

Commission accepted an Agreement Containing Consent Orders (“Agreement”) resolving the charges in the Complaint. The Agreement included a proposed Decision and Order (the “Order”) and an Order to Hold Separate and Maintain Assets (“Hold Separate Order”). After a public comment period, the Commission issued the Order for public comment on June 24, 2013, and it became final on August 7, 2013.

Effective June 19, 2013, Tesoro acquired the NWP Pipelines and Terminals. Section II of the Commission’s Order requires that Tesoro divest the Boise Terminal Assets no later than 180 days from the date the Order was finalized (*i.e.*, by February 3, 2014). The Boise Terminal Assets have been operating in accordance with the Hold Separate Order under the oversight of a Commission-appointed Trustee.

This application describes the principal terms of the Asset Purchase Agreement (the “APA”) between Tesoro and Sinclair by which Tesoro proposes to divest the Boise Terminal Assets, and explains why the divestiture of the Boise Terminal Assets to Sinclair satisfies the purposes of the Commission’s Order.

While the application itself contains no confidential information, the attached APA (Exhibit A) contains confidential and competitively sensitive information relating to Tesoro, the divestiture of the Boise Terminal Assets, and the proposed acquirer, Sinclair. Consequently, pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c) (2013), and Sections 2.41(f), 4.9 and 4.10 the Commission’s Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f), 4.9 and 4.10 (2013), Tesoro requests that the Commission treat Exhibit A as strictly confidential and not be made available to the public. The disclosure of this Exhibit would prejudice Tesoro and Sinclair, cause harm to the ongoing competitiveness of the Boise Terminal Assets, and impair Tesoro’s ability to comply with its obligations under the

Order. Tesoro requests that the Commission inform Tesoro immediately if the Commission cannot treat Exhibit A as confidential in order to provide Tesoro an opportunity to seek appropriate relief.

Tesoro desires to complete the proposed divestiture of the Boise Terminal Assets as soon as possible following Commission approval. Prompt consummation will further the purposes of the Order and is in the interests of the Commission, the public, Sinclair, and Tesoro. First, it will restore the competition that the Commission's Complaint alleges would be lost as a result of Tesoro's acquisition of the NWS Pipelines and Terminals. Second, it will allow Sinclair to move forward with its business plans for the competitive operation of the Boise Terminal Assets. Third, it will allow Tesoro to fulfill its obligations under the Order as soon as possible. Accordingly, Tesoro requests that the Commission promptly commence the public comment period pursuant to Section 2.41(f) of the Commission's Rules, 16 C.F.R. § 2.41(f) (2012), limit the comment period to the customary 30 days, and approve this application for divestiture as soon as practicable after the close of the public comment period.

II. THE PROPOSED DIVESTITURE

On December 13, 2013, Tesoro and Sinclair entered into an agreement for the sale and purchase of the Boise Terminal Assets. A copy of the APA is attached hereto as Exhibit A. As explained below, the terms of the APA comply with the Commission's Order, the proposed divestiture to Sinclair satisfies the purposes of the Commission's Order, and Sinclair will be a viable competitor.

III. THE PROPOSED DIVESTITURE IS CONSISTENT WITH THE TERMS AND PURPOSE OF THE ORDER

A. The Proposed Divestiture Is Consistent With the Terms Of the Order

Paragraph II.A.1 of the Order requires that Tesoro divest the Boise Terminal Assets no later than 180 days from the Order Date. Tesoro must divest the Boise Terminal Assets absolutely and in good faith, as an on-going business, and at no minimum price.

Pursuant to the APA, Tesoro has agreed to sell, and Sinclair has agreed to purchase, the Boise Terminal Assets. The purchase and sale transaction described in the APA comprise all of the Boise Terminal Assets as defined and described in Paragraph I.L of the Order. Specifically, pursuant to Paragraph 2.1 of the APA, Sinclair will purchase the “Boise Terminal Assets” (defined to include the Boise Terminal and Boise Pipelines assets relating only the Boise Terminal Business).

