

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT**
*In the Matter of TC Group L.L.C., Riverstone Holdings LLC,
Carlyle/Riverstone Global Energy and Power Fund II, L.P., and
Carlyle/Riverstone Global Energy and Power Fund III, L.P.,
File No. 061-0197*

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (“Consent Agreement”) with TC Group, L.L.C. (“Carlyle”), Riverstone Holdings LLC (“Riverstone”), Carlyle/Riverstone Global Energy and Power Fund II, L.P. (“CR-II”), and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (“CR-III”). The proposed Consent Agreement remedies the anticompetitive effects that otherwise would be likely to result from the acquisition described herein.

On August 28, 2006, Kinder Morgan, Inc. (“KMI”) announced that it had entered into a definitive merger agreement pursuant to which a group of investors, including CR-III, a private equity fund managed and controlled by Carlyle and Riverstone, and Carlyle Partners IV, L.P. (“CP-IV”), an affiliate of Carlyle, would acquire all outstanding shares of KMI for approximately \$22 billion, including the assumption of approximately \$7 billion of debt (the “Acquisition”).

Carlyle and Riverstone have worked together to form, manage, and operate several private equity funds that focus on energy-related investments. One of these funds is CR-III, which, through the Acquisition, will acquire approximately 11.3% of the equity in KMI. In addition, CP-IV will also acquire approximately 11.3% of the equity in KMI. Another fund that is jointly controlled and managed by Carlyle and Riverstone, CR-II, holds interests in various energy firms, including, as relevant here, a 50% interest in the general partner that controls Magellan Midstream Partners, L.P. (“Magellan”), a midstream terminal and pipeline company that competes with KMI in various terminaling and pipeline operations.

Without some form of relief, the proposed Acquisition is likely to result in anticompetitive effects from combining KMI and Magellan under Carlyle and Riverstone. KMI and Magellan compete directly with each other in at least eleven terminal markets in the southeastern United States. These markets include: Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. In addition, KMI and Magellan are two of only three significant “independent” (*i.e.* not owned by a refiner) terminaling companies in the Southeast. A reduction in competition, particularly competition among independent terminaling companies, may result in higher prices of gasoline and other light petroleum products, reduced supply, or other anticompetitive effects in these markets.

CR-II has representatives on Magellan’s board and has significant veto power over Magellan’s activities. Carlyle and CR-III also will have the right to appoint one director each to

the eleven-member KMI board. Carlyle and Riverstone therefore may have the ability to reduce competition between the terminals owned by KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

The proposed Consent Agreement effectively remedies these possible anticompetitive effects by, among other things, prohibiting CR-II from having representation on any Magellan board, prohibiting the Respondents from influencing or attempting to influence Magellan's business activities, and requiring that Respondents implement firewalls designed to prevent the exchange of competitively sensitive information between Magellan and KMI.

I. The Proposed Respondents and Other Relevant Entities

A. Carlyle and Riverstone

Founded in 1987, Carlyle is a private equity firm based in Washington, D.C., with more than \$44.3 billion under management. Carlyle invests in buyouts, venture and growth capital, real estate, and leveraged finance in Asia, Australia, Europe, and North America, focusing on aerospace and defense, automotive and transportation, consumer and retail, energy and power, healthcare, industrial, technology and business services, and telecommunications and media. Carlyle's investors include public and private institutional investors and high net worth individuals.

Founded in 2000, Riverstone Holdings LLC is a \$6 billion private investment firm that invests solely in the energy and power sectors. Riverstone has partnered with Carlyle to create a series of energy-focused investment funds, which include CR-II and CR-III.

Carlyle and Riverstone launched CR-II in 2002, and in the last four years the fund has invested more than \$1 billion in transactions in the energy and power sector. Currently, CR-II holds interests in more than a dozen energy firms, including Magellan. In 2005, Carlyle and Riverstone launched CR-III, with more than \$3.8 billion in capital. CR-III, through the Acquisition, proposes to acquire shares that would constitute approximately 11.3% of KMI. CP-IV, another fund controlled and managed by Carlyle, also plans to acquire shares that would constitute approximately 11.3% of KMI, so that Carlyle and Riverstone together would hold approximately 22.6% of the equity of KMI.

B. KMI

KMI is one of the largest energy transportation, storage, and distribution companies in North America. Through various operating affiliates, KMI owns or operates pipelines that transport natural gas, crude oil, petroleum products and carbon dioxide, and terminals that store, transfer, and handle energy products such as gasoline and other light petroleum products,

including terminals in the southeastern United States. KMI holds the general partner interest of Kinder Morgan Energy Partners, L.P. (“KMP”), which is one of the largest publicly traded energy limited partnerships in the United States.

C. Magellan

Magellan Midstream Partners, L.P., is a publicly traded limited partnership that is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include an 8,500 mile petroleum products pipeline system, including petroleum product terminals serving the mid-continent region of the United States, and other inland petroleum products terminals located in the southeastern United States, mostly along the Colonial Pipeline. Magellan has a complex organizational structure. CR-II holds a 50% interest in MGG Midstream Holdings GP, LLC – the general partner that ultimately controls Magellan – as well as certain limited partnership interests. Interests affiliated with Madison Dearborn Partners (“MDP”), another investment firm, hold the other 50% interest. CR-II and MDP have the right to designate two representatives each on a four-member Board of Managers, and each has veto power over actions taken by the Board of Managers. CR-II and MDP also have two directors each on the boards of the other general partners that control Magellan.

