

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 sixty (60) 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 October 1, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Medtronic, Inc. ("Medtronic"). The proposed Consent Order contains a number of provision designed to remedy the anticompetitive effects resulting from Medtronic's acquisition of Physio-Control International Corporation's ("Physio-Control") automated external defibrillator business and its ownership interest in SurVivaLink Corporation ("SurVivaLink"), a direct competitor of Physio-Control.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the proposed Order.

On June 27, 1998, Medtronic entered into an Agreement and Plan of Merger with Physio-Control to acquire all of the voting stock of Physio-Control in exchange for Medtronic voting stock valued at \$530 million. The proposed compliant alleges that the transaction, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended,

15 U.S.C 45, in the market for the research, development, manufacture and sale of automated external defibrillators.

Automated external defibrillators are portable, automated devices used in emergency situation, by persons with limited medical training, such as policemen, firemen and lifeguards, to treat people suffering from sudden cardiac arrest. The market for automated external defibrillators is highly concentrated with only three significant players in the United States: Physio-Control, SurVivaLink and Hewlett-Packard/Heartstream.

The relevant geographic market is the United States. Only companies that have received U.S. Food and Drug Administration approval to sell their devices in the United States may supply automated external defibrillators to U.S. customers.

In addition, new entry into the market for automated external defibrillators is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects of Medtronic's acquisition of Physio-Control. Entry into this market is unlikely and would not be timely because of the time and expense required to design and develop a competitively viable product, obtain approvals from the U.S. Food and Drug Administration, and establish a sales and distribution network.

Medtronic's acquisition of Physio-Control raises serious competitive concerns in the market for automated external defibrillators because of its ownership interest in SurVivaLink, Physio-Control's direct competitor. Pursuant to an investment agreement entered into between Medtronic and SurVivaLink, Medtronic was given the explicit right to name a member to SurVivaLink's Board of Directors and to receive certain non-public competitively sensitive information. Medtronic also has the right to receive certain non-public competitively sensitive information under Minnesota law. In addition, Medtronic has the right as a shareholder in SurVivaLink to vote on all matters requiring a shareholder vote. Medtronic's entanglements with SurVivaLink and its acquisition of Physio-Control would cause anticompetitive harm in the market for automated external defibrillators by potentially eliminating direct competition, increasing the likelihood of coordinated interaction, reducing innovation and ultimately increasing prices for automated external defibrillator customers.

The proposed Consent Order remedies the acquisition's

anticompetitive effects in the market for automated external defibrillators by making Medtronic a passive investor in SurVivaLink and by preventing Medtronic from exercising its right to name a member to SurVivaLink's Board of Directors. The proposed Consent Order also prevents Medtronic from exercising its rights, pursuant to its investment agreement with SurVivaLink or under Minnesota law, to receive non-public competitively sensitive information relating to SurVivaLink.

The proposed Consent Order also limits Medtronic's ability to vote on any matter that requires a vote of SurVivaLink's shareholders by requiring Medtronic to delegate its voting rights to be voted in a manner proportional to the votes of all other shareholders. The proposed Consent Order would also prohibit Medtronic from proposing any corporate action or participating in any business decisions of SurVivaLink. Additionally, the proposed Consent Order prevents Medtronic from increasing its ownership interest in SurVivaLink without prior written notice to the Commission. Finally, the proposed Consent Order requires Medtronic to return to SurVivaLink any documents that contain any trade secrets, commercial information or financial information relating to SurVivaLink.

Under the provisions of the proposed Order, Medtronic is also required to provide the Commission with a report of compliance with the provisions of the order within sixty (60) days following the date this Order becomes final, and annually thereafter until such time as Medtronic sells or transfers all of its ownership interest in SurVivaLink or Physio-Control.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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#### **FEDERAL TRADE COMMISSION**

**[File No. 981-0166]**

#### **Shell Oil Company, 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 December 7, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William Baer, FTC/H-374, Washington, DC 20580 (202) 326-2932 or John Hoagland, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201 (214) 979-9350.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 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 sixty (60) 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 October 1, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW, Washington DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Analysis to Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("Commission") has accepted for public comment from Shell Oil Company ("Shell") and Tejas Energy, LLC ("Tejas"), a wholly owned subsidiary of Shell, an agreement containing Consent Order designed to remedy the anticompetitive effects resulting from Shell and Tejas' proposed acquisition of

certain gas gathering assets of The Coastal Corporation ("Coastal"). The Consent Order requires the divestiture of approximately 171 miles of Coastal's gas gathering pipeline in western Oklahoma and the Texas panhandle to a Commission-approved buyer.

This agreement has been placed on the public record for sixty (60) days for the receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

On January 20, 1998, Transok, LLC ("Transok"), a wholly-owned subsidiary of Tejas, and ANR Field Services Company and ANR Production Company (collectively referred to as ("ANR"), subsidiaries of Coastal, entered into a Letter of Intent for Transok to acquire gas gathering assets of ANR located in Oklahoma, Texas, and Kansas. Gas gathering is the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or gas processing plant. The Commission found that the acquisition may create competitive problems in parts of Roger Mills, Beckham, Custer, Washita, Caddo and Grady Counties, Oklahoma, and Wheeler County, Texas (hereafter referred to as the overlap counties). The Commission's Complaint alleges that Transok's acquisition agreement with ANR violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

With the overlap counties, Tejas, through its subsidiary Transok, is the largest gas gatherer and Coastal, through its ANR subsidiaries, is a substantial competitor in gas gathering. Six areas were identified where gas producers could only turn to Tejas and Coastal or, at most, one other gas gatherer, for gas gathering services. In these areas, the proposed merger would eliminate competition between Tejas and Coastal in providing gas gathering services to gas producers and would likely lead to anticompetitive increases in gathering rates and an overall reduction in gas drilling and production. It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the gas gathering market in these areas.

The proposed Consent Order requires Shell and Tejas to divest parts of the

ANR pipeline system within these six areas. The gas gathering assets to be divested are listed, with accompanying maps showing the locations of the pipelines, in Schedule A of the proposed Consent Order. The purposes of the divestiture are to ensure the continued use of the Schedule A assets as gas gathering assets and to remedy the lessening of competition resulting from the acquisition.

Shell and Tejas must divest the assets by January 5, 1999, or thirty days following the consummation of the acquisition, whichever is later. If Shell and Tejas fail to divest the assets by the deadline, the Commission may appoint a trustee to sell the assets. The trustee may include additional assets with those specified in Schedule A to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of the order. Shell and Tejas have agreed to maintain the assets that are being divested in their current condition and provide gathering service at existing terms and conditions to customers under contract with ANR until the Schedule A assets are sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention (CDC)**

#### **The Division of HIV/AIDS Prevention, Intervention, Research and Support (DHAP, IRS), National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Announces the Following Meeting**

*Name:* African American Gay Men's Consultation for HIV Prevention.

*Time and Date:* 9 a.m. to 5:30 p.m., October 19, 1998.

*Place:* The Wyndham Garden Hotel, Midtown, 125 10th Street, Atlanta, Georgia 30309.

*Status:* Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 65 people.