

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

In the Matter of)	
)	
Red Sky Holdings LP,)	
a limited partnership,)	
)	
and)	Docket No. 9333
)	
Newpark Resources Inc.,)	
a corporation.)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that respondents Red Sky Holdings LP (“Red Sky”), through its subsidiary CCS Corporation (“CCS”), and Newpark Resources Inc. (“Newpark”) have entered into an acquisition agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, for the acquisition by Red Sky of Newpark, which acquisition, if consummated, 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, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

SUMMARY

1. The proposed \$85 million, all-cash acquisition of the United States operations of Newpark subsidiaries Newpark Environmental Services, LLC and Newpark Environmental Services Mississippi, L.P. (collectively, “Newpark Environmental Services”) by Red Sky subsidiary CCS Energy Services LLC (“CCS Energy”) would leave only two providers of offshore oil and natural gas exploration and production (“E&P”) waste disposal services in the Louisiana Gulf Coast region of the United States. The proposed transaction is, in effect, a merger-to-duopoly that would facilitate the exercise of market power by CCS unilaterally, and/or by CCS and its remaining competitor, U.S. Liquids of Louisiana (“U.S. Liquids”), together.

2. E&P waste is generated from drilling for or producing oil or natural gas. “Offshore E&P waste” refers specifically to E&P waste generated in a body of water, such as a wetland or inland waterway, or the Gulf of Mexico. All E&P waste is harmful to the environment and must be disposed of in accordance with applicable laws. Environmental regulations for offshore E&P waste, however, are more stringent, and disposal options more limited. Accordingly, companies that produce offshore E&P waste rely on third-party E&P waste disposal services to ensure compliance with applicable laws and to limit producers’ exposure to environmental liability.

3. After the transaction, and with the Newpark entities eliminated, CCS would have a market share greater than 50 percent in each geographic market. The creation of a duopoly would eliminate significant head-to-head competition between CCS and Newpark, substantially increase concentration, and facilitate coordination between CCS and U.S. Liquids regarding prices and/or customer allocation. Respondents’ oil and gas industry customers would likely be harmed, as might consumers of petroleum products and natural gas.

4. The resulting substantial increases in concentration alone lead to a presumption that respondents’ proposed transaction would have anticompetitive effects.

PARTIES AND JURISDICTION

5. Respondent Red Sky is a limited partnership formed, on information and belief, under the laws of Alberta, Canada, for the purpose of taking CCS Corporation (then CCS Inc.) private in 2007. CCS has its principal place of business at 2400, 530 – 8th Avenue SW, Calgary, Alberta T2P 3S8, Canada. CCS, in turn, owns CCS Energy, a Louisiana corporation with its principal place of business at 363 North Sam Houston Parkway East, Suite 330, Houston, Texas 77060.

6. Red Sky is, and at all relevant times has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affects “commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

7. Respondent Newpark is a Delaware corporation headquartered at 2700 Research Forest Drive, Suite 100, The Woodlands, Texas 77381.

8. Newpark is, and at all relevant times has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affects “commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE TRANSACTION

9. On April 16, 2008, CCS and Newpark signed a Membership Purchase Agreement in which Newpark agreed to sell the United States operations of Newpark Environmental Services to CCS Energy for \$85 million in cash.

PRODUCT MARKET

10. The product market in which to assess the effects of the proposed acquisition is offshore E&P waste disposal services. The most common disposal methods include landfarms, landfills, underground injection wells, and salt caverns.

GEOGRAPHIC MARKETS

11. The geographic markets in which to analyze the effects of the proposed acquisition are each port along the Louisiana Gulf Coast at which CCS and Newpark both operate waste transfer stations, specifically, the ports of Fourchon, Venice, Morgan City, and Intracoastal City, Louisiana. Alternatively, the Louisiana Gulf Coast is a geographic market.

MARKET STRUCTURE

12. As noted, only three firms compete in the offshore E&P waste disposal markets in the Louisiana Gulf Coast – CCS, Newpark, and U.S. Liquids.

13. As a result of the proposed acquisition, CCS would have a market share of 50 percent or greater in each of the four geographic markets, and in the alternative geographic market consisting of the Louisiana Gulf Coast.

14. The post-acquisition Herfindahl-Hirschman Indexes (“HHIs”) in the relevant geographic markets would be at least 5,000, reflecting HHI increases of at least 300 over pre-acquisition levels, and thereby create a presumption of anticompetitive effects and illegality.

15. Moreover, for many large customers in the Gulf Coast, CCS and Newpark are their first and second choices. Thus, for this class of customers (or submarket), the transaction would create a monopoly, eliminate choice, and lead to higher prices and reduced service quality.

ANTICOMPETITIVE EFFECTS

16. The proposed acquisition may substantially lessen competition in the relevant markets by, among other things:

- a. eliminating actual, direct, and substantial competition between CCS and Newpark in offshore E&P waste disposal services in the Louisiana Gulf Coast;
- b. increasing the likelihood that CCS will exercise market power unilaterally in offshore E&P waste disposal services in the Louisiana Gulf Coast;
- c. enhancing the likelihood of collusion or coordinated interaction between the only two remaining providers of offshore E&P waste disposal services in the Louisiana Gulf Coast;
- d. increasing the likelihood that customers will be forced to pay higher prices for offshore E&P waste disposal services in the Louisiana Gulf Coast;

- e. increasing the likelihood that customers would suffer decreased quality in services for offshore E&P waste disposal services in the Louisiana Gulf Coast; and
- f. eliminating potential competition in additional ports along the United States Gulf Coast.

ENTRY

17. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the proposed acquisition, as these markets have significant barriers to entry that limit competition to the incumbent providers.

VIOLATIONS

COUNT I – ILLEGAL ACQUISITION

18. The allegations of paragraphs 1 through 17 above are incorporated by reference as though fully set forth.

19. CCS Energy’s acquisition of the United States operations of Newpark Environmental Services would, if consummated, tend to substantially lessen competition in the relevant market in 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.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

20. The allegations of paragraphs 1 through 17 above are incorporated by reference as though fully set forth.

21. Respondents Red Sky Holdings LLP and Newpark Resources, Inc., through the Membership Purchase Agreement described in paragraph 9, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the respondents that the twenty-second (22nd) day of January, 2009, at 10:00 a.m., or such earlier date as is determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC 20580, as the place, when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission and Clayton Acts to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under § 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under § 3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisition challenged in this complaint violates Section 7 of the Clayton Act, as amended, and/or Section 5 of the FTC Act, as amended, the Commission may order such relief against respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores competition between distinct, separate, viable, and independent businesses in the relevant markets, with the ability to offer such products and services as CCS and Newpark were offering and planning to offer prior to the transaction.
2. A prohibition against any transaction between CCS and Newpark that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, Red Sky, CCS, and Newpark provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their offshore E&P waste disposal businesses in the relevant markets with any other company providing those services in that market.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to ensure the creation of one or more viable, independent entities to compete against CCS and Newpark in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, DC, this twenty-second day of October, 2008.

By the Commission.

Donald S. Clark
Secretary

SEAL