PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

SHELL OIL COMPANY,
a corporation,

and

PENNZOIL-QUAKER STATE COMPANY,
a corporation.

Docket No. C-4059

APPLICATION FOR APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2003), and Paragraph II of the Commission's Decision and Order in the above captioned matter ("Order"), Shell Oil Company ("Shell Oil") and Pennzoil-Quaker State Company ("Pennzoil") hereby petition the Commission to approve the divestiture of the Pennzoil Excel Paralubes Interest to Flint Hills Resources, LP ("FHR"), which is wholly-owned by Koch Industries Inc. ("Koch").[1]

I. BACKGROUND

On September 12, 2002, Shell Oil Company and Pennzoil-Quaker State Company (collectively, "Shell"), and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent

[1] Capitalized terms not defined herein have the definition given them in the Order.

Agreement"). On September 27, 2002, the Commission accepted the Consent Agreement for public comment, and placed the Consent Agreement and the Complaint on the public record. On November 18, 2002, the Commission issued its Complaint and Order as final.

On October 1, 2002, Shell Oil consummated its acquisition of Pennzoil. Currently, Pennzoil is a wholly-owned subsidiary of Shell Oil. The Pennzoil Excel Paralubes Interest has been operating in accordance with the Commission's Order to Hold Separate and Maintain Assets under the oversight of the Hold Separate Trustee.

The Commission's Complaint alleges that Shell Oil's acquisition of Pennzoil will substantially lessen competition in the market for Group II paraffinic base oil in the United States and Canada. Consequently, Paragraph II of the Commission's Order requires that Shell divest the Pennzoil Excel Paralubes Interest within twelve (12) months of Shell executing the Consent Agreement.

This application describes the principal terms of the Partnership Interest Purchase Agreement ("Purchase Agreement") by which Shell proposes to divest the Pennzoil Excel Paralubes Interest, and explains why the divestiture of the Pennzoil Excel Paralubes Interest to FHR satisfies the purposes of the Commission's Order.

This application contains confidential and competitively sensitive information relating to Shell, the divestiture of the Pennzoil Excel Paralubes Interest, and FHR, the proposed acquirer. Consequently, pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c) (2003), and Sections 2.41(f), 4.9 and 4.10 the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f), 4.9 and 4.10 (2003), Shell requests that non-public, commercially or competitively sensitive information contained in this application be treated by the Commission as strictly confidential and not be made available to the public.[2] The disclosure of this information would prejudice Shell, Shell Oil, Pennzoil, FHR and Koch, cause harm to the ongoing competitiveness of the Pennzoil Excel

[2] For the convenience of maintaining the public record, Shell is submitting two versions of this application. The Confidential Version contains the confidential and proprietary information necessary to enable the Commission to assess the application. The other version redacts such confidential and proprietary information (the "Public Version").

Paralubes Interest, and impair Shell's ability to comply with its obligations under the Order. Shell requests that the Commission inform it immediately if the Commission cannot treat the confidential information contained in this application as confidential so that Shell may seek appropriate relief.

Shell desires to complete the proposed divestiture of the Pennzoil Excel Paralubes Interest as soon as possible, following Commission approval. Prompt consummation will further the purposes of the Order and is in the interests of the Commission, the public, FHR, and Shell. First, it will restore the competition the Commission's Complaint alleges would be lost as a result of Shell Oil's acquisition of Pennzoil. Second, it will allow FHR to move forward with its business plans for the competitive operation of the Pennzoil Excel Paralubes Interest. Third, it will allow Shell to fulfill its obligations under the Order as soon as possible. Accordingly, Shell requests that the Commission promptly commence the public comment period pursuant to Section 2.41(f) of the Commission's Rules, 16 C.F.R. § 2.41(f) (2003), limit the comment period to the customary 30 days, and approve this application for divestiture as soon as practicable after the close of the public comment period.

II. THE PROPOSED DIVESTITURE

On April 21, 2003, Shell and FHR entered into the Partnership Interest Purchase Agreement for the sale and purchase of the Pennzoil Excel Paralubes Interest. A copy of the Purchase Agreement was previously provided to the Commission. The terms of the Purchase Agreement comply with and satisfy the purposes of the Commission's Order.

III. THE PROPOSED DIVESTITURE IS CONSISTENT WITH TERMS AND PURPOSE OF THE ORDER

A. The Proposed Divestiture Is Consistent With The Terms Of The Order

Paragraph II.A of the Order requires that Shell divest the Pennzoil Excel Paralubes Interest, within twelve (12) months of Shell executing the Consent Agreement. Shell must divest the Pennzoil Excel Paralubes Interest absolutely and in good faith and at no minimum price. Pursuant to the Purchase Agreement, Shell has agreed to sell and FHR has agreed to purchase the Pennzoil Excel Paralubes

Interest. The purchase and sale described in the Purchase Agreement comprise all of the Pennzoil Excel Paralubes Interest as defined and described in Paragraph I.P of the Order.

Paragraph II.B of the Order requires that, at the acquirer's option, Shell negotiate an agreement to purchase Group II Base Oil from the acquirer for a term not to exceed one year and with no renewal or evergreen rights. Shell afforded all companies bidding on the Pennzoil Excel Paralubes Interest an opportunity to negotiate a one year agreement whereby Shell would purchase Group II Base Oil from the acquirer post-divestiture.

Paragraph II.C of the Order requires that, prior to the Effective Date of Divestiture, Shell shall not enter into any agreement or understanding with the acquirer to purchase Group II Base Oil, other than as provided in Paragraph II.B of the Order. Shell has not entered into any such agreement or understanding with FHR.

