

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



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In the Matter of )  
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ASPEN TECHNOLOGY, INC., )  
a corporation. )  
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PUBLIC RECORD VERSION

Docket No. 9310

**ASPEN TECHNOLOGY, INC.'S APPLICATION FOR APPROVAL OF PROPOSED  
DIVESTITURE OF THE ENGINEERING SOFTWARE ASSETS**

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice, 16 C.F.R § 2.41(f) (2004), and Paragraph II.A.1 of the Commission's proposed Decision and Order ("Proposed Order") in the above-captioned matter, Aspen Technology, Inc. ("AspenTech") hereby petitions the Commission to approve the divestiture of AspenTech's Engineering Software Assets to Honeywell International Inc., Honeywell Control Systems Limited, and Honeywell Limited-Honeywell Limitee (collectively, "Honeywell").<sup>1</sup>

**I. INTRODUCTION**

Paragraph II.A.1 of the Proposed Order provides AspenTech with 90 days from the date the Proposed Order becomes final to conclude its divestiture of the Engineering Software Assets, provided that AspenTech has submitted to the Commission an application (including an executed purchase agreement) for approval of a proposed divestiture buyer no later than five days after the Proposed Order has become final.<sup>2</sup> AspenTech executed a definitive agreement with Honeywell on October 6, 2004 to effectuate the divestiture of the Engineering

<sup>1</sup> All capitalized terms not defined in this petition have the meanings as defined in the Proposed Order.

<sup>2</sup> As the Commission has not yet made the Proposed Order final, this application is made within the timeframe contemplated in Paragraph II.A.1 of the Proposed Order.

Software Assets as required by the Proposed Order. A copy of the signed Purchase and Sale Agreement (and related ancillary agreements and schedules) is attached as Confidential Exhibit A (collectively, the "Honeywell Purchase Agreement").<sup>3</sup>

This application for approval describes the principal terms of the Honeywell Purchase Agreement, and explains why the proposed divestiture of the Engineering Software Assets to Honeywell satisfies the purposes of the Commission's Proposed Order and thus merits the Commission's approval. AspenTech respectfully requests that the Commission promptly commence the public comment period pursuant to Section 2.41(f) of the Commission's Rules of Practice, limit the comment period to no more than the customary 30 days, and approve this application for divestiture as soon as practicable after close of the public comment period.

## **II. THE PROPOSED ACQUIRER AND PROPOSED DIVESTITURE ARE CONSISTENT WITH THE TERMS AND PURPOSE OF THE ORDER**

Based in Morristown, New Jersey, Honeywell is a diversified technology and manufacturing company serving customers worldwide in the aerospace, automation and control solutions (including for process industries), specialty materials, and transportation systems industries.<sup>4</sup> Honeywell had annual revenues of nearly \$25 billion in 2003 and employs approximately 100,000 people in 95 countries worldwide, and its shares are traded on the New York and London stock exchanges. Like AspenTech, Honeywell is a vendor of software and services designed to enhance the productivity and efficiency of process industry manufacturing facilities (*e.g.*, gas processing plants, refineries, chemical plants, *etc.*) by allowing customers to simulate and control those facilities. Although Honeywell does not currently offer products in

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<sup>3</sup> A complete, executed copy of the Honeywell Purchase Agreement was provided to the FTC Staff on October 7, 2004.

<sup>4</sup> Attached as Exhibits B and C, respectively, are copies of Honeywell's 2003 annual report and its most recent Form 10-Q (for the period ending June 30, 2004) filed with the United States Securities and Exchange Commission.

the relevant markets alleged by the FTC in its complaint (*i.e.*, continuous and batch process engineering simulation flowsheet software and integrated engineering software for process industries), it is active in complementary software products, with a focus primarily in automation and control solutions.

The proposed divestiture will fully accomplish the FTC's purpose outlined in Paragraph II.K of the Proposed Order by enabling Honeywell to engage in the development and licensing of Hyprotech Process Engineering Simulation Software. Although AspenTech strongly disagrees with the allegation in the Commission's complaint that its acquisition of Hyprotech has or would lead to a lessening of competition, Honeywell's acquisition of the Engineering Software Assets ensures that no such lessening of competition will occur, and indeed, enhances competition by creating two suppliers offering closer substitute products than existed pre-merger.

