terminaling of gasoline, diesel fuel, and other light petroleum products, and a relevant geographic market may be as small as the area within a fifty-mile radius of Niles, Michigan (''Niles Area''). The proposed complaint further alleges that market for terminaling services in the Niles Area is highly concentrated and that, had the original proposed acquisition been consummated, concentration in that market would have increased by 800 points, as measured by the Herfindahl-Hirschman Index. The acquisition as modified would not change market concentration in the Niles Area because it does not involve the acquisition of Shell's Niles terminal. The proposed complaint also alleges that entry into the terminaling services market in the Niles Area is difficult and would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the original proposed acquisition.

The proposed complaint alleges that the acquisition, if consummated as originally proposed, may have led to a substantial lessening of competition in the supply of terminaling services for gasoline, diesel, and other light petroleum products in the Niles Area. The acquisition as originally proposed may have substantially increased concentration in a market that is already highly concentrated. The complaint further alleges competitive harm could result from the elimination of direct competition between Buckeye and Shell in the supply of terminaling services in the Niles Area, and from the increased likelihood of collusion or coordinated interaction between the remaining competitors in the relevant market.

Terms of the Proposed Consent Order

The Proposed Order requires Buckeye to provide prior notification to the Commission of an acquisition of any interest in the Niles terminal, for a period of ten years. The Proposed Order requires Shell to provide prior notification to the Commission of a sale or transfer of any interest in the Niles terminal, for a period of ten years. These provisions require Buckeye and Shell to comply with premerger notification and waiting periods similar to those found in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. (''HSR'').

Consistent with the Commission's Statement of Policy Concerning Prior Approval and Prior Notice Provisions, 60 FR 39745 (Aug. 3, 1995), the Proposed Order ensures that the Commission will have the appropriate mechanism to review a proposed sale of the Niles terminal by Shell, or a proposed acquisition of the Niles terminal by Buckeye, that may raise antitrust concerns but would not be reportable under HSR. The Proposed Order affords the Commission the opportunity to guard against such potentially anticompetitive transactions.

By accepting the Proposed Order, subject to final approval, the Commission anticipates that the competitive problem alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment concerning 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 or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22696 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0039]

Enterprise Products Partners L.P., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2004.

ADDRESSES: Comments should refer to ''Enterprise Products Partners L.P., *et al.*, File No. 041 0039,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Lipson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2617.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 30, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 29, 2004. Comments should refer to ''Enterprise Products Partners L.P., *et al.,* File No. 041 0039,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will

FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Enterprise Products Partners L.P. (''Enterprise'') and Dan L. Duncan (''Duncan''), the ultimate parent entity of Enterprise. (Enterprise and Duncan are hereinafter referred to collectively as ''Respondents.'') The Consent Agreement contains a Decision and Order (''Consent Order'') that is designed to remedy the anticompetitive effects of the proposed merger between Enterprise and GulfTerra Energy Partners L.P. (''GulfTerra''). Under the terms of the Consent Agreement, Respondents must divest (1) their interest in one of two competing pipelines that transport natural gas from the deepwater regions of the Gulf of Mexico and (2) their interest in one of two competing underground propane storage and terminaling facilities serving the Dixie Pipeline in Hattiesburg, Mississippi. The Consent Agreement also contains an Order to Hold Separate and to Maintain Assets (''Hold Separate Order'') which, among other things, is designed to preserve the viability, marketability and competitiveness of the assets to be divested under the proposed Consent Order.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

I. The Complaint

Pursuant to certain agreements dated December 15, 2003 (as amended), Enterprise, a publicly traded limited partnership that provides midstream energy services to customers throughout the Southeastern and Midwestern United States, proposes to merge with GulfTerra in a transaction that will create a midstream energy partnership with an estimated enterprise value of approximately $13 billion. The Commission's complaint (''Complaint'') alleges that the proposed merger would 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, in the markets for (1) pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico (''West Central Deepwater'' market) and (2) propane storage and terminaling services in Hattiesburg, Mississippi. The West Central Deepwater region of the Gulf of Mexico encompasses the East Breaks, Garden Banks, Keithley Canyon and Alaminos Canyon areas in the Gulf of Mexico, areas defined by the United States Department of Interior Minerals Management Service. These areas are in the ''deepwater'' part of the Gulf of Mexico farther from shore, in which water depths exceed 1000 feet. The proposed Consent Agreement would remedy the alleged violations by restoring the lost competition that would result from the merger in each of these markets.

