

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

_____)
In the Matter of)
)
Tesoro Corporation,) Docket No. C-4405
a corporation, and)
)
Tesoro Logistics Operations LLC)
a limited liability company.)
_____)

ORDER TO MAINTAIN ASSETS
[Redacted Public Version]

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”) of certain assets of Chevron Corporation 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 Orders (“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 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 thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets (“Order to Maintain Assets”):

1. Respondent Tesoro Corporation 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 19100 Ridgewood Parkway, San Antonio, Texas 78259.
2. Respondent Tesoro Logistics Operations LLC 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 19100 Ridgewood Parkway, San Antonio, Texas 78259. Tesoro Logistics Operations LLC is an indirect subsidiary of Tesoro Corporation.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

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

- A. “Tesoro Corporation” means Tesoro Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Corporation (Tesoro Logistics Operations LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Tesoro Logistics Operations LLC” means Tesoro Logistics Operations LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Tesoro Logistics Operations LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means the Person identified in Paragraph II.A.1. of the Decision and Order.
- E. “Acquisition” means the proposed acquisition described in the Asset Sale and Purchase Agreement Between Northwest Terminalling Company and Tesoro Logistics Operations LLC, dated December 6, 2012.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Boise Terminal Assets” means the assets identified in Paragraph I.L. of the Decision and Order.

- H. “Boise Terminal Business” means the light petroleum products Terminaling business conducted by Tesoro in Boise, Idaho, prior to the Acquisition.
- I. “Boise Terminal Employee” means any full-time, part-time, or contract individual (i) who is employed by Respondents after the Acquisition Date, and (ii) whose job responsibilities relate or related primarily to the Boise Terminal Business at any time from the date of the announcement of the Acquisition.
- J. “Confidential Information” means any and all of the following information:
1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;
 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
 4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

- K. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- L. “Divestiture Agreement” means any agreement identified in Paragraph VI.B. of the Decision and Order.
- M. “Final Report” means the report as defined in Paragraph V.C.(ii) of this Order to Maintain Assets.
- N. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- O. “Terminaling” means the temporary storage of light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

II.

IT IS FURTHER ORDERED that from the date Respondents execute the Consent Agreement until the Divestiture Date, Respondents shall manage the Boise Terminal Business and Boise Terminal Assets in the ordinary course of business consistent with past practices as of the date that Respondents announced the Acquisition. Respondents shall, among other requirements:

- A. Maintain the Boise Terminal Business and Boise Terminal Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents execute the Consent Agreement;
- B. Keep available the services of all Boise Terminal Employees (that are performing in a satisfactory manner) and maintain the relations and good will with suppliers, customers, landlords, creditors, agents, and others having business relationships with the Boise Terminal Business and Boise Terminal Assets;
- C. Preserve the Boise Terminal Business and Boise Terminal Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondents’ control, as a result of which the viability, competitiveness, and marketability of the Boise Terminal Business and Boise Terminal Assets would be diminished; and

- D. Provide the Boise Terminal Business with sufficient financial and other resources to:
1. Operate the Boise Terminal Business and Boise Terminal Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition;
 2. Perform all maintenance to, and replacements or remodeling of, the assets of the Boise Terminal Business in the ordinary course of business and in accordance with past practice and current plans;
 3. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, or expansion projects; and
 4. Maintain the viability, competitiveness, and marketability of the Boise Terminal Business and Boise Terminal Assets:

Such financial resources to be provided to the Boise Terminal Business shall include, but shall not be limited to, (i) general funds, (ii) capital, and (iii) working capital.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall staff the Boise Terminal Business and Boise Terminal Assets with sufficient employees to maintain the viability and competitiveness of the Boise Terminal Business and Boise Terminal Assets, including but not limited to, providing each Boise Terminal Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Boise Terminal Assets.
- B. Respondents shall allow the Acquirer an opportunity to identify, recruit, and hire any Boise Terminal Employee:
1. No later than twenty (20) days before execution of a Divestiture Agreement, Respondents shall (i) identify all Boise Terminal Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all Boise Terminal Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview Boise Terminal Employees;
 2. Respondents shall (i) remove any impediments that may deter or prevent any Boise Terminal Employee from accepting employment with Acquirer, including any non-compete or confidentiality provision of an employment contract (other than Confidential Information relating to Respondents in their role as a customer of the Boise Terminal Business and Confidential Information not relating to the

Boise Terminal Business and Boise Terminal Assets) and (ii) vest all accrued retirement benefits as of the date of transition of employment with Acquirer for all Boise Terminal Employees who accept an offer of employment from Acquirer; and

3. Respondents shall (i) not solicit or induce any Boise Terminal Employee to decline an offer of employment with Acquirer, and (ii) provide any Key Employee to whom Acquirer has made a written offer of employment with a financial incentive, if necessary, to accept a position with Acquirer at the time the Boise Terminal Assets are divested, pursuant to the terms set forth in Confidential Appendix A attached to this Order.

“Key Employee” means any individual identified as a key employee by agreement between Respondents and Acquirer and included in a Divestiture Agreement.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) keep confidential (including as to Respondents’ employees) and (ii) not use for any reason or purpose, any Confidential Information held or controlled by Respondents relating to the Boise Terminal Business and Boise Terminal Assets (other than information relating to Respondents’ own transactions in the course of conducting business as throughput customers of the Boise Terminal Business); *provided, however*, that Respondents may disclose or use such confidential information:
 1. To perform their obligations, or as permitted, under this Order to Maintain Assets, the Decision and Order, or any Divestiture Agreement; or
 2. To comply with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Boise Terminal Business or Boise Terminal Assets, or as required by law;

Provided further, that Respondents shall require that employees who have had access to any Confidential Information relating to the Boise Terminal Business or Boise Terminal Assets (other than information relating to Respondents’ own transactions in the course of conducting business as throughput customers of the Boise Terminal Business) within the one (1) year period prior to the Acquisition Date sign an agreement to maintain the confidentiality of such information.

- B. If disclosure or use of any Confidential Information is permitted to Respondents’ employees or to any other Person under Paragraph IV.A. of this Order to Maintain Assets, Respondents shall limit such information (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement in writing to maintain the confidentiality of such information.

- C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of their employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Walter Schanbacher to serve as Monitor.
- B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order to Maintain Assets and the Decision and Order, and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondents shall (i) insure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order to Maintain Assets and the Decision and Order, or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order to Maintain Assets;
 3. The Monitor shall (i) serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days from the Acquisition Date, (ii) no later than thirty (30) days from the date Respondents have completed all obligations required by Paragraphs II. and III. of the Decision and Order ("Final Report"), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order to Maintain Assets and the Decision and Order.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties shall terminate three business days after the Monitor has completed his final report pursuant to Paragraph V.C.(ii) of this Order to Maintain Assets, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:
 1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the Boise Terminal Business and Boise Terminal Assets as a viable, competitive, and ongoing business independent of Respondents until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of either Respondent;
- B. Acquisition, merger or consolidation of either Respondent; or
- C. Any other change in either Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondents at their expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the Monitor has completed his Final Report required by Paragraph V.C.(ii) of this Order to Maintain Assets.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: June 17, 2013

Confidential Appendix A

[Redacted From the Public Record Version, But Incorporated By Reference]

Confidential Non-Public Information.