

Aug 12, 2004

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave, N.W.  
Washington DC 20580

**Re:** In the Matter of Aspen Technology, Inc., Docket No. 9310

The SimSci - Esscor business unit of Invensys plc ("SimSci") submits the following comments regarding the Federal Trade Commission's proposed Agreement Containing Consent Order with Decision and Order In the Matter of Aspen Technology, Inc., Docket No. 9310 (July 15, 2004).

SimSci is engaged in the development and marketing of Industrial process simulation software and systems for a variety of industries, including oil and gas exploration, petroleum refining, petrochemical and chemical manufacturing, electrical power generating, mining, pulp and paper, and engineering and construction. SimSci competes directly in this business with Aspen Technology, Inc. ("Aspen"). Prior to Aspen's acquisition of Hyprotech ("the Acquisition"), SimSci competed directly with Aspen and Hyprotech.

The Acquisition combined the two largest competitors providing process engineering simulation flowsheet software. The Commission's complaint states that Aspen documents admit a post-Acquisition market share between 67% and 80% of the continuous process flowsheet market. SimSci believes that Aspen's share of the market currently approximates more than 70%.

The Commission's complaint alleges that the Acquisition may allow Aspen unilaterally to exercise market power in the relevant market, and thereby substantially lessen competition. As the principal remaining competitor in this market, SimSci is directly threatened.

SimSci believes that these allegations reflect a well-founded concern that the Acquisition has resulted in and will continue to result in serious anticompetitive effects. SimSci believes that the proposed consent order does little, if anything, to address these concerns or to alleviate the underlying market conditions that threaten competition.

David McQuillin at Aspen is quoted in a July 15, 2004 Aspen press release as stating:

"Under the agreement, we should be able to continue to sell and develop our comprehensive offering of process industry software products, including the products we acquired with the acquisition of Hyprotech. We believe this settlement is on terms favorable to Aspen Technology...."

An information sheet/Q&A, being distributed by Aspen to its customers, states that "the substance of the transaction is what is important" and describes how, in substance, the proposed order will bring little change to the market. Indeed, Aspen asserts that it's "customers will not experience change in their commercial relationship with Aspen Technology".

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SimSci's analysis of the proposed order suggests that Aspen's claim that the order "in substance" would accomplish very little is correct. SimSci requests that the Commission consider and address the following issues in determining whether the proposed order adequately will remedy the real threat to competition presented by the Acquisition:

1. How would the proposed order substantially reduce Aspen's >70% dominant market share to a level that no longer presents a serious threat to competition? SimSci sees no basis to believe such a reduction is reasonably foreseeable. What level of market share for Aspen does the FTC see as acceptable for restored competition?
2. Under the FTC's complaint dated August 7, 2003, part of the proposed relief was "divestiture of all Hyprotech software, intellectual property, contract rights and other necessary assets". How is Aspen able to exclude certain derivative products such as the refinery simulation product known as REFSYS or the upstream simulation products known as HYSYS Upstream and AssetBuilder from the divestiture to increase market competition?
3. Based on Stephen Doyle's comment that asset sell price is not a factor during the Aspen conference call on July 15, what criteria would the Aspen shareholders use to review and approve potential buyers of the Hyprotech assets? How do the FTC criteria meet the minimum compensation expectations of the Aspen shareholders as return on the acquisition cost of \$106m for Hyprotech assets?
4. How does the current injunction obtained by KBC Advanced Technologies effect the implementation of the proposed consent decree? Can Aspen divest the Hyprotech assets while this injunction is in effect?
5. If the FTC stated goal is to restore a three competitor status to the process simulation market, why is KBC, who through a separate legal action has received the rights to the HYSYS code, not considered the third competitor?

Does the FTC believe that KBC is a service provider only and therefore not a viable software supplier?

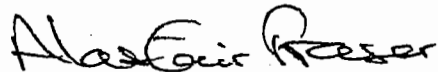
How can the FTC sanction the proposed Aspen deal which proposes to provide the Hyprotech software to a third party with zero or close to zero acquisition costs in return for a perpetual license back to themselves of the same software?

Stated more simply if the current Harris County injunction continues to be upheld in KBC's favor and allows them to sell HYSYS software, why should the FTC support a subsidized third party agreement which allows Aspen to license back the software?

6. As an alternative approach, has the FTC considered having the HYSYS code placed in the public domain? Public domain software was the origin of ASPEN PLUS so Aspen should not see this as an unreasonable business situation.
7. As the OTS business (currently provided by a small team in London and a partially owned subsidiary, Hyperion) was not part of the original complaint, why are these assets now included? Are these assets being used as an inducement to enable Aspen to get the reciprocal perpetual license back for the HYSYS product lines?
8. What criteria for acceptance is the FTC planning to use for approval of the potential buyer? How is the FTC going to evaluate the business plans from the potential buyer for viability and aggressive competition in all markets including chemicals, where Aspen has a monopolistic market share with global chemical majors?

9. Under the proposed consent decree, Aspen is not required to divest any contracts, expertise or resources. Are the clients who signed multiyear term license agreements, when there was only a single sole source for HYSYS and Aspen+, now going to have the opportunity to cancel their license agreements, to allow the successful Buyer to compete for the HYSYS license, maintenance and support?
10. David McQuillin said on the Aspen conference call July 15, that it is a very positive result for Aspen. How does the FTC feel that they achieved the desired result based on the original complaint dated August 13, 2003?

Yours truly,



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