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FTC Requires Divestitures in Gasoline Terminal Deal

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The FTC is increasingly focused on competition in gasoline and fuel markets and has “redoubl[ed] its commitment” to “aggressive antitrust enforcement” in these areas.[1] The most recent example of this renewed commitment came earlier this month with the announcement of a consent agreement, requiring the divestiture of petroleum terminals in two states.

The proposed transaction involved petroleum terminal and pipeline companies and the acquisition of 26 light petroleum product terminals largely located in the Southeast for approximately $435 million.[2] The FTC alleged that the proposed acquisition would substantially lessen competition for terminaling services for light petroleum products and gasoline in three markets in South Carolina and Alabama, increasing the likelihood of collusion between competitors and increasing prices.

The terminals, which dispense fuel into tanker trucks for delivery, are a “critical” aspect of the gasoline supply chain, and the FTC’s announcement of the consent agreement reiterated its commitment to ensuring competitive gasoline and diesel markets.[3] This announcement follows similar recent statements by the FTC and calls from President Biden to the FTC to more aggressively monitor oil and gas transactions.[4]

In addition to requiring the divestiture of five terminals in the three markets in South Carolina and Alabama, the consent agreement also contains a prior approval provision, requiring the acquiring company to seek prior approval from the FTC before acquiring any light petroleum products terminal within a 60-mile radius of the divested terminals for a period of 10 years.[5] U.S. Venture, the divestiture buyer, must also seek prior approval before transferring any of the divested terminals to any buyer.[6]

The commissioners’ statement accompanying the announcement of the consent agreement drew attention to the inclusion of the prior approval provision, noting that the inclusions of such provisions in consent agreements is now standard, but acknowledging that such provisions might not always benefit competition or consumers.[7] The statement noted that the FTC received numerous informative comments regarding potentially harmful effects of a prior approval provision included in another recent oil and gas transaction, and encouraged stakeholders to provide feedback on this prior approval provision and those that appear in future consent agreements.[8]

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[1] Holly Vedova, *Protecting Americans at the gas pump through aggressive antitrust enforcement* (Sept. 21, 2021), *available at* https://www.ftc.gov/enforcement/competition-matters/2021/09/protecting-americans-gas-pump-

through-aggressive-antitrust-enforcement.

[2] *See Analysis of Agreement Containing Consent Orders to Aid Public Comment*, *In the Matter of Buckeye Partners, L.P.*, File No. 211-0144, Docket No. C-4765, *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/2110144C4765BuckeyeAAPC.pdf.

[3] *See FTC Acts to Protect South Carolina and Alabama Markets from Anticompetitive Gasoline Terminal Deal* (June 2, 2022), *available at* https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-acts-protect-south-carolina-alabama-markets-anticompetitive-gasoline-terminal-deal.

[4] *See*, *e.g.*, Letter from Pres. Joseph R. Biden to FTC Chair Lina Khan (Nov. 17, 2021), *available at* https://int.nyt.com/data/documenttools/ftc-gas-prices/92d93dca9793b8b4/full.pdf.

[5] *See supra* n. 3.

[6] *See id.*

[7] *See* Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson (June 2, 2022), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/BuckeyePhillipsWilsonStatement2.pdf.

[8] *See id.*

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