Consistent with the terms of the Proposed Order, the Honeywell Purchase Agreement also preserves valuable technological efficiencies from the merger of AspenTech and Hyprotech by allowing AspenTech to retain a license to the Hyprotech Process Engineering Simulation Software products, so that customers will continue to enjoy the benefits of AspenTech's innovation using the combined AspenTech and Hyprotech technologies.

**A. Honeywell Is Well Positioned To Compete Effectively In Process Engineering Simulation Software**

Honeywell is a well-known global conglomerate and one of the leading providers of, among other things, plant automation, optimization, safety, and control solutions to process industries, including chemical, pharmaceutical, refining, gas processing, pulp and paper, and power and energy industries. Honeywell's products and services in this area are complementary to, and used in conjunction with process engineering simulation software products, including,

among others, Hyprotech Process Engineering Simulation Software, AspenTech's Aspen Plus software, Simulation Science's Pro/II software, Chemstations' CHEMCAD software, and comparable products from other vendors of process engineering simulation software.

In addition to acquiring ownership of the intellectual property comprising the Hyprotech Process Engineering Simulation Software, as part of AspenTech's divestiture of the Engineering Software Assets, Honeywell will acquire AspenTech's on-going operator training business (the "OTS Assets"), which uses divested technology for the dynamic simulation that is at the core of operator training services. The OTS Assets include, among other things, AspenTech's operator training software (including intellectual property rights), certain employees of the OTS Business, customer contracts and trademarks relating solely to the OTS Business, and inventories, books, records, financial files, and marketing and sales materials of the OTS Business. The OTS Assets further ensure that Honeywell will have a strong financial and operational base and incentives to continue to develop and market the Hyprotech Process Engineering Simulation Software products.

The combination of Honeywell's existing products and services with the operator training business and Hyprotech Process Engineering Simulation Software acquired from AspenTech will allow Honeywell to offer process industry customers with scalable solutions ranging from single processes to enterprise wide solutions. As Honeywell explained in its press release announcing this proposed transaction:<sup>5</sup>

The acquired technologies will extend the capabilities of Honeywell's Experion™ Process Knowledge System (PKS) by enhancing its ability to gather data throughout the plant, coupling it with domain knowledge embedded in HYSYS

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<sup>5</sup> A copy of Honeywell's press release is attached as Exhibit D.

models and advanced solutions. The combined solution allows Honeywell to help drive customer profitability by placing information in front of decision-makers in an actionable format.

Specifically, the addition of the new HYSYS technology and OTS business allows customers to turn data into knowledge in four interlinked areas:

- Better process performance that helps the plant process achieve the maximum output/yield.
- Better asset effectiveness by deciding when/where/how to operate, maintain or repair equipment.
- Better business decision-making when choosing which orders to take, which plant to use, when to deliver, and at what price.
- Better operator effectiveness through training on startup, shutdown, upsets and abnormal circumstances.

"Today's process operations are increasingly complex. Operators not only manage profitability, they also work to comply with regulations and product quality constraints," said Jack Bolick, president of Honeywell Process Solutions.

"Powerful, integrated, automation-based solutions and a well-trained staff are an essential requirement. This acquisition not only allows us obtain great new additions to our product portfolio, but we gain an incredible amount of process knowledge and experience from the new employees joining Honeywell, and we are committed to ensuring a seamless transition of in-progress customer projects."

With this acquisition, Honeywell reinforces its commitment to providing a comprehensive suite of advanced solutions for its customer base. In addition, Honeywell will be able to further enhance its Shadow Plant® simulation offerings by merging capabilities offered by the Aspen OTS and Hyprotech technologies, and leveraging customers' own intellectual property embedded in existing HYSYS models - ultimately providing a more robust and thorough operations and training solution to customers.

**B. The Proposed Order And Honeywell Purchase Agreement Provide Additional Protections To Ensure Honeywell's Viability As A Competitor**

Honeywell has well-established expertise and a strong reputation in related software products and services, based in part on a proven record of financial stability and experience with technical support and customer service. Although Honeywell would have little difficulty establishing itself as a viable competitor to AspenTech based on the combination of its own experience and resources with the Engineering Software Assets it is acquiring from

AspenTech, the Honeywell Purchase Agreement and the Proposed Order provide additional protections to ensure Honeywell's viability in process engineering simulation software. These additional protections include, among others, the following:

