements with the Northwest Terminalling Company and Chevron Pipeline Company, subsidiaries of Chevron Corporation, to acquire the Northwest Products Pipeline system and Chevron's associated terminals, including a terminal in Boise, Idaho, for a total of $355 million (the "Acquisition"). Respondents already own and operate a terminal in Boise, Idaho (the "Tesoro Terminal").

The Commission's Complaint alleges that Respondents have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, by substantially lessening competition in terminaling services for light petroleum products in the Boise, Idaho Metropolitan Statistical Area ("Boise MSA"). The Acquisition would reduce the competitive options for terminaling services in the Boise MSA from three to two, with Respondents owning the two largest terminals. The proposed Consent Agreement effectively remedies the Acquisition's possible anticompetitive effects by requiring Respondents to divest its own terminal in Boise, the Tesoro Terminal.

II. Respondents and Other Relevant Entities

A. Tesoro Corporation

Tesoro Corporation is a publically traded corporation principally engaged in the refining and marketing of petroleum products in the United States.

B. Tesoro Logistics Operations LLC

Tesoro Logistics Operations LLC, a limited liability company, is a wholly owned subsidiary of Tesoro Logistics LP, a publically traded limited partnership. Respondent Tesoro Corporation individually and through its subsidiaries owns Tesoro Logistics GP, LLC, the general partner of Tesoro Logistics LP. Tesoro Logistics GP, LLC manages the operations and employs the personnel of Tesoro Logistics LP, and owns a two percent general partner interest in the partnership. Tesoro Corporation directly owns 37.6% of limited partner interest in Tesoro Logistics LP.

Tesoro Logistics Operations LLC directly or indirectly owns a number of petroleum products terminals, including the Tesoro Terminal in Boise, Idaho, that receive light petroleum products off the Northwest Pipeline. The Tesoro Terminal in Boise stores product it receives off the pipeline and provides facilities to load the product onto tank trucks for local distribution.

C. Chevron Corporation

Chevron Corporation ("Chevron") is a publicly traded corporation principally engaged in fully integrated petroleum operations in the United States, including the exploration, production, manufacture, transportation, and sale of petroleum products. Chevron, through Chevron Pipeline Company, owns and operates the Northwest Pipeline, a 760-mile interstate common-carrier pipeline that transports petroleum products from Salt Lake City to the States of Idaho and Washington. Chevron, through Northwest Terminalling Company owns petroleum terminals along the Northwest Pipeline in Idaho and Washington, including one in Boise, Idaho.

III. Distribution of Petroleum Products and Competitive Effects

Pipelines and terminals play a key role in the distribution of refined light petroleum products, a product category that includes gasoline, diesel fuel, and jet fuel. Pipelines are the least expensive means of moving bulk quantities of light petroleum products across land. The alternatives, rail transportation and truck transportation, are not cost competitive when pipeline transportation is available.

Terminals provide a critical connection between bulk supply through pipelines and local distribution of light petroleum products. The efficient operation of pipelines requires continuous shipment of large volumes of light petroleum products. Efficient local distribution utilizes tank trucks to pick up product from the terminal and deliver it to customers.

Terminals have specialized truck-loading facilities, known as "truck racks," to transfer light petroleum products from storage tanks to individual tank trucks. Terminal services provided to suppliers of light petroleum products include storage, dispensing, and ethanol and additive blending. Suppliers of light petroleum products trying to reach a particular local market have no economically viable alternative to terminals.

The Acquisition would reduce the competitive options for terminaling services in Boise from three to two, with Tesoro owning the two largest terminals. Currently, in the Boise MSA, there are three terminals and one storage facility lacking truck racks. Tesoro, Chevron, and United Oil Company each own and operate terminals. Holly Energy Partners and Sinclair Corporation jointly own a storage facility under the name Boise Petroleum. This facility cannot load light petroleum products into tank trucks because it lacks a truck rack. Companies storing light petroleum products at Boise Petroleum must move the products to another terminal to load it onto tank trucks for delivery to the Boise market.

