Statement of the Federal Trade Commission

Concerning

Shell Oil Company
FTC File No. 041-0087

The Federal Trade Commission has ended its twelve-month investigation of the decision by Shell Oil Products US ("Shell") to close its petroleum refinery in Bakersfield, California. In November 2003, Shell announced its decision to close the refinery in October 2004, in light of concerns that declining production of an important crude oil supply would adversely affect the profitability of the refinery. Shell has since sold the Bakersfield refinery to Big West of California, LLC, a wholly-owned subsidiary of Flying J Inc. ("Flying J").[1]

One refiner's decision to close a refinery would not ordinarily invite antitrust scrutiny. On this occasion, however, the Commission received substantial inquiry questioning whether Shell's stated reasons for closing the refinery were mere pretext, which raised the possibility that Shell's action was part of an anticompetitive scheme to reduce refining capacity and raise gasoline prices in California. Because of such concerns, the Commission opened its investigation on March 10, 2004.

Given the strong interest, Commission attorneys, economists, and other staff spent considerable time on this investigation. The staff obtained confidential information – in the form of documents, investigational hearings, and interviews, from representatives of Shell and other refiners of gasoline that meets standards promulgated by the California Air Resources Board – regarding refinery output plans, crude supply options, and communications regarding the supply of refined products to California. The staff also interviewed and obtained sensitive trade secret and business information from crude oil producers related to negotiations and communications with Shell regarding crude supply affecting the Bakersfield refinery operations. In order to assess the bona fides of Shell's offer to sell the refinery, the staff interviewed companies that expressed interest in acquiring it. Finally, the staff analyzed a substantial volume of sensitive financial information from Shell relating to the operation of the Bakersfield refinery and reviewed information from California government agencies relating to past and projected crude production levels.

The staff obtained its information in order to determine whether closing the refinery would violate any law that the Commission enforces. In particular, the staff sought to determine (1) whether there was evidence to support a conclusion that Shell possesses market power in any defensible antitrust market served by the Bakersfield refinery and, if so, whether it had acquired

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[1] In order to ensure that Flying J would be willing and able to operate the refinery independently of Shell, the staff reviewed the sales agreement, the sales process, and the prospects for Flying J's viable operation of the refinery. We are persuaded that Flying J is a viable buyer for the refinery.

or used such power illegally;[2] (2) whether there was any basis for a conclusion that the decision to close the refinery resulted from an agreement between Shell and any other person to harm competition; and (3) whether Shell's stated rationale for closing the refinery was merely a pretext for the purpose of hiding anticompetitive conduct.[3]

After a thorough review of the evidence obtained during the investigation, the Commission has unanimously concluded that there would have been no basis under the antitrust laws for challenging the closing of the refinery even if it had not been sold. Indeed, we found that there was strong evidentiary corroboration of Shell's stated reasons for closing the refinery. There was no evidence supporting a conclusion that Shell possessed, acquired, or exercised market power in any way. We found evidence that other refiners could increase output (for example, imports) that would reduce any effect on price that might arise from closing the Bakersfield refinery.

Nor was there any evidence suggesting collusion between Shell and any other person to close the refinery. Indeed, in this case, while Shell planned to reduce capacity in California, other refiners increased (or planned to increase) their ability to supply the California market. These developments would have reduced the benefit to Shell of any allegedly collusive agreement to restrict capacity. The fact that another firm might have come to a different business decision regarding the Bakersfield refinery does not establish that Shell entered into a collusive scheme.

For these reasons, the Commission today closes its thorough and exhaustive investigation of Shell's decision to close its Bakersfield refinery.

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[2] It is well-settled that the mere possession of market power, even to the point of monopoly, does not violate the antitrust laws. Nor do the antitrust laws prevent a firm with such power from reducing its own capacity or charging as much as the market will bear for its product. Instead, the antitrust laws condemn the acquisition of monopoly power through illegal means (*e.g.*, an acquisition that violates the Clayton Act). In addition, the exercise of market power is illegal only if the firm possessing it acts in an anticompetitive manner (*e.g.*, by preventing others from selling into the market in which it operates).

[3] Proof of collusion requires evidence of a conspiracy or an agreement. Neither a firm's failure to provide a plausible business justification for its conduct, nor proof that its decisions affected product prices, is sufficient to establish that it acted in concert with other firms.