ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT
In the Matter of Aspen Technology, Inc., Docket No. 9310

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Order ("Proposed Order") with Aspen Technology, Inc. ("AspenTech") to resolve the anticompetitive effects alleged in the Complaint issued by the Commission on August 6, 2003.

On or about May 31, 2002, AspenTech acquired Hyprotech, Ltd. from AEA Technology plc for approximately $106.1 million in a transaction that was not reportable under the Hart-Scott-Rodino Act. At the time of the acquisition, AspenTech and Hyprotech were the primary global suppliers of process engineering simulation software and had only one other significant competitor, Simulation Sciences ("SimSci"). The Agreement requires that AspenTech divest its integrated engineering software business to Bentley Systems, Inc. ("Bentley"), and its batch and continuous process engineering software business to a Commission-approved buyer.

The Proposed Order has been placed on the public record for 30 days for interested persons to comment. Comments received during this 30 day period will become part of the public record. After 30 days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw the Proposed Order or make the Proposed Order final.

I. The Parties

AspenTech, headquartered in Cambridge, Massachusetts, is a developer and worldwide supplier of manufacturing, engineering, and supply chain simulation computer software. AspenTech's products include non-linear process engineering simulation software used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that support those industries. AspenTech had total revenues of approximately $323 million for fiscal year 2003, and it employs approximately 1,750 people worldwide.

Hyprotech was a wholly-owned operating division of AEA Technology plc, a corporation organized, existing, and doing business under the laws of the United Kingdom. Hyprotech was also a developer and worldwide supplier of engineering and simulation computer software used by the refining, oil and gas, petrochemical, chemical, pharmaceutical, and other process manufacturing industries and by engineering and construction companies that support those industries. Headquartered in Calgary, Alberta, Canada, Hyprotech had offices throughout the world, including the United States, and had revenues of approximately $68.5 million in fiscal year 2002.

Prior to the acquisition, AspenTech and Hyprotech were the largest providers of process engineering simulation software. Process engineering simulation software enables plant designers, engineers, production planners, and others, to design, simulate, and analyze production processes used in various industrial operations. The software allows users to

mathematically model, or simulate, a process to predict what happens when different variables (such as heat, pressure, or raw material composition) are changed, thereby allowing more efficient and lower cost operations. AspenTech and Hyprotech were also the two primary providers of integrated engineering software, which facilitates the sharing and implementation of process design data.

II. The Commission's Complaint

On August 6, 2003, the Commission issued a Complaint charging that AspenTech unlawfully acquired the assets of Hyprotech in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

The Complaint alleges the following seven global markets within which to analyze the effects of the acquisition: (1) software used to simulate continuous process engineering applications; (2) four narrower markets contained within the overall continuous process engineering software market, each such market defined by end-use application (specifically oil and gas, refining, chemicals, and air separation process simulation); (3) software used to simulate batch process engineering applications, such as fine chemicals or pharmaceuticals; and (4) software used for integrated engineering applications (multi-user software that enables engineers to share process design data).

The Complaint alleges that, prior to the acquisition, AspenTech and Hyprotech were the closest competitors within each relevant market. The Complaint further alleges that, prior to the acquisition, AspenTech and Hyprotech vigorously competed to develop, license, and support continuous and batch process engineering simulation software and integrated engineering software. This competition provided customers with lower prices, better service, and increased product innovation. The Complaint maintains that entry into the relevant product markets is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint charges that the combination of the two companies substantially lessened competition in the relevant markets. Specifically, the acquisition eliminated the competition between AspenTech and Hyprotech to reduce prices, enhance innovation, and offer better services with respect to their software offerings in the relevant markets. Thus the acquisition enhanced AspenTech's ability to raise customers' prices above competitive levels in the relevant markets. The acquisition also increased AspenTech's capability to undermine open standard setting organizations, diminishing the pro-consumer effectiveness of such organizations to promote third-party software design and sale.

III. Terms Of The Proposed Order

The Proposed Order effectively remedies the acquisition's alleged anticompetitive effects by requiring AspenTech to divest the overlapping Hyprotech assets. The continuous process and batch process assets, along with AspenTech's operator training software and service business,

are to be divested to a Commission-approved buyer and in a manner approved by the Commission, and the integrated engineering software business is to be divested to Bentley, also subject to the Commission's final approval.

A. Divestiture of the Hyprotech Process Engineering Software and AspenTech Operator Training Software Business

The Proposed Order directs AspenTech to sell Hyprotech's continuous process and batch process assets, as well as AspenTech's operator training business, to a buyer acceptable to the Commission within the required time period. Section II. If AspenTech is unable to divest this set of assets to a Commission-approved buyer within 60 or 90 days of the Commission making the Proposed Order final, this time period dependant on when AspenTech provides an application for divestiture, the Commission may appoint a trustee to divest the assets to a Commission-approved buyer.

The Proposed Order assures the viability of the divestiture of the continuous and batch process engineering software assets by (1) requiring AspenTech to divest its operator training software and services business and (2) allowing customers with current software maintenance and support agreements to choose between maintaining those contracts with AspenTech or switching to the Commission-approved buyer. Section II. Customers will also be able to obtain additional copies of Hyprotech software from the Commission-approved buyer without affecting current license agreements with AspenTech. Paragraph II.F.