- for two years, Honeywell is entitled to receive from AspenTech technical support and copies of all AspenTech Releases of its Hyprotech Process Engineering Simulation Software products;
- for two years, AspenTech must permit each of its Hyprotech Process Engineering Simulation Software customers to switch to Honeywell's service, support, and maintenance program without penalty;
- for two years, AspenTech must permit each of its Hyprotech Process Engineering Simulation Software customers to purchase additional copies of Hyprotech Process Engineering Simulation Software from Honeywell without affecting the customers' existing AspenTech contracts;
- for a period of six months, AspenTech must allow Honeywell to have access to, and make offers to, Hyprotech and operator training personnel employed by AspenTech without interference by AspenTech;
- for five years, AspenTech must maintain technical standards relating to the Hyprotech Process Engineering Simulation Software, and publish all of its Interfaces for HYSYS and Aspen Plus; and

- AspenTech must indemnify Honeywell and remedy any infringement claims relating to certain proceedings identified in the Proposed Order (the “Specified Proceedings”).<sup>6</sup>

The structure of the transaction and the protections guaranteed by the Proposed Order and the Honeywell Purchase Agreement ensure that Honeywell will have a strong incentive and ability to develop its process engineering simulation software business.

### III. CONCLUSION

Although AspenTech is not privy to the specifics of Honeywell’s business plans, it is apparent that Honeywell will be well-positioned to build off of its relationships with customers in its operator training and automation and control businesses (including the OTS Business acquired from AspenTech), and to take advantage of the two years of Releases and technical support from AspenTech to establish its own research and development path for the Hyprotech Process Engineering Simulation Software products. In sum, with its acquisition of the Engineering Software Assets, Honeywell has the experience, incentive, and resources necessary to become a significant competitor for process engineering simulation software. Honeywell and the Honeywell Purchase Agreement should easily satisfy both the specific terms and the purpose of the Proposed Order.

For the foregoing reasons, AspenTech respectfully requests the Commission approve the proposed divestiture of the Engineering Software Assets to Honeywell, in the manner provided for in the Honeywell Purchase Agreement, as soon as possible after expiration

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<sup>6</sup> The legal actions comprising the “Specified Proceedings,” which involved disputes between AspenTech and KBC Advanced Technologies plc, were settled in their entirety on October 1, 2004 (see AspenTech press release attached as Exhibit E).

of the public comment period, especially in view of AspenTech's obligation under Paragraph II.A.1 of the Proposed Order to divest the Engineering Software Assets no later than 90 days from the date the Proposed Order is made final

#### **IV. CONFIDENTIAL TREATMENT**

Pursuant to Section 21 of the Federal Trade Commission Act, 15 U.S.C. § 57b-2, and the Commission's Rules of Practice 4.9(b)(7), 4.9(c), and 4.10-4.11, 16 C.F.R. §§ 4.9(b)(7), 4.9(c), and 4.10-4.11, AspenTech respectfully requests that the information and documents provided in Confidential Exhibit A to this application for approval be treated as strictly confidential and not be made available to the public.<sup>7</sup> The confidential version of this application for approval contains highly confidential business information relating to the Engineering Software Assets, and contains commercially sensitive information regarding the terms and conditions of AspenTech's divestiture agreements with Honeywell.

The information contained in Confidential Exhibit A, if released to the public, would provide significant insight into AspenTech's confidential negotiations with Honeywell, and would provide competitors with commercially sensitive information relating to the Engineering Software Assets. The release of such information may cause harm to the ongoing competitiveness of AspenTech's remaining businesses, the competitiveness of Honeywell's business with respect to the Engineering Software Assets, or impair AspenTech's ability to fulfill its obligations under the Proposed Order. AspenTech requests the Commission inform it immediately if the Commission decides not to treat the confidential version of this application

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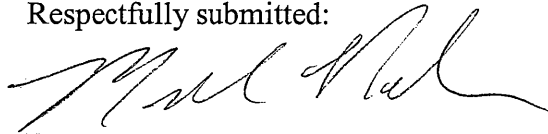
<sup>7</sup> For the convenience of maintaining the public record, AspenTech is submitting two versions of this application for approval: a confidential version that contains confidential and proprietary information and documents necessary for the Commission to assess this application, and a redacted version that excludes confidential and proprietary information for placement on the public record.



for approval, and the information contained within, as confidential so that AspenTech may seek appropriate relief.

Date: October 14, 2004

Respectfully submitted:

A handwritten signature in black ink, appearing to read "George S. Cary", written over a horizontal line.

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