

ANALYSIS OF PROPOSED AGREEMENT CONTAINING  
CONSENT ORDERS TO AID PUBLIC COMMENT  
In the Matter of Tesoro Corporation and Tesoro Logistics Operations LLC  
FTC File No. 131-0052

I. Introduction

The Federal Trade Commission (the “Commission”), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (“Consent Agreement”) with Tesoro Corporation and Tesoro Logistics Operations LLC (“Respondents”). On December 6, 2012, Respondents executed related Asset Sale and Purchase Agreements with the Northwest Terminalling Company and Chevron Pipeline Company, subsidiaries of Chevron Corporation, to acquire the Northwest Products Pipeline system and Chevron’s associated terminals, including a terminal in Boise, Idaho, for a total of \$355 million (the “Acquisition”). Respondents already own and operate a terminal in Boise, Idaho (the “Tesoro Terminal”).

The Commission’s Complaint alleges that Respondents have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Federal Trade Commission Act, by substantially lessening competition in terminaling services for light petroleum products in the Boise, Idaho Metropolitan Statistical Area (“Boise MSA”). The Acquisition would reduce the competitive options for terminaling services in the Boise MSA.



power unilaterally by raising the terminaling fees or denying access to terminaling services for light petroleum products in the Boise MSA.

#### IV. The Proposed Agreement Containing Consent Orders

Under the Proposed Agreement Containing Consent Orders, Respondents have one hundred and eighty (180) days from the issuance of the Decision and Order (“Order”) to divest the Tesoro Terminal, to a Commission-approved buyer. Pursuant to the Order, Respondents may complete the Acquisition of Chevron’s Northwest Pipeline and associated terminals immediately upon issuance of the Order. The required divestiture of the Tesoro Terminal will maintain the level of competition that existed in the market for terminaling services in the Boise MSA prior to the Acquisition. The Order to Maintain Assets (discussed in the next section) will protect the competitive status quo until Respondents are able to find a suitable buyer of the Tesoro Terminal.

The Order contains an “open season” provision. Respondents agree to let any customer at the Chevron Boise terminal terminate its contract without penalties for a period of six months after the divestiture sale of the Tesoro Terminal. Respondents agree to notify customers at the Chevron Boise terminal of their right to terminate their existing contracts. These provisions will ensure that the new owner of the Tesoro Terminal can compete for new business to replace Respondents’ current business at the Tesoro Terminal. Respondents are the only customer of the Tesoro Terminal and they could move their business to the Chevron Boise terminal when the divestiture is completed.

The Order requires Respondents to provide transitional assistance and support services to the buyer of the Tesoro Terminal. Respondents must also license any key software and intellectual property to the buyer. The Order allows the buyer to recruit Respondents’ employees who work at the Tesoro Terminal. For a period of two years after the divestiture of the Tesoro Terminal, Respondents may not solicit the employees to accept employment offers from the buyer, to rejoin Respondents. The Order grants Respondents’ access to, and use of, confidential business information pertaining to the Tesoro Terminal.

If Respondents fail to fully divest the Tesoro Terminal within the one hundred and eighty (180) day time period, the Order grants the Commission power to appoint a divestiture trustee to complete the divestiture. The Commission may also appoint a divestiture trustee, if it brings an action against Respondents pursuant to Section 5(l) of the FTC Act. The Order also governs the divestiture trustee’s duties, privileges, and powers.

The Order requires Respondents, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the Tesoro Terminal and the status of that undertaking. Commission representatives may gain reasonable access to the information contained in these reports.

## V. The Order to Maintain Assets

The Order to Maintain Assets seeks to preserve the Tesoro Terminal as a viable, competitive, ongoing business, and to ensure Respondents do not access the confidential business information belonging to this business. Respondents agree to preserve the Tesoro Terminal in substantially the same condition existing at the time when Respondents executed the Consent Agreement. Pursuant to the Order to Maintain Assets, Respondents will provide the Tesoro Terminal with sufficient financial and other resources to maintain current operation levels and carry already planned capital improvement projects.

The Order to Maintain Assets also empowers the Commission to appoint a monitor to oversee Respondents' compliance with their obligations under the Order. The Order to Maintain Assets outlines the rights, duties, and responsibilities of the monitor, including access to business records, hiring necessary consultants and attorneys, and any other things reasonably necessary to carry out their duties. The Order to Maintain Assets further prohibits Respondents from interfering with the monitor's obligations and requires them to indemnify the monitor.

The monitor shall submit periodic reports to the Commission concerning compliance with the Order to Maintain Assets. The Commission may appoint a different monitor if the original monitor fails to carry out his duties. The Order to Maintain Assets terminates either (1) three days after the Commission withdraws its acceptance of the Consent Agreement or (2) three days after the monitor completes its final report required by Paragraph V.C.(ii) of this Order to Maintain Assets.

## VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed in the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order to aid the Commission in its determination of whether it should make final the proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.