Paragraph II.D of the Order prohibits Shell from divesting the Pennzoil Excel Paralubes Interest to Conoco (now doing business as ConocoPhillips). The proposed acquirer of the Pennzoil Excel Paralubes Interest is FHR, not Conoco. FHR is not related to Conoco.

Paragraph II.D of the Order also requires Shell to take all actions necessary to enforce the Letter Agreement dated August 30, 2002 between Shell and Conoco relating to Excel Paralubes ("Shell-Conoco Letter Agreement"). Shell has undertaken all actions necessary to enforce the Shell-Conoco Letter Agreement.

B. The Proposed Divestiture Is Consistent With The Purpose Of The Order

Paragraph II.E recites that the purpose of the Order's provisions concerning the divestiture of the Pennzoil Excel Paralubes Interest is: to ensure that the acquirer is a viable independent competitor in the refining, supplying, marketing, and selling of Group II Base Oil produced by Excel Paralubes in the same way in which Pennzoil was engaged at the time of the announcement of the Merger; to ensure that the acquirer has the option to enter into an agreement to supply Shell with Group II Base Oil on competitive terms; and to remedy any lessening of competition in Group II Base Oil resulting from the proposed

Merger as alleged in the Commission's Complaint. The proposed divestiture to FHR is consistent with the purpose of the Order.

As discussed in greater detail in Section IV of this application, FHR is an established refining and chemicals company that is a leading producer of fuels and other petrochemical and commodity products. Currently, FHR does not own any Group II Base Oil refineries. Consequently, by acquiring the Pennzoil Excel Paralubes Interest, FHR will become an independent competitor in the refining, supplying, marketing, and selling of Group II Base Oil in the same way that Pennzoil was prior to the Merger.

FHR, and all other companies bidding on the Pennzoil Excel Paralubes Interest, were given the opportunity and option to negotiate a one year contract to supply Group II Base Oil to Shell from the Excel Paralubes facility.

Shell's sale of the Pennzoil Excel Paralubes Interest to FHR will remedy any lessening of competition in Group II Base Oil resulting from the Merger as alleged in the Commission's Complaint. The Complaint alleges that the effect of the Merger may be substantially to lessen competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada by eliminating direct competition between Shell Oil and Pennzoil, by increasing the likelihood that combined Shell Oil and Pennzoil would unilaterally exercise market power, and by increasing the likelihood of, or facilitating, coordinated interaction among competitors in the market. Currently, FHR does not engage in refining or marketing of Group II Base Oil in the United States or Canada. In fact, FHR's President recently stated that FHR is looking forward "to entering into this new product line and the opportunity to serve this customer base."[3] Consequently, sale of the Pennzoil Excel Paralubes Interest to FHR does not pose any of the competitive concerns alleged in the Complaint. Accordingly, the proposed divestiture to FHR will not lessen competition in the market for Group II paraffinic base oil in the United States and Canada.

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3 Shell and FHR press releases, "Shell Oil Company and Flint Hills Resources Agree on Sale of Excel Paralubes Venture," dated April 23, 2003.

IV. THE PROPOSED ACQUIRER IS A STRONG, EXPERIENCED AND VIABLE COMPETITOR

A. FHR Is Financially Capable

FHR, based in Wichita, Kansas, is wholly-owned by Koch. Koch, also headquartered in Wichita, Kansas, is a privately owned company that owns a diverse group of companies engaged in trading, investment and has operations in more than 30 countries. Koch's continued financial strength is a result of its shareholders historically reinvesting as much as ninety (90) percent of earnings back into the company.

FHR is the conglomeration of the refining and chemicals business that various Koch companies operated for more than six decades. FHR has independent leadership and separate financial decision-making authorities and is tightly focused on achieving its goals for growth and success in the refining and chemicals business.

B. FHR Has Experience In Refining and Marketing Petroleum Products and Petrochemical Products

FHR is a leading producer of fuels and other petrochemical and commodity products. FHR has refining complexes in Pine Bend, Minnesota and Corpus Christi, Texas, as well as associated capabilities such as refined products marketing, and other crude oil supply activities. FHR's refineries in Minnesota and Texas have a total processing capacity of nearly 600,000 barrels of crude oil per day. In addition, FHR produces petrochemicals and related products at its manufacturing facilities located at its Corpus Christi, Texas refining complex. In Canada, FHR engages in crude oil marketing, trading, transportation and storage activities, primarily focused on providing a supply of Canadian crude oil to its Pine Bend, Minnesota refinery. FHR also markets a full slate of petroleum products, including gasoline, jet fuel, diesel, heating oil, as well as value-added fuels such as cleaner-burning gasoline and performance diesel fuels.

According to FHR's President, the acquisition of the Pennzoil Excel Paralubes Interest is a growth opportunity, a great fit for FHR, and "a natural extension of [FHR's] existing refining business activities."[4]

C. FHR Will Be A Viable Competitor

FHR intends to be a viable competitor in the Group II Base Oil market in the United States and Canada. FHR appears well positioned to use its experience in refining and marketing other petroleum products to become a significant competitor in the Group II Base Oil market.

V. CONCLUSION

For the foregoing reasons, Shell respectfully requests that the Commission expeditiously approve the proposed divestiture of the Pennzoil Excel Paralubes Interest to FHR, in the manner provided in the Purchase Agreement, as soon a practicable after expiration of the public comment period.

Respectfully submitted,

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4 Shell and FHR press releases, "Shell Oil Company and Flint Hills Resources Agree on Sale of Excel Paralubes Venture," dated April 23, 2003.