Tesoro will not have continuing ties to Sinclair or the Boise Terminal Business except as a customer of the terminal (*e.g.*, no ongoing supply agreements or security interests in the assets being divested). Tesoro will not have a financial stake in Sinclair’s success. Accordingly, the proposed divestiture to Sinclair satisfies Tesoro’s obligation to divest absolutely the Boise Terminal Assets.

Paragraph II.A.2 of the Order requires that Tesoro grant to the acquirer a worldwide, royalty-free, irrevocable and transferable license under all Shared Intellectual Property to the acquirer that will enable the acquirer to operate the Boise Terminal Business in substantially the same manner as Tesoro prior to the Acquisition. Tesoro represents that there is no Shared Intellectual Property needed by the acquirer to operate the Boise Terminal Business in substantially the same manner as Tesoro prior to the Acquisition. During negotiations of the

transaction, Sinclair advised Tesoro that they would prefer to provide all the intellectual property needed to operate the Boise Terminal System.

Paragraph II.B requires that Tesoro secure all approvals, consents, ratifications, waivers, or other authorizations from all Persons that are necessary for the divestiture of the Boise Terminal Assets no later than the Divestiture Date. Procurement of all authorizations, consents and approvals (or waiver thereof) required to consummate the sale of the Boise Terminal Assets is a condition to closing.

Paragraph II.C of the Order requires that, at the acquirer's request, Tesoro must provide Transitional Assistance to the acquirer for a period of up to nine months after the date of the divestiture. Given Sinclair's experience in operating terminals in the region, Tesoro does not anticipate there will be a substantial need for transition services. Nevertheless, Section 6.3 of the APA provides that Tesoro will provide Transition Services to Sinclair, at Tesoro's cost, for a period of not more than nine (9) months after the date of divestiture, as may be further provided in a Transition Services Agreement to be mutually negotiated between the Tesoro and Sinclair before the divestitures, if and to the extent that Sinclair determines that any transition services will be required. Tesoro will provide all services requested by Sinclair in order to enable Sinclair to operate the Boise Terminal Assets in substantially the same manner as operated by Tesoro.

Paragraph II.D of the Order requires that Tesoro not solicit the employment of any Boise Terminal Employee who becomes employed by the acquirer at the time the Boise Terminal Assets are divested for a period of two years after the divestiture, unless the acquirer terminates the individual's employment or the individual provides an unsolicited application for employment with Tesoro. Tesoro has provided Sinclair the opportunity to recruit and retain

Boise Terminal Employees and has agreed, pursuant to Section 6.1(b) of the APA, to not interfere with the acquirer's efforts to hire any Boise Terminal Employee. The APA also requires Sinclair in Section 6.1(b) to offer at-will employment to the Boise Terminal Employees.

Through the provisions of the APA and other actions, Tesoro has complied with the terms of the Order and the proposed sale to Sinclair is consistent with the terms of the Order.

B. The Proposed Divestiture Is Consistent With The Purpose Of the Order

Paragraph VII recites that the purpose of the Order's provisions concerning the divestiture of the Boise Terminal Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Tesoro; and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. The proposed divestiture to Sinclair is consistent with the purpose of the Order.

According to the Bureau of Competition, "to be acceptable, a buyer must be competitively and financially viable ... The staff will therefore evaluate a proposed buyer to determine whether it has (1) the financial capability and incentives to operate the assets, and (2) the competitive ability to maintain or restore competition in the market."² Divestiture of the Boise Terminal Assets to Sinclair meets these articulated criteria.

As discussed in greater detail in Section IV of this application, Sinclair operates numerous products terminals in the mid-continent, and is financially sound.

Tesoro's sale of the Boise Terminal Assets to Sinclair will remedy any competitive harm in the provision of terminalling services for light petroleum products in the Boise, Idaho MSA resulting from Tesoro's acquisition of the NWS Pipelines and Terminals alleged in the

² Statement of the Federal Trade Commission, Bureau of Competition on Negotiating Merger Remedies at "An Acceptable Buyer;" *see also id.* ("Divestiture Applications").

