

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

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

In the Matter of)
))
Aspen Technology, Inc.,) **Docket No. 9310**
))
a corporation.))

ORDER TO SHOW CAUSE AND ORDER MODIFYING ORDER

On December 20, 2004, the Federal Trade Commission (“Commission”) issued a Decision and Order (“Order”) in Docket No. 9310 resolving claims contained in the Commission’s Complaint issued on August 7, 2003. The Complaint alleged that the acquisition of Hyprotech Limited (“Hyprotech”) by Respondent Aspen Technology, Inc. (“AspenTech”), lessened competition in several relevant markets, including the licensing of process engineering simulation software, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 57. The Order, as filed on December 20, 2004, was entered into the Commission’s public docket on December 20, 2004, and is available at www.ftc.gov.

final on December 27, 2004, before the administrative trial had begun.

The Order requires AspenTech, among other things, to divest Hyprotech’s process engineering simulation software, known as HYSYS, and certain related products specified in the Order that were marketed together with HYSYS (collectively, “Hyprotech assets”). The Order requires AspenTech to divest the Hyprotech assets it owns and to sublicense rights to the Hyprotech assets it licenses from third parties if the relevant license agreements permit it to do so. The Order also requires that AspenTech divest or license the Hyprotech assets to an acquirer approved by the Commission and in a manner approved by the Commission and incorporates into the Order the terms of any Commission-approved divestiture agreement between AspenTech and a Commission-approved acquirer. On December 20, 2004, the Commission approved divestiture of the Hyprotech assets to Honeywell International Inc. (“Honeywell”)

pursuant to a purchase and sale agreement previously submitted to the Commission. The Order requires AspenTech to have divested the Hyprotech assets to Honeywell on or before March 28, 2005. The purpose of the divestiture of these assets, as stated in the Order, is “to allow the Commission-approved Acquirer [Honeywell] to engage in the continued development and licensing of Hyprotech Process Engineering Simulation Software and to remedy the lessening of competition as alleged in the Commission’s complaint . . .” in the markets for process engineering simulation software. Order ¶ II.K.

Following entry of the Order in 2004, issues arose concerning the scope and timeliness of AspenTech’s delivery and licensing of some of the assets required to be divested and licensed. After a full investigation, the Commission found reason to believe that AspenTech did not transfer ce

¹ Issues also arose with respect to the software product Flarenet. Hyprotech marketed Flarenet as a product that was part of the Hyprotech family of products, alth

XIII.

IT IS FURTHER ORDERED that:

- A. As used in this Paragraph XIII., the following definitions shall apply:
1. “Commercial Version Release” means a new version of any HYSYS Product or Heat Exchange Simulation Software Product, in each case that contains new Input Variables or changes the Portable Format of the relevant software, that is made generally available to customers. For the avoidance of doubt, “Commercial Version Release” shall not include localized versions, patches to a release, or beta or other test versions of a software product.
 2. “Consent Agreement” means the Agreement Containing Show Cause Order and Order Modifying Order Pursuant to Rule 3.72, executed by Respondent.
 3. “Honeywell” means Honeywell International Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 101 Columbia Road, Morris Township, NJ 07962.
 4. “Heat Exchange Simulation Software Product” means Respondent’s software products known by and licensed by Respondent as of the date the Modifying Order became final as, or previously known and licensed as, ACOL, APLE, FIHR, FRAN, MUSE, PIPE, TASC, Aspen Air Cooled Exchanger (previously known as Acol+), Aspen Fired Heater, Aspen Plate Exchanger (previously known as Plate+), Aspen Plate Fin Exchanger and Aspen Shell & Tube Exchanger (previously known as Tasc+) (each a “Product”). “Heat Exchange Simulation Software Product” also includes any successor versions of these software programs, but, for the avoidance of doubt, shall not include (i) separate software programs usable in connection with such Product (such as through a “call” to the separate program), (ii) software code from separate software programs incorporated in whole or in part in such Product, except to the extent such code contains enhancements to the heat exchange design and rating capability of the Product or (iii) another software program into which all or a portion of the Product is incorporated, integrated, embedded or attached, provided that this exclusion shall not apply to the Product itself and future enhancements to the heat exchange design and rating capability of the Product as incorporated, integrated, embedded or attached to such other program.

5. “HTFS+ Portability Test Suite” means a suite of test cases that fully tests the validity of a data export from HTFS+ as demonstrated to the satisfac

Heat Exchange Simulation Software Product, and (ii) input data provided as input by the user to define the flowsheet block and stream graphical layout of a case in a HYSYS Product, but only as to flowsheet block and stream graphical layout input data that can be exported into Portable Format in HYSYS 2006.0 Update.