II. Market Structure and Competitive Effects

Relevant markets in which to analyze the effects of the Acquisition are the terminaling of gasoline and other light petroleum products in eleven metropolitan areas in the southeastern United States, including Birmingham, Alabama; Albany and Atlanta (Doraville), Georgia; North Augusta and Spartanburg, South Carolina; Charlotte, Greensboro, and Selma, North Carolina; Knoxville, Tennessee; and Roanoke and Richmond, Virginia. Terminals are essential to the efficient flow of gasoline and other products from refineries to retail stations and have no effective substitutes. A terminal is the only method of safely and economically receiving, storing, and distributing bulk supplies of gasoline and other refined products in the large quantities needed for delivery to retail stations. Large quantities of gasoline and other light petroleum products can be shipped economically over long distances only by means of pipelines or marine vessels, not by trucks. Local deliveries to retail stations and commercial accounts, however, can be handled effectively only by tank trucks. Terminals serve as the link between pipelines that transport products from refineries and local modes of transportation.

Terminals typically serve limited geographic areas. Although the size of a terminal’s service area may vary from one metropolitan area to another based on the relative proximity of terminals, traffic congestion, natural barriers, and other factors impacting tank truck delivery, terminals often are clustered near each other and compete primarily to supply a nearby metropolitan area. The eleven local metropolitan areas in which both KMI and Magellan own terminals are relevant geographic markets in which to assess the possible effects of the Acquisition.

Each of the eleven markets already is either moderately or highly concentrated prior to the Acquisition, and an acquisition that combines KMI and Magellan through partial common ownership or control would significantly increase those levels of concentration. Moreover, KMI and Magellan are two of only three major independent terminaling systems in the Southeast – the third being TransMontaigne. Independent shippers and marketers frequently depend on independent terminals to obtain competitive access to certain markets because proprietary terminals are sometimes either not available to them or only available on a limited basis. In a number of the relevant markets, KMI and Magellan are either the only independent terminals available or two of a small number of independent terminals in service.

As a result, a direct combination of KMI and Magellan would remove a significant supplier of terminal services in markets where customers have few competitive alternatives. The combination would make the exercise of unilateral market power more likely because many customers view KMI's and Magellan's terminals as their first and second choices, and the other suppliers in the market are likely to be either incapable of replacing or unwilling to replace the competition lost as a result of the combination. Indeed, there is evidence that when customers have few independent terminal options, they can have difficulty obtaining storage and terminaling services and pay higher prices for those services that are available. Such a transaction also would increase the likelihood of coordinated interaction because of the small number of competitors remaining in many of the markets at issue and because the transaction would remove one of the few remaining independent participants that may serve as an important competitive influence.

Although the proposed transaction will not directly merge KMI and Magellan, it will have the effect of combining the two companies through partial common ownership. Carlyle and Riverstone, through their funds, will acquire a combined 22.6% interest in KMI, in addition to their existing 50% interest in the general partner controlling Magellan. After the transaction, it is likely that Carlyle and Riverstone would reduce competition between KMI and Magellan through their board representation on both competitors, by exercising veto power at Magellan, by exchanging competitively sensitive non-public information between KMI and Magellan, and by using information learned from one firm in connection with their activities on the other.

III. Entry

Entry into the market for terminaling of gasoline and other light petroleum products in each of the identified markets in the southeastern United States is unlikely to deter or counteract the likely anticompetitive effects. Entry is difficult and time-consuming and potential entrants would face substantial barriers in the form of permit requirements and land use restrictions.

IV. Terms of the Proposed Agreement Containing Consent Orders

The proposed Consent Agreement effectively remedies the Acquisition's alleged anticompetitive effects by, among other things, prohibiting representatives of Carlyle or

Riverstone from serving on any of the Magellan boards, prohibiting Carlyle and Riverstone from exerting control or influence over Magellan as long as they hold an interest in or can influence KMI, and requiring Respondents to set firewalls to prevent the exchange of competitively sensitive non-public information. The purpose of the Consent Agreement is to ensure that KMI and Magellan are operated independently of, and in competition with, each other, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

A. Proposed Respondents' Current and Future Magellan Investments Must Be Passive

In order to achieve the purposes of the Consent Agreement, Paragraph II.A. of the Commission's proposed Decision and Order ("Order") prohibits the proposed Respondents from consummating the Acquisition unless and until (1) they have removed all of their appointed or elected agents from all Magellan boards, and (2) they have agreed with MDP that they will remove such directors and will no longer have the right to have any representation on any Magellan board. Paragraph II.B of the proposed Order provides that as long as either Carlyle, Riverstone, or CR-III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, the proposed Respondents shall not: (1) elect or appoint a director to any Magellan board, (2) have a director on any Magellan board, (3) influence or attempt to influence, directly or indirectly, Magellan (with exceptions that would allow Respondents to monitor certain actions of their partner MDP in Magellan entities that are not directly involved in the operation or management of the entities engaged in Magellan's terminaling business), or (4) receive or attempt to receive non-public information about Magellan. CR-II has agreed with MDP to modify their partnership agreement to effectuate the removal of CR-II's representatives on the Magellan boards, to ensure that CR-II does not have the ability through the general partnership agreement to elect or appoint a director to any Magellan board, and to otherwise comply with the terms of the Order.