The Proposed Order allows AspenTech to license the Hyprotech continuous and batch process engineering software from the Commission-approved buyer to preserve software development efforts since the acquisition. The Proposed Order requires AspenTech to provide the Commission-approved buyer with (1) all releases and upgrades to the Hyprotech process engineering simulation software for two years and (2) within fourteen days after the two-year post-divestiture period, all Hyprotech process engineering software under development at that time. Paragraph II.D. The Proposed Order additionally requires AspenTech to provide support services on the process engineering software assets to the Commission-approved buyer for two years from the date of divestiture. Paragraph II.E. These provisions ensure that the Commission-approved buyer will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Proposed Order requires AspenTech to indemnify the Commission-approved buyer in the event that the divested process engineering software infringes specific intellectual property rights. AspenTech will be bound to either procure for the Commission-approved buyer the right to continue to use the software or modify or replace the software so that it does not infringe the third party's intellectual property rights. Paragraphs II.H. and II.I.

The Commission's purpose in divesting the process engineering simulation software assets is to allow the buyer to engage in the development and licensing of the Hyprotech software and to remedy the lessening of competition alleged in the Commission's Complaint in

the markets for (1) continuous process engineering simulation flowsheet software for process industries and smaller markets contained therein, and (2) batch process engineering simulation flowsheet software for process industries.

B. Divestiture to Bentley

Pursuant to the Proposed Order and subject to the Commission's final approval, AspenTech will divest Hyprotech's AXSYS integrated engineering software business to Bentley. Section III. Bentley is a technology firm that provides architecture, engineering, construction, and operations software for a variety of applications, including buildings, industrial plants, and civil operations. Bentley reported 2003 revenues of approximately $260 million.

Under the terms of the Proposed Order, Bentley will acquire Hyprotech's integrated engineering software products and, among other things, all rights to any existing software contracts no earlier than one day, and no later than ten days after the Proposed Order is placed on the public record. The Proposed Order contains additional provisions that require AspenTech to provide Bentley with updates, upgrades, and new releases of AspenTech's engineering and other products on at least as favorable terms as offered to any other person, for a period of five years. Paragraph III.E. AspenTech must also provide Bentley with no-cost support services relating to the AXSYS assets for a period of two years. Paragraph III.F. These provisions ensure that Bentley will be able to create and maintain integrated engineering products that interface with AspenTech engineering products.

The Commission believes that Bentley is a satisfactory buyer for these assets. The AXSYS software effectively complements the other software and services that Bentley currently offers. Bentley has the engineering, software, and marketing resources to support the AXSYS software, and the expertise to provide updated and innovative versions of AXSYS. As a result, the Commission believes that divestiture of this product line to Bentley will remedy the acquisition's alleged anticompetitive effects in the integrated engineering software market.

The purpose of the divestiture is to ensure the continued use and development of the AXSYS software in the same business in which Hyprotech used the software prior to Hyprotech's acquisition by AspenTech and to remedy the lessening of competition alleged in the Commission's Complaint in the market for integrated engineering software for process industries.

C. Other Provisions

To maintain the viability of both packages and to provide a level playing field for third-party software developers that must interface with the Hyprotech and AspenTech process engineering simulation software products, the Proposed Order requires Aspentech to maintain a level playing field. For a period of five years after the divestiture, the Proposed Order requires AspenTech to develop its engineering simulation software in a manner that maintains its compatibility with HYSYS and to maintain published interfaces to AspenTech engineering

simulation software. Paragraphs IV.A. and IV.B. AspenTech also must publish and provide support for all HYSYS and AspenPlus interfaces. Paragraphs IV.B. and IV.C. Finally, the proposed order prohibits AspenTech from entering into or enforcing any agreement with any competitors that has the purpose of impeding or obstructing the conduct or organizational structure of any standard-setting organization, which agreement has not been explicitly disclosed to the members of that standard-setting organization and that is inconsistent with the purpose of the Proposed Order as stated in Paragraphs II.K. and III.H. Paragraph IV.D.

To ensure that both the Commission-approved buyer of the process engineering software and operator training software and Bentley can hire employees familiar with the divested software, the Proposed Order directs AspenTech to provide the acquirers with access to relevant AspenTech employees. Paragraph V.A. This provision requires AspenTech to provide the acquirers with lists of relevant employees, remove any impediments deterring current AspenTech employees from switching to Commission-approved buyers, and for a period of two years following the divestitures, prevents AspenTech from soliciting any former AspenTech employees who choose to work for either of the Commission-approved buyers. Paragraphs V.B. through V.D.

Section VI of the Proposed Order includes the standard divestiture trustee provision pursuant to which the Commission may appoint a trustee to effectuate a required divestiture if AspenTech is unable to comply with its divestiture obligations in either Section II. or Section III., or both. Section VI. If, however, the Commission rejects Bentley as a buyer, AspenTech is granted an additional six months to divest the asset package to an acquirer that receives the prior approval of the Commission. Paragraph III.B. If AspenTech is unable to divest within that six month period, then the Commission may appoint a trustee to divest the AXSYS Assets.

IV. Opportunity For Public Comment

By accepting the Proposed Order, 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, including the proposed divestitures, 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 modify the terms of the Proposed Order in any way.