

industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts. For the fiscal year ended June 30, 2002, SU reported sales of nearly \$1.3 billion and assets of approximately \$2.67 billion.

Pursuant to an agreement executed November 20, 2002, which continued until the agreement was terminated on May 12, 2003, Respondent SU's subsidiary, Energy Worx, Inc. ("Energy Worx"), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. ("AIG") through its affiliate Southern Star Central Corp. ("Southern Star").

CMS, headquartered in Dearborn, Michigan, is engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services. Panhandle, a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.

Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately \$1.8 billion.

### III. The Complaint

The Complaint alleges that the acquisition of Panhandle from Respondent CMS by Respondent SU would violate section 7 of the Clayton

Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the transportation of natural gas by pipeline into the Kansas City area. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondent Southern Union, prior to the proposed acquisition, to terminate the Management Services Agreement with AIG for the management of the Central pipeline. The proposed order also prohibits Southern Union from acquiring an equity position in AIG or the Central Pipeline. In addition, the Proposed Order prohibits Respondents Southern Union and CMS from transferring or otherwise providing any ownership interest in the Panhandle pipeline to AIG.

The Complaint alleges that a relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Transportation of natural gas by other methods would be unsafe, prohibitively expensive, and otherwise not viable. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

The Complaint further alleges that the proposed transaction would lessen competition in a geographic market in the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a pricing constraint on Central or Panhandle because of operational limitations, capacity constraints, and distance limitations. As a result, for many buyers of natural gas transportation services in

the relevant geographic market, Central and Panhandle are the only viable alternatives.

Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline from November 20, 2002, until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had effective control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.

The market for the pipeline transportation of natural gas to the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, would involve significant sunk costs, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5–10% increase in the price of pipeline transportation of natural gas.

The Complaint charges that the proposed acquisition, absent relief, is likely to substantially lessen competition and lead to higher prices for the transportation of natural gas by pipeline to the Kansas City area, by eliminating direct competition between the Panhandle pipeline and the Central pipeline; by placing the Panhandle pipeline and the Central pipeline under common ownership and/or common management and control; by increasing the likelihood that unilateral market power would be exercised in the