

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

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In the Matter of)
)
BUCKEYE PARTNERS, L.P.,)
a limited partnership,)
)
and)
)
SHELL OIL COMPANY,)
a corporation.)
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Docket No. C-4127

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Buckeye Partners, L.P. (“Buckeye”), of certain refined petroleum products pipeline and terminaling assets from Respondent Shell Oil Company (“Shell”) (collectively “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Buckeye Partners, L.P., is a publicly-traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 5 Corporate Center, Suite 500, 100 Matsonford Road, Radnor, Pennsylvania 19087.

2. Respondent Shell Oil Company is a corporation, organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Buckeye” means Buckeye Partners, L.P., its partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Buckeye, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Shell” means Shell Oil Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell; and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Acquisition” means the proposed acquisition by Buckeye of certain refined petroleum products pipeline and terminaling assets from Shell pursuant to a Purchase and Sale Agreement dated June 30, 2004, as amended to exclude the Niles Terminal.

- D. “Commission” means the Federal Trade Commission.
- E. “Niles Terminal” means Shell’s refined petroleum product storage and distribution terminal located in Niles, Michigan.
- F. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
- G. “Respondents” means Buckeye and Shell, individually and collectively.

II.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondent Buckeye shall not acquire, directly or indirectly, any interest in the Niles Terminal, in connection with the Acquisition or otherwise, without prior written notification to the Commission before consummating any such transaction.

The prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the “Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent Buckeye and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent Buckeye shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Buckeye shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission’s Bureau of Competition; *provided, however*, that Respondent Buckeye shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- B. For a period of ten (10) years from the date this Order becomes final, Respondent Shell shall not sell, transfer or otherwise convey, directly or indirectly, any interest in the Niles Terminal to any Person, in connection with the Acquisition or otherwise, without prior written notification to the Commission before consummating any such transaction.

The prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent Shell and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent Shell shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Shell shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition; *provided, however,* that Respondent Shell shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

III.

IT IS FURTHER ORDERED that one (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph II. of this Order.

IV.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of that Respondent, (2) acquisition, merger or consolidation of that Respondent, or (3) any other change in that Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in that Respondent.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to either Respondent, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of that Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to that Respondent and without restraint or interference from that Respondent, to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: December 17, 2004