

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of

**TC GROUP, L.L.C.,
a limited liability company,**

**RIVERSTONE HOLDINGS LLC,
a limited liability company,**

**CARLYLE/RIVERSTONE GLOBAL
ENERGY AND POWER FUND II, L.P.,
a limited partnership,**

and

**CARLYLE/RIVERSTONE GLOBAL
ENERGY AND POWER FUND III, L.P.,
a limited partnership.**

Docket No. C-4183

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondent TC Group, L.L.C. (“Carlyle”), a limited liability company, and Respondent Riverstone Holdings LLC (“Riverstone”), a limited liability company, each subject to the jurisdiction of the Commission, have through affiliates entered into an agreement and plan of merger to acquire equity interests in Kinder Morgan, Inc. (“KMI”), in violation 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 that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. THE PARTIES

A. *TC Group, L.L.C.*

1. Respondent TC Group, L.L.C. (“Carlyle”) is a limited liability company doing business as The Carlyle Group, and is 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 1001 Pennsylvania Avenue, N.W., Suite 220 S, Washington, DC 20004.
2. Respondent Carlyle is, and at all times relevant herein has been, engaged in the business of originating, managing and operating private equity funds. As part of its private equity fund business, Respondent Carlyle directly or indirectly acquires interests in a variety of firms, including, as relevant here, midstream energy companies whose businesses include the terminaling of gasoline and other light petroleum products.
3. Respondent Carlyle is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

B. *Riverstone Holdings LLC*

4. Respondent Riverstone Holdings LLC (“Riverstone”) is a limited liability company 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 712 Fifth Avenue, 51st Floor, New York, NY 10019.
5. Respondent Riverstone is, and at all times relevant herein has been, engaged in the business of originating, managing and operating private equity funds. As part of its private equity fund business, Respondent Riverstone directly or indirectly acquires interests in a variety of firms, including, as relevant here, midstream energy companies whose businesses include the terminaling of gasoline and other light petroleum products.
6. Respondent Riverstone is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

C. Carlyle/Riverstone Global Energy and Power Fund II, L.P.

7. Respondent Carlyle/Riverstone Global Energy and Power Fund II, L.P. (“CR-II”) is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
8. Respondent CR-II is, and at all times relevant herein has been, a private equity fund that holds interests in a variety of investments.
9. Respondent CR-II is a joint venture between, and is managed and controlled by, Respondents Carlyle and Riverstone.
10. Respondent CR-II holds a fifty percent interest in MGG Midstream Holdings GP, LLC, the general partner of MGG Midstream Holdings, L.P., which in turn holds 100% of Magellan Midstream Holdings GP, LLC, the general partner of Magellan Midstream Holdings, L.P., which in turn holds 100% of Magellan GP, LLC, the general partner of Magellan Midstream Partners, L.P. (“Magellan”). Magellan is a midstream energy firm whose business includes the terminaling of gasoline and other light petroleum products.
11. Respondent CR-II has the right to designate two representatives on a four-member Board of Managers of MGG Midstream Holdings GP, LLC, and has the ability to veto actions by the Board of Managers. The CR-II representatives on the Board of Managers also serve as CR-II’s representatives on the Boards of Directors of Magellan Midstream Holdings GP, LLC, and Magellan GP, LLC.
12. As a result of the interests and rights set forth above in Paragraphs 9, 10 and 11, Respondents Carlyle, Riverstone and CR-II have the ability to exercise veto power over actions by the Board of Managers of MGG Midstream Holdings GP, LLC and to receive non-public competitively sensitive information from and about Magellan.
13. Through the interests set forth above in Paragraphs 9 and 10, Respondents Carlyle, Riverstone, and CR-II are, and at all times relevant herein have been, engaged in the business of terminaling gasoline and other light petroleum products.
14. Respondent CR-II is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

D. Carlyle/Riverstone Global Energy and Power Fund III, L.P.

15. Respondent Carlyle/Riverstone Global Energy and Power Fund III, L.P. (“CR-III”), is a 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 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
16. Respondent CR-III is, and at all times relevant herein has been, a private equity fund that has been set up to hold interests in a variety of investments.
17. Respondent CR-III is a joint venture between, and is managed and controlled by, Respondents Carlyle and Riverstone.
18. Respondent CR-III is, and at all times relevant herein has been, engaged in activities in or affecting commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUISITION

