ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Buckeye Partners, L.P.
File No. 211-0144, Docket No. C-4765

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from IFM Global Infrastructure Fund, Buckeye Partners, L.P. ("Buckeye") and Magellan Midstream Partners, L.P. ("Magellan") (collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Buckeye's proposed acquisition from Magellan of 26 light petroleum product ("LPP") terminals, located primarily in the southeastern United States.

The Commission's Complaint alleges that the acquisition, 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, as amended, 15 U.S.C. § 45, by substantially lessening competition for terminaling services for all LPPs, and terminaling services specifically for gasoline, in three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama.

Petroleum product terminals are critical to the efficient distribution of LPPs. Terminals generally consist of storage tanks that load fuel into tanker trucks for further delivery. Terminals receive their supply from pipelines or water vessels. Wholesale petroleum suppliers move LPPs from the terminals to retail locations and end-use customers. Terminaling services include the cluster of services related to the off-loading, temporary storage, and dispensing of LPPs into trucks.

Under the terms of the proposed Decision and Order ("Order") included in the Consent Agreement, Buckeye must divest all of Magellan's terminals located in North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama, to U.S. Venture, Inc. ("U.S. Venture"), a financially sound buyer with a record of operating successful LPP terminals in other locations. The divestitures will effectively restore an independent terminal operator in each relevant geographic market and will thereby preserve competition in each relevant market. Further, the Commission has issued, and Respondents have agreed to comply with, an Order to Maintain Assets that requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date U.S. Venture acquires the divested assets.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Buckeye provides midstream logistics solutions, primarily consisting of pipeline transportation, storage, and throughput of LPPs, which include gasoline and distillates. Buckeye is headquartered in Houston, Texas. Buckeye owns over 115 LLP terminals which are located primarily in the Northeast and Midwest. IFM Global Infrastructure Fund is the ultimate parent entity of Buckeye.

Magellan is a publicly traded partnership that transports, stores, processes, and distributes LLPs and crude oil. Magellan operates a pipeline system and terminals in the central United States as well as terminals in the southeastern United States. Magellan is headquartered in Tulsa, Oklahoma. In 2020, Magellan's revenues from transportation and terminals were $1.8 billion.

III. The Proposed Acquisition

Pursuant to an Equity Purchase Agreement dated June 9, 2021, Buckeye will acquire 26 LLP terminals from Magellan for approximately $435 million (the "Acquisition"). The terminals are located in Alabama, Georgia, Missouri, North Carolina, South Carolina, Tennessee, and Virginia.

IV. The Relevant Markets

The Commission's Complaint alleges that the relevant service markets in which to analyze the Acquisition is terminaling services for LPPs and terminaling services for gasoline specifically. Refiners, independent traders, and fuel marketers require a means to receive and store bulk quantities of LLPs and to deliver these products into tanker trucks, whether for their own use or for their customers. No cost-effective alternatives to terminaling services serve these functions. To provide terminaling services for gasoline, terminals generally must have specialized equipment, including vapor recovery units, tanks with internal floating roofs, and the ability to blend gasoline with ethanol. While gasoline-capable storage tanks may also handle distillates, the reverse is generally not possible without added expense, due to the more stringent regulatory requirements for the storage and handling of gasoline. Because storing and handling gasoline requires different tanks and other infrastructure, a narrower terminaling market also exists for terminaling services specifically for gasoline.

The Commission's Complaint alleges three relevant geographic markets: North Augusta, South Carolina; Spartanburg, South Carolina; and Montgomery, Alabama. The area that a particular terminal can serve is limited by several factors, including the density of retail outlets served from the terminal, trucking costs relating to labor and fuel, driving times and distances, loading and waiting times at the terminal, and the relative price differences of LPPs offered at alternative terminals.

The Acquisition would likely substantially lessen competition in each local market. In North Augusta, Buckeye and Magellan are two of only three firms that offer terminaling services for LPPs and for gasoline. The markets are highly concentrated with the significant increase in concentration giving rise to a presumption of enhanced market power post-Acquisition. In Spartanburg, as measured by LPP capacity, Buckeye owns the largest terminal and Magellan owns the second largest. The Acquisition would result in highly concentrated markets for LPP and gasoline terminaling services with a change in concentration giving rise to a presumption of enhanced market power. In Montgomery, the Acquisition would reduce the number of terminal service operators from six to five, resulting in a moderately concentrated market post-Acquisition, and would also reduce the number of gasoline terminal operators from five to four, resulting in a highly concentrated market post-Acquisition. Moreover, Buckeye and Magellan are two of few independent gasoline terminal operators in Montgomery, who have little or no refining or marketing activities that can be supported by their terminal operations. The Acquisition would leave as few as two independent gasoline terminal operators in Montgomery and limit options for third parties to access independent terminaling services providers in that market.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal and the time required to design, build, and permit a new facility.

V. The Proposed Order and the Order to Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Acquisition's likely anticompetitive effects alleged in the Commission's Complaint by requiring Buckeye to divest the Magellan terminals and all associated assets (the "Terminal Divestiture Assets") in North Augusta, Spartanburg, and Montgomery to U.S. Venture. The proposed Order ensures that U.S. Venture or any other acquirer can operate the terminals in a manner equivalent in all material respects to the manner in which Magellan operated those businesses prior to the Acquisition.

U.S. Venture is a privately held company that was founded in 1951 and currently has a number of divisions, including U.S. Oil. U.S. Oil will be responsible for operating the divested terminals. U.S. Oil owns and operates 26 terminals in Iowa, Michigan, Indiana, Wisconsin, and Texas serving retail customers at 11 locations. U.S. Oil does not have any refined products terminals in the southeastern United States.

The proposed Order requires Buckeye to divest the Terminal Divestiture Assets no later than 10 days after Buckeye and Magellan consummate the Acquisition.

The proposed Order and the Order to Maintain Assets contain additional provisions designed to ensure the effectiveness of the relief. Both the proposed Order and the Order to Maintain Assets require Respondents to maintain the Terminal Divestiture Assets' full economic viability, marketability, and competitiveness until the divestitures are completed and to help facilitate the transfer of the Terminal Divestiture Assets to U.S. Venture.

In addition to requiring divestiture of the Terminal Divestiture Assets, the proposed Order requires Buckeye to seek prior approval from the Commission before acquiring any LPP terminal (including the divested terminals) within a 60-mile radius of the Terminal Divestiture Assets because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Acquisition and may fall below the Hart-Scott-Rodino Act premerger notification thresholds. The proposed Order further requires U.S. Venture to obtain prior approval from the Commission for a period of 3 years before transferring any of the divested assets to any buyer, and for a period of 7 additional years to any buyer with an interest in any LLP terminal in any of the 3 relevant geographic markets.

Finally, the proposed Order appoints The Claro Group as an independent third-party monitor to oversee the Respondents' compliance with the requirements of the proposed Order. The Claro Group has previous experience serving as a monitor for the Commission in matters relating to natural gas pipelines and retail gasoline outlets.

The purpose of this analysis is to facilitate public comment on the proposed Order, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.