Paragraph II.B of the Order further provides that as long as either Carlyle, Riverstone, or CR-III holds any interest in KMI, has the ability or right to elect or appoint a KMI director, or has the right to obtain non-public information about KMI, Carlyle, Riverstone, and CR-II shall: (1) not discuss with, or provide, disclose or otherwise make available to KMI or any KMI director any non-public information relating to Magellan, (2) prohibit any Magellan director from discussing with, or providing, disclosing or otherwise making available to KMI or any KMI director, directly or indirectly, any non-public information relating to Magellan; and (3) institute procedures and requirements throughout the various entities of the proposed Respondents to ensure that non-public information is protected as required by the proposed Order. This prohibition, however, would not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., who are principals with Riverstone, from serving as a director on any KMI board. Although these individuals have served on Magellan boards in the past, they are not currently directors of Magellan and have not been Magellan directors for several years. As a result, any direct non-public information they might have about Magellan from serving on the board in the past is out

of date and would be competitively insignificant. In addition, such individuals still are prohibited from divulging such information to KMI or other KMI directors.

B. KMI Information and Investment Limitations

The Order also limits the flow of non-public KMI information to Magellan and places restrictions on the proposed Respondents' additional investments in KMI. Specifically, paragraph II.C. of the proposed Order provides that Carlyle, Riverstone, and CR-III shall: (1) not discuss with, or provide, disclose or otherwise make available to, Magellan, any non-public information relating to KMI; (2) prohibit all KMI directors from discussing with, or providing, disclosing or otherwise making available to Magellan, any non-public information relating to KMI; and (3) institute procedures and requirements throughout the various entities of the proposed respondents to ensure that non-public information is protected as required by the proposed Order.

Paragraph II.D. provides that, for the time period that Carlyle or Riverstone holds, directly or indirectly, any interest in Magellan, Carlyle and Riverstone shall not, without providing thirty days advance written notification, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition. This prior notice gives the Commission the opportunity to analyze additional purchases of KMI by the proposed Respondents that may change the economic incentives of the proposed Respondents. Advance notice is not required in certain limited situations where investments are effectively passive or where the Respondents' relative ownership interests would not change. In such situations, the Respondents must provide notification under Paragraph II.E. within ten days after such acquisitions.

C. Implementation Monitor

To assure that the firewall provisions of Paragraphs II.B. and II.C. of the Order are properly implemented and enforced, the Order requires an Implementation Monitor to monitor these obligations. Pursuant to Paragraph IV, Mr. Kevin Sudy, an Associate Director at Navigant Consulting, will be appointed as the Implementation Monitor and shall serve until such time as he reports to the Commission that the parties have established adequate procedures under the terms of the proposed Order and the Commission notifies the parties that such procedures are acceptable. The Commission reserves the right subsequently to reinstate the monitor as necessary and appropriate to ensure compliance by Respondents with the terms of the proposed Order. The Implementation Monitor is important to assuring compliance with the firewall provisions of the Order.

D. Notice Provisions

Paragraph II.E. requires the proposed Respondents to provide the Commission with written notice within ten days if they (1) no longer hold any interest in Magellan, other than a

wholly passive investment, (2) no longer hold any interest in Magellan, (3) no longer hold any interest in KMI or no longer have the ability to influence or have representation at KMI, (4) acquire interest in interest in KMI through a passive investment fund, or (5) acquire any interest in Magellan.

Paragraph III of the proposed Order requires the proposed Respondents to send notice of the Order, Complaint, and Analysis to Aid Public Comment in this matter to certain persons likely to have competitively sensitive information subject to this Order or likely to be impacted by the firewall provisions of the Order, including persons on the Magellan and KMI Boards of Directors, and other persons involved in the Acquisition of KMI.

Paragraph V.A. requires periodic reports until the Implementation Monitor and the Commission are satisfied that the firewalls are properly established and adequately protect the flow of non-public information as required by the Order. Paragraph V.B. requires annual reports until the Order terminates in ten years.

Paragraph VI requires the proposed Respondents to give the Commission prior notice of certain events that may change their obligations under the Order.

E. Additional Provisions

Paragraph VII allows the Commission to have access to personnel and documents at the offices of the proposed Respondents with proper notice for purposes of determining or securing compliance with this Order.

Paragraph VIII provides that the Order shall terminate after ten years.

V. The Order to Maintain Assets

The Commission has also issued an Order to Maintain Assets in this proceeding, which effectively requires the proposed Respondents to adhere to the terms of the proposed Order during the time period leading up to their proposed Acquisition of equity interests in KMI.

VI. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on 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, nor is it intended to modify the terms of the proposed Order in any way.