Of the three terminals in Boise, the Tesoro Terminal and the Chevron terminal together account for most of the terminal capacity. The United Oil terminal is the smallest terminal in Boise. Tesoro's control of most of the terminal capacity in Boise may substantially lessen competition in the relevant market. It increases the likelihood that Tesoro would exercise market power unilaterally by raising the terminaling fees or denying access to terminaling services for light petroleum products in the Boise MSA.

IV. The Proposed Agreement Containing Consent Orders

Under the Proposed Agreement Containing Consent Orders, Respondents have one hundred and eighty (180) days from the issuance of the Decision and Order ("Order") to divest the Tesoro Terminal, to a Commission-approved buyer. Pursuant to the Order, Respondents may complete the Acquisition of Chevron's Northwest Pipeline and associated terminals immediately upon issuance of the Order. The required divestiture of the Tesoro Terminal will maintain the level of competition that existed in the market for terminaling services in the Boise MSA prior to the Acquisition. The Order to Maintain Assets (discussed in the next section) will protect the competitive status quo until Respondents are able to find a suitable buyer of the Tesoro Terminal.

The Order contains an "open season" provision. Respondents agree to let any customer at the Chevron Boise terminal terminate its contract without penalties for a period of six months after the divestiture sale of the Tesoro Terminal. Respondents agree to notify customers at the Chevron Boise terminal of their right to terminate their existing contracts. These provisions will ensure that the new owner of the Tesoro Terminal can compete for new business to replace Respondents' current business at the Tesoro Terminal. Respondents are the only customer of the Tesoro Terminal and they could move their business to the Chevron Boise terminal when the divestiture is completed.

The Order requires Respondents to provide transitional assistance and support services to the buyer of the Tesoro Terminal. Respondents must also license any key software and intellectual property to the buyer. The Order allows the buyer to recruit Respondents' employees who work at the Tesoro Terminal. For a period of two years after the divestiture of the Tesoro Terminal, Respondents may not solicit the employees that accept employment offers from the buyer, to rejoin Respondents. The Order also limits Respondents' access to, and use of, confidential business information pertaining to the Tesoro Terminal.

If Respondents fail to fully divest the Tesoro Terminal within the one hundred and eighty (180) day time period, the Order grants the Commission power to appoint a divestiture trustee to complete the divestiture. The Commission may also appoint a divestiture trustee, if it brings an action against Respondents pursuant to Section 5(l) of the FTC Act. The Order also governs the divestiture trustee's duties, privileges, and powers.

The Order requires Respondents, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the Tesoro Terminal and the status of that undertaking. Commission representatives may gain reasonable access to Respondents' business records related to compliance with the consent agreement. The Order terminates ten (10) years after its issuance.

V. The Order to Maintain Assets

The Order to Maintain Assets seeks to preserve the Tesoro Terminal as a viable, competitive, ongoing business, and to ensure that Respondents do not access the confidential business information belonging to this business. Respondents agree to preserve the Tesoro Terminal in substantially the same condition existing at the time when Respondents executed the Consent Agreement. Pursuant to the Order to Maintain Assets, Respondents will provide the Tesoro Terminal with sufficient financial and other resources to maintain current operation levels and carry already planned capital and improvement projects.

The Order to Maintain Assets also empowers the Commission to appoint a monitor to oversee Respondents' compliance with their obligations under the Order. The Order to Maintain Assets outlines the rights, duties, and responsibilities of the monitor, including access to business records, hiring necessary consultants and attorneys, and any other thing reasonably necessary to carry out their duties. The Order to Maintain Assets further prohibits Respondents from interfering with the monitor's obligations and requires them to indemnify the monitor.

The monitor shall submit periodic reports to the Commission concerning compliance with the Order to Maintain Assets. The Commission may appoint a different monitor if the original monitor fails to carry out his duties. The Order to Maintain Assets terminates either (1) three days after the Commission withdraws its acceptance of the Consent Agreement or (2) three days after the monitor completes its final report required by Paragraph V.C.(ii) of this Order to Maintain Assets.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order to aid the Commission in its determination of whether it should make final the proposed Order contained in the Agreement. This analysis is not *intended* to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.