II. The Consent Agreement

A. Pipeline Transportation of Natural Gas

The Gulf of Mexico accounts for nearly one quarter of the natural gas supplies in the United States. Natural gas producers ship their production out of the Gulf of Mexico to the Gulf Coast via pipelines. Enterprise and GulfTerra are direct and substantial competitors in the market for pipeline transportation of natural gas from the West Central Deepwater.

Enterprise owns a 50 percent ownership interest in the Starfish Pipeline Company, LLC (''Starfish''), which owns the Stingray/Triton pipeline system in the West Central Deepwater market. Shell Gas Transmission (''Shell'') owns the remaining 50 percent interest in Starfish and exercises operational and management control over the Starfish assets. However, because the operating agreement provides that Enterprise must approve any commercial gas transportation agreements proposed by Shell with respect to Starfish, Enterprise effectively controls the competitive decisions of Starfish and the Stingray/Triton pipeline system. GulfTerra owns the High Island Offshore System (''HIOS'') and its accompanying East Breaks lateral, which compete directly for pipeline transportation business in the West Central Deepwater market with Starfish's Stingray/Triton pipeline system.

The West Central Deepwater market is highly concentrated. The assets controlled wholly or in part by GulfTerra and Enterprise account for two of the three pipelines providing natural gas pipeline transportation services to the market. Combined, these two pipeline systems would control 60 percent of the natural gas pipeline capacity in the West Central Deepwater market. The proposed merger would substantially increase industry concentration in this already highly concentrated market. Moreover, new entry into the pipeline transportation of natural gas from the West Central Deepwater market entails substantial sunk costs and is highly unlikely to constrain any post-merger exercise of market power by Respondents in the relevant market. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in this market, the proposed merger would be substantially likely to cause significant competitive harm to producers of natural gas who must purchase pipeline transportation services in the West Central Deepwater market.

The proposed Consent Order remedies the merger's alleged anticompetitive effects in the West Central Deepwater market by requiring that Respondents divest either (1) their 50 percent interest in Starfish, (the ''Starfish Interest'') or (2) the HIOS/East Breaks pipeline system, (the ''HIOS/East Breaks Assets.''). If Respondents fail to divest either of these competing pipeline assets on or before March 31, 2005, the Commission may appoint a Divestiture Trustee to divest either of the above referenced pipeline assets.

be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

B. Propane Storage and Terminaling Services

Propane is used as a heating fuel during the winter months in much of the Southeastern United States. Propane marketers generally purchase propane from the major supply sources in Texas and Louisiana and ship that propane eastward over the Dixie Pipeline System (''Dixie''), the only common carrier propane pipeline in the Southeast. Because of certain physical and capacity constraints on Dixie west of Baton Rouge, Louisiana, the segments of Dixie west of Baton Rouge are often full (capacity constrained) during the winter months. Therefore, propane shippers along Dixie often must purchase propane during the spring and summer (non-peak) seasons, ship it eastward on Dixie and store the propane at locations east of Baton Rouge, such as Hattiesburg, Mississippi (''Hattiesburg''). This enables these propane marketers to access Dixie's unconstrained capacity during the winter months to meet the peak demand of their customers for heating fuel.