Commission's Complaint. The Complaint alleges that the effect of the Acquisition may be substantially to lessen competition in the relevant markets by: (a) eliminating actual, direct and substantial competition between Tesoro and Chevron; and (b) increasing the likelihood that Tesoro will exercise market power unilaterally. The sale of the Boise Terminal Assets to Sinclair does not pose any of the competitive concerns alleged in the Complaint. Sinclair does not operate any terminalling services in the Boise, Idaho MSA, but does have tanks in Boise that it can use to bolster the capacity of the terminal. Therefore, through the acquisition of the Boise Terminal Assets, Sinclair will become an independent competitor in terminalling services for light petroleum products in the relevant market. As Sinclair has the competitive ability to maintain or restore competition in the market, the proposed divestiture to Sinclair will remedy the competitive harm alleged in the Commission's Complaint.

IV. THE PROPOSED ACQUIRER IS A STRONG, EXPERIENCED AND VIABLE COMPETITOR

A. Sinclair Is Financially Capable

Sinclair, a Wyoming corporation, is headquartered in Salt Lake City, Utah. Sinclair currently operates eight petroleum products terminals located in Colorado, Wyoming, Idaho, Kansas, Missouri, and Iowa.

In addition to the products terminals, Sinclair owns several crude oil terminals in Wyoming. Sinclair also participates in joint ventures which include significant terminal and pipeline operations. Sinclair currently employs approximately 100 people to support its terminal and transportation operations.

Sinclair is privately owned. The company is affiliated with Sinclair Oil Corporation, which owns two refineries in Wyoming. Another affiliate of Sinclair Oil, Sinclair Oil Pipeline,

leases pipeline capacity to facilitate the transportation of refined petroleum products owned by Sinclair Oil. Additionally, Sinclair's affiliates also market light petroleum products at retail, and there are currently more than 2500 Sinclair retail stores in 20 states in the Western and Midwestern United States.

Sinclair is acquiring the Boise Terminal Assets for approximately \$9.8 million. It is Tesoro's understanding (which would have to be confirmed with Sinclair) that Sinclair is paying for the acquisition out of cash on hand rather than financing the acquisition. If this were not the case, given the scope of Sinclair's operation and the small size of the acquisition, Sinclair should have no trouble financing the acquisition of the Boise Terminal Assets.

B. Sinclair Intends to Retain the Boise Terminal Employees

It is Tesoro's understanding that Sinclair will retain all of the Boise Terminal Employees.

C. Sinclair Will Be a Viable Competitor

Given Sinclair's substantial experience in terminalling as well as its other petroleum related operations in the region, it will be a viable competitor in terminalling services for light petroleum products in the Boise, Idaho MSA. While there is no terminalling services overlap in Boise between Tesoro and Sinclair, Sinclair does own tanks (but no truck rack) in Boise. Sinclair will use these tanks to enhance the capacity of the Boise Terminal Assets. The company intends to make a direct connection from the pipeline that leads from its existing storage tanks to the pipelines connecting to the terminal being acquired. This will provide the storage tanks with direct truck rack distribution without having to go through a Tesoro rack, thus reducing costs and providing Sinclair added control over scheduling. Sinclair may also take deliveries directly off the pipeline into either the storage tanks or the terminal being acquired. Sinclair is a marketing presence in the area, with direct pipeline connections to its Wyoming refinery. The company has

an established branded retail presence in the area, and this facility can be used to enhance Sinclair's competition at retail.

V. CONCLUSION

For the foregoing reasons, Tesoro respectfully requests that the Commission expeditiously approve the proposed divestiture of the Boise Terminal Assets to Sinclair, in the manner provided in the Agreement, as soon as practicable after expiration of the public comment period.

Respectfully Submitted,



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CONFIDENTIAL

EXHIBIT A

Confidential Exhibit A

This exhibit has been redacted.