ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Magellan Midstream Partners, L.P. and Shell Oil Company, File No. 041-0164

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders ("Agreement") with Magellan Midstream Partners, L.P. ("Magellan") and Shell Oil Company ("Shell") to resolve the anticompetitive effects alleged in the Complaint issued by the Commission concerning Magellan's acquisition of certain pipeline and terminal assets from Shell.

By purchase and sale agreement dated June 23, 2004, Magellan plans to acquire a package of Midwest pipelines and terminals from Shell. Included in the assets being acquired is a refined petroleum products terminal in Oklahoma City, Oklahoma, that supplies light petroleum products, including gasoline and diesel fuel. Magellan already owns and operates another refined petroleum products terminal in Oklahoma City, and the proposed acquisition would substantially increase concentration in the terminaling of light petroleum products in the Oklahoma City Metropolitan Area. The Agreement requires that Magellan divest the terminal acquired from Shell to a Commission-approved buyer.

The Agreement has been placed on the public record for 30 days for interested persons to comment. Comments received during this 30 day period will become part of the public record. After 30 days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw the Agreement or make the Agreement final.

I. The Parties

Magellan is a publicly traded limited partnership that is owned 64% by public shareholders, and 36% by Magellan Midstream Holdings, L.P. (which in turn is owned 50% by Madison Dearborn Partners and 50% by Carlyle Group/Riverstone Holdings). Magellan is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include a petroleum products pipeline and terminal system that serves the Mid-continent region of the United States, marine terminals along the Gulf Coast and near the New York Harbor, inland petroleum products terminals located principally in the ending December 31, 2003, Shell reported total gross revenues of more than $268 billion and total assets of approximately $124 billion.

II. The Commission's Complaint

The Commission's Complaint charges that Magellan's agreement to acquire the Oklahoma City refined products terminal from Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, violate 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.

The Complaint alleges that a relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. Depending on their location, terminals receive deliveries 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 petroleum terminals for providing such terminaling services.

The Complaint alleges that a relevant section of the country in which to evaluate the effects of this acquisition is the Oklahoma City Metropolitan Area. Buyers of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area, such as gasoline marketers and others, have no effective alternative to terminals located within the Oklahoma City Metropolitan Area. Because of costs and delivery logistics, terminals located outside the Oklahoma City Metropolitan Area are too far away to supply buyers in that area.

The Complaint charges that Magellan and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Magellan and Shell have two of only a very limited number of terminals that can serve the Oklahoma City area. According to the Complaint, the market for terminaling services in the Oklahoma City Metropolitan Area is highly concentrated and would become significantly more highly concentrated as a result of this acquisition. Even if a terminal located 40 miles outside of Oklahoma City is included, the pre-merger Herfindahl-Hirschman Index is more than 3,100, and would increase by more than 1,200 points to a level exceeding 4,300. The Complaint further maintains that entry into the relevant market is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint further charges that the proposed acquisition, if consummated, may substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Specifically, the acquisition would (1) eliminate direct competition between Magellan and Shell in the supply of terminaling services in the Oklahoma City Metropolitan Area, and (2) increase the likelihood of, or facilitate, collusion or coordinated interaction in the relevant market, each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

III. Terms of the Decision and Order and Order to Hold Separate and Maintain Assets

The Decision and Order ("Proposed Order") effectively remedies the acquisition's alleged anticompetitive effects by requiring Magellan to divest the overlapping Shell terminal assets. The Shell Oklahoma City terminal is to be divested to a Commission-approved buyer and in a manner approved by the Commission.

The Proposed Order requires that Magellan divest the Shell terminal, at no minimum price, within six months after Magellan signs the Agreement, to a buyer approved by the Commission. The Proposed Order includes several additional provisions to ensure the interim viability of the subject terminal, to ensure that the acquirer has an opportunity to enter into an agreement with Shell for the Shell volumes at the terminal, and to remedy the lessening of competition resulting from the proposed acquisition. In particular, the Proposed Order requires Shell to utilize the subject terminal for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after divestiture of the terminal. It further prohibits Shell and Magellan until three months after divestiture from entering into or maintaining, or attempting to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell's refined petroleum products volume from the subject terminal to any other terminaling facility owned, leased, or operated by Magellan. The order further prohibits Shell and Magellan from discussing or negotiating with each other any potential agreement or understanding relating to such movement or transfer.

The Proposed Order also provides that should Magellan be unable to satisfy all conditions necessary to divest any intangible asset, Magellan will: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

The Proposed Order further provides that if the subject terminal has not been divested within the allotted time, a trustee may be appointed to sell the terminal to a buyer approved by the Commission.

Other paragraphs of the Proposed Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Order to Hold Separate and Maintain Assets ("Hold Separate Order") contains provisions designed to ensure that the Oklahoma City terminal at issue will be maintained separately and apart from Magellan pending divestiture.

The Hold Separate Order provides that Magellan will hold the terminal assets separate from its other businesses and continue to maintain the terminal assets during the period prior to divestiture. Paragraph II also provides that pending divestiture Magellan will contract with Shell for Shell to manage the terminal independently from Magellan's other operations. Shell will report directly and exclusively to a hold separate trustee with respect to the operation of the terminal. Shell is required to keep confidential business information related to the terminal from Magellan employees, except as permitted by the Hold Separate Order.

Other paragraphs of the Hold Separate Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Hold Separate Order terminates on the earlier of two dates, either (1) three business days after the Commission withdraws its acceptance of the consent agreement, or (2) the day after the divestiture of the Oklahoma City terminal, as described in and required by the Proposed Order, is completed.