Hattiesburg is the site of massive, naturally occurring underground salt domes, which when leached out, provide economic storage capacity for propane. The salt domes and associated terminaling facilities located at Hattiesburg receive propane from Dixie during the non-peak months and then re-inject propane into Dixie during the winter heating season. Dixie shippers and other propane marketers pay significant fees to the owners of propane storage facilities for the right to store propane at Hattiesburg and inject it into Dixie. Enterprise and GulfTerra are direct and substantial competitors in providing propane storage and terminaling services in Hattiesburg. Enterprise currently owns a 50 percent undivided interest in a propane storage and terminaling facility located in Hattiesburg (with Dynegy Midstream Services, L.P. owning the other 50 percent interest). Enterprise also owns a 100 percent interest in a second propane storage facility located in nearby Petal, Mississippi. GulfTerra currently owns and operates a wholly owned propane storage and terminaling facility in Hattiesburg.

The market for propane storage and terminaling services in Hattiesburg is highly concentrated, with Enterprise and GulfTerra currently controlling approximately 53 percent of propane storage capacity in that market. The proposed merger would leave Respondents with an ownership interest in three of the four propane storage and terminaling facilities located in Hattiesburg and substantially increase concentration in an already highly concentrated market. Entry into the market for propane storage and terminaling services requires substantial sunk costs and such entry is highly unlikely in response to a post-merger increase in propane storage and terminaling fees at Hattiesburg. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in the relevant market, the proposed merger would be substantially likely to cause significant competitive harm to propane marketers who would likely incur increased prices and fees for propane storage and terminaling services in Hattiesburg. These increased costs would likely be passed on to propane customers supplied from Hattiesburg.

The proposed Consent Order remedies the alleged anticompetitive effect of this merger in the propane storage and terminaling services market in Hattiesburg by requiring that Respondents divest either (1) their undivided 50 percent interest in the facility Enterprise co-owns with Dynegy, (the ''Enterprise Propane Storage Interest,'') or (2) their wholly owned Hattiesburg propane storage facility (the ''Enterprise Petal LPG Storage Facility''). If Respondents fail to divest either of these competing propane storage and terminaling assets on or before December 31, 2004, the Commission may appoint a Divestiture Trustee to divest either of the above referenced assets. The December 31, 2004 deadline for the divestiture of the specified propane storage and terminaling assets of Respondents at Hattiesburg is designed to assure that a new owner of the divested assets will be in place prior to the 2005–06 propane storage contract season, which begins in April 2005.

The Commission believes that divestiture by Respondents of their partially owned assets in each market to a Commission-approved purchaser would restore competition in each of the two markets potentially affected by the merger. However, as certain third parties have contractual rights that may impact on Respondents' ability to transfer such partially owned assets, or that may affect or delay the timing of any such transfer, the proposed Consent Order gives Respondents the option of divesting either their partially owned assets or their wholly owned assets in each relevant market by the dates specified in the proposed Consent Order.

III. The Hold Separate Order

Because the Consent Agreement would allow the merger to proceed prior to the completion of each of the required divestitures, the Consent Agreement contains a Hold Separate Order covering the Starfish Interest and the Enterprise Propane Storage Interest. The purpose of the Hold Separate Order is to ensure that the Starfish Interest and the Enterprise Storage Propane Interest operate independently from Enterprise and GulfTerra pending the divestitures required under the proposed Consent Order. The Hold Separate Order is also intended to ensure the continuing viability, marketability, and competitiveness of these partially owned assets until they are divested.

The Commission has appointed Richard J. Black as a monitor to oversee the management and operations of the Starfish Interest and the Enterprise Propane Storage Interest until the divestitures required by the Consent Order are complete. Mr. Black has more than 15 years of relevant experience in the midstream energy services business, including experience in pipeline transportation of natural gas in the deepwater regions of the Gulf of Mexico and in the marketing and sale of natural gas liquids.

To assure that the Commission remains informed about the status of the required divestitures, the proposed Consent Order requires Respondents to file reports with the Commission periodically until the divestitures required under the Consent Order are accomplished. The Hold Separate Order will remain in effect until the Respondents or the Divestiture Trustee successfully divests the assets required to be divested under the Consent Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22697 Filed 10–7–04; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 041 0164]

Magellan Midstream Partners, L.P., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.