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 in B5.006f T(*of rp, econo staf)4.1(yit)]TJ0.07y options, [(gasoline pricaio)iel Reso stnegoati Shelorsendionsasol 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