12. “Modifying Order” means the Order Modifying Order issued by the Commission in this matter.
13. “Monitor” means the person appointed by the Commission to monitor Respondent’s compliance with its obligations under this Modifying Order and any related agreements, including the Monitor Agreement.
14. “Monitor Agreement” means the agreement executed by Respondent and the Monitor.
15. “Project Plan” means the plan submitted to and approved by the Monitor that contains a plan and schedule according to which Respondent plans to complete the HYSYS 2006.0 Update, HYSYS 7.1 Technical Documentation, HYSYS Portability Test Suite, HTFS+ Portability Test Suite, and HTFS+ Technical Documentation.
16. “Portable Format” shall mean a structured file format, such as XML or ASCII, that is both human-readable and machine-readable.
17. “Portable Format Export/Import Feature” means a provision for the export into and import from Portable Format of the Input Variables.
18. “Technical Documentation” means the tag itself, the data type of the tag (e.g., integer, real, Boolean, text, choice), valid choices for choice data types, and a definition of the meaning of the tag.
19. “Validate” means:
 - a. with respect to HYSYS 2006.0 Update, (i) the Monitor has verified that as to Input Variables common to Aspen HYSYS and Aspen HYSYS Dynamics versions 7.1 and HYSYS 2006.0 Update, the Monitor has verified that the native input report (.dmp) text files for each case in the HYSYS Portability Test Suite are shown to be substantially the same as the input report (.dmp) files that are produced when the Portable Format file is exported from Aspen HYSYS version 7.1 and Aspen HYSYS Dynamics version 7.1, and then imported as a new case in HYSYS 2006.0 Update, and (ii) the Monitor has verified, running HYSYS 2006.0 Update in calculation mode, that each case in the HYSYS Portability Test

not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor;

5. Respondent may require the Monitor and each of the Monitor's experts, 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, and a copy of such agreement shall be provided to the Commission staff; and

6. the Commission may, among other things, require the Monitor and each of the Monitor's experts, consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement on (a) the Commission's behalf and (b) on the Commission's behalf and information

G. By no later than July 22, 2009, Respondent shall provide to the Monitor and to Honeywell:

1. The HYSYS 2006.0 Update, including the object code and full source code for HYSYS 2006.0 Update to Honeywell and, unless otherwise requested by the Monitor, in object code form only to the Monitor, with a report of which source code files have been changed.
 - a. Upon receipt of the HYSYS 2006.0 Update, the Monitor shall review and Validate the HYSYS 2006.0 Update and determine whether any revisions are necessary.
 - b. If the Monitor determines that any revisions are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.
 - c. When the Monitor Validates the HY

- c. When the Monitor determines that the HYSYS Portability Test Suite is complete, he will notify Respondent and the Commission staff.
 - 3. The HYSYS 7.1 Technical Documentation:
 - a. Upon receipt of the HYSYS 7.1 Technical Documentation, the Monitor shall review the HYSYS 7.1 Technical Documentation to ensure that it is complete.
 - b. If the Monitor determines that any revisions to the HYSYS 7.1 Technical Documentation are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and to Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.
 - c. When the Monitor determines that the HYSYS 7.1 Technical Documentation is complete, he will notify Respondent and the Commission staff.
- H. By no later than July 22, 2009, Respondent shall complete and provide to the Monitor and to Honeywell the HTFS+ Technical Documentation:
 - 1. Upon receipt of the HTFS+ Technical Documentation, the Monitor shall review the HTFS+ Technical Documentation to ensure its completeness.
 - 2. If the Monitor determines that any revisions are necessary, Respondent shall furnish a final and complete update, incorporating such revisions, to the Monitor and Honeywell as soon as possible, but no later than four (4) weeks after the Monitor notifies Respondent of any requested revisions.
 - 3. When the Monitor determines that the HTFS+ Technical Documentation is complete, he will notify Respondent and the Commission staff.
- I. Respondent shall generate and provide to the Monitor and to Honeywell the HTFS+ Portability Test Suite as follows:
 - 1. As part of the HTFS+ Portability Test Suite, Respondent shall generate three (3) sets of test cases:
 - a. the standard example cases for ACOL, APLE, FIHR, MUSE, and TASC will be run through the import function of HTFS+ and saved in HTFS+ input files;

- b. the supplemental set of test input files that are designed by Respondent to map Input Variables that are not already covered by the existing example input cases; and
 - c. any additional supplemental set of test input files to the extent that additional Input Variables for ACOL, APLE, FIHR, MUSE, or TASC not covered by the test cases above are identified by the Monitor prior to or on March 1, 2009, Respondent shall generate such additional supplemental test cases in the respective product and run those cases through the import function of HTFS+ and save as HTFS+ input files.
2. Respondent shall complete and provide to the Monitor and Honeywell the HTFS+ Portability Test Suite by no later than July 22, 2009. The HTFS+ Portability Test Suite shall include two (2) formats of the same test cases: the first format as inputs to ACOL, APLE, FIHR, MUSE or TASC, and the second format as run through the import function of HTFS+ and saved as HTFS+ input files.
 3. The Monitor shall review the HTFS+ Portability Test Suite.
 4. If the Monitor determines that any revisions are necessary, Respondent shall furnish final ~~and~~ run throuy 0.00,sTjHYSYS 7.1.00000 TD010ssa

C.F.R. § 4.3(b), and the Commission will give great weight to that determination in considering whether to grant the extension of time.

L. With respect to any Commercial Version Release of a HYSYS Product or any Heat Exchange Simulation Software Product that (i) Respondent releases after the date Respondent executes the Consent Agreement and prior to December 31, 2014 (or December 31, 2016, if extended pursuant to subparagraph XIII.N.), and (ii) contains new Input Variables, or changes the Portable Format of the relevant software:

1. Respondent shall provide to the Monitor the Technical Documentation of the Portable Format tags for all new Input Variables and changes to the Portable Format in such Commercial Version Release.
2. The Monitor shall review the Technical Documentation to ensure its

Commercial Version Release