19. On August 28, 2006, Kinder Morgan, Inc. (“KMI”) announced that it had entered into a definitive merger agreement under which a group of investors (collectively the “Investor Group”) would acquire all outstanding shares of KMI for approximately \$14.4 billion plus the assumption of more than \$7 billion in debt (the “Acquisition”).
20. KMI is a midstream energy firm whose business includes, directly or through affiliates, the terminaling of gasoline and other light petroleum products.
21. The Investor Group consists of (1) Members of KMI management, including Chairman and Chief Executive Officer Richard Kinder; (2) Goldman Sachs Capital Partners and affiliates; (3) American International Group and affiliates; (4) Carlyle Partners IV, L.P., a private equity fund managed and controlled by Respondent Carlyle; and (5) Respondent CR-III, a private equity fund jointly managed and controlled by Respondents Carlyle and Riverstone.
22. As a result of the Acquisition, Respondents Carlyle and Riverstone, through their interests in Respondent CR-III, will jointly hold approximately 11.3% of the equity of KMI.
23. As a result of the Acquisition, Respondent Carlyle, through its interest in Carlyle Partners IV, L.P., will also hold approximately 11.3% of the equity of KMI.

24. As a result of their interest in KMI held through CR-III, Respondents Carlyle and Riverstone will have the right to appoint a representative to the Board of Directors of KMI and to receive non-public competitively sensitive information from and about KMI.
25. As a result of its interest in KMI held through Carlyle Partners IV, L.P., Respondent Carlyle will have the right to appoint a representative to the Board of Directors of KMI and to receive non-public competitively sensitive information from and about KMI.

III. TRADE AND COMMERCE

A. Relevant Market

26. Terminals are specialized facilities with large storage tanks used for the receipt and local distribution of large quantities of gasoline and other light petroleum products. Terminals receive deliveries of gasoline and other light petroleum products from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for terminals for the storage and local distribution of gasoline and other light petroleum products.
27. A relevant line of commerce in which to evaluate the effects of the Acquisition is the terminaling of gasoline and other light petroleum products.
28. Magellan and KMI both own competing terminals in each of the following metropolitan areas in the southeastern United States: (a) Birmingham, Alabama; (b) Albany, Georgia; (c) Atlanta (Doraville), Georgia; (d) Charlotte, North Carolina; (e) Greensboro, North Carolina; (f) Selma, North Carolina; (g) North Augusta, South Carolina; (h) Spartanburg, South Carolina; (i) Knoxville, Tennessee; (j) Richmond, Virginia; and (k) Roanoke, Virginia.
29. Because of costs and delivery logistics, buyers of gasoline and other light petroleum products in any of the metropolitan areas listed above in Paragraph 28, and shippers of such products into any of such metropolitan areas, would have no effective alternative to terminals located within the area.
30. Each of the metropolitan areas listed above in Paragraph 28 is a relevant section of the country in which to evaluate the effects of this Acquisition on the terminaling of gasoline and other light petroleum products.

B. Market Structure

31. Following the Acquisition, as a result of Respondents' holding of interests in both Magellan and KMI, the market for the terminaling of gasoline and other light petroleum

products in each geographic area would be either highly concentrated or moderately concentrated, and would become significantly more concentrated as a result of the Acquisition.

C. Entry Conditions

32. Construction of a terminaling facility and its necessary infrastructure, including tanks, pipeline connections, and truck loading facilities, is subject to significant regulatory and other legal constraints, and requires significant sunk costs and substantial time to accomplish.
33. Entry into the market for the terminaling of gasoline and other light petroleum products in any of the eleven geographic areas listed in Paragraph 28 above would not be timely, likely, or sufficient to prevent the anticompetitive effects that are likely to result from the Acquisition.

IV. ANTICOMPETITIVE EFFECTS

34. KMI and Magellan are actual competitors for the terminaling of gasoline and other light petroleum products in each of the relevant sections of the country. By holding significant interests in both KMI and Magellan, by having the right to board representation at both firms, by having the right to exercise veto power over actions by Magellan, and by receiving, using or sharing non-public competitively sensitive information from or about KMI or Magellan, Respondents Carlyle, Riverstone, CR-II and CR-III may substantially lessen competition in the relevant line of commerce in each of the relevant sections of the country.
35. The Acquisition may substantially lessen competition in the following ways, among others:
 - a. by eliminating competition between KMI and Magellan in the terminaling of gasoline and other light petroleum products in the relevant sections of the country;
 - b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between KMI and Magellan, or between KMI, Magellan and other providers of terminaling services, in the relevant sections of the country; and
 - c. by increasing the likelihood that Magellan or KMI, or the combination of Magellan and KMI, will unilaterally exercise market power in the terminaling of gasoline and other light petroleum products;

each of which increases the likelihood that terminal fees and prices for gasoline and other light petroleum products would increase in each of the relevant sections of the country.

V. VIOLATIONS CHARGED

36. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fourth day of January, 2007, issues its complaint against Respondents.

By the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL: