

**ANALYSIS OF PROPOSED AGREEMENT CONTAINING  
CONSENT ORDERS TO AID PUBLIC COMMENT**

*In the Matter of Pilot Corporation,  
Propeller Corp., and Flying J Inc.,  
File No. 091-0125*

The Federal Trade Commission has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Pilot Corporation and Propeller Corp. (collectively, “Pilot”), and Flying J Inc. (Pilot and Flying J Inc., collectively, “Respondents”). Pursuant to agreements dated December 18, 2009, Pilot intends to acquire the interests and assets of Flying J Inc.’s travel center and related businesses for approximately \$1.8 billion (the “acquisition”). The Commission’s Complaint alleges that the acquisition, if consummated, 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 removing actual, direct, and substantial competition between Pilot and Flying J and increasing the likelihood that Pilot will exercise market power unilaterally. The proposed Consent Agreement would resolve the competitive concerns from the acquisition by requiring the divestiture of 26 travel centers to Love’s Travel Stops and Country Stores. The divestiture will make Love’s a stronger competitor and replace competition weakened by the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the proposed Consent Agreement again and the comments received, and decide whether it should withdraw from the Consent Agreement or make it final.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Decision and Order (“Order”), nor does the analysis modify their terms in any way.

**I. Respondents and Other Relevant Entities**

**A. Pilot and Propeller**

Pilot Travel Centers LLC is the largest travel center operator in the United States. Pilot Travel Centers LLC is a privately held, for-profit limited liability company and is controlled equally by Pilot Corporation and Propeller Corp.

Respondent Pilot Corporation holds 52.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC’s Board of Managers. Pilot Corporation is a privately held, for-profit corporation.

Respondent Propeller Corp. holds 47.5 percent of the non-corporate interests of Pilot Travel Centers LLC and a right to 50 percent representation on Pilot Travel Centers LLC's Board of Managers. Propeller Corp. is a for-profit corporation, privately held in its entirety by five stockholders managed by CVC European Equity V Limited and three stockholders managed by CVC European Equity Tandem Fund Limited.

## **B. Flying J**

Respondent Flying J Inc., a privately held, for-profit corporation, is a fully integrated oil company with operations throughout the United States and Canada. Flying J Inc. owns and operates, among other things, travel center, trucking, fuel card, and related businesses. Flying J Inc., its wholly-owned subsidiary, and wholly-owned subsidiaries of ConocoPhillips jointly control the CFJ Entities.

The CFJ Entities own Flying J-branded travel centers operated by Flying J Inc. in 36 U.S. states. It is jointly controlled by Flying J Inc., its wholly-owned subsidiary, and wholly-owned subsidiaries of ConocoPhillips. The CFJ Entities consist of: (1) CFJ Properties, a general partnership that is 50% owned by wholly-owned subsidiaries of ConocoPhillips and 50% owned by a wholly-owned subsidiary of Flying J Inc.; (2) CFJ I Management Inc., CFJ II Management Inc., and CFJ III Management Inc. ("CFJ Management Companies"), each of which is 50% owned by a wholly-owned subsidiary of ConocoPhillips and 50% owned by Flying J Inc.; and (3) CFJ Plaza Company I LLC, CFJ Plaza Company II LLC, and CFJ Plaza Company III LLC, each of which is 49.5% owned by a wholly-owned subsidiary of ConocoPhillips, 49.5% owned by Flying J Inc., and 1% owned by its corresponding CFJ Management Company.

## **II. The Proposed Complaint**

Pilot's acquisition of Flying J presents substantial antitrust concerns in the market for over-the-road sale of diesel to long-haul fleets by national travel center operators in the contiguous United States. Travel centers provide locations for long-haul trucks to fuel and serve as the long-haul driver's home away from home, offering amenities including parking for tractor-trailers, truck service centers, truck washes, certified automated truck scales, fast food restaurants, shower facilities, internet access, and financial services for drivers. Four travel center operators – Pilot, Flying J, TravelCenters of America ("TA"), and Love's (collectively, "national travel center operators") – have the scale and scope to compete for any substantial portion of long-haul over-the-road diesel business although not all the major travel center operators are able to compete for all customers. Pilot and Flying J are the first and second choices for a number of long-haul fleets.

The acquisition may substantially lessen competition in the relevant market by, among other things: (a) eliminating actual, direct, and substantial competition between Pilot and Flying J; and (b) increasing the likelihood that Pilot will exercise market power unilaterally.

De novo entry or fringe expansion into the relevant market is unlikely to deter or counteract the likely anticompetitive effects. Entry is difficult and time-consuming and potential entrants would face substantial barriers.

### **III. The Proposed Consent Agreement**

The proposed Consent Agreement is intended to remedy the acquisition's alleged anticompetitive effects by, among other things, requiring the divestiture of travel center assets to Love's. Love's is a growing national travel center operator that is currently concentrated in the South. It is the smallest of the four national travel center operators and some long-haul fleets do not encounter Love's on the routes they travel, especially in the Midwest and the Eastern portion of the United States.

Respondents have reached an agreement to sell to Love's 26 specific travel center sites, the majority of which are located in the Midwest or the Eastern portion of the United States. These sites, along with Love's aggressive and independent expansion plan, will enhance Love's market position as a national travel center operator, allowing it to compete for more long-haul over-the-road diesel business. Love's possesses the existing infrastructure, resources, and capability to acquire the divested sites and operate them within Love's existing network. The divestiture will allow Love's to replace competition lost because of the acquisition of Flying J by Pilot. In particular, Love's will now be able to compete for those customers who viewed Pilot and Flying J as their first and second choices and who did not encounter Love's on their routes prior to the divestiture.

The Order contains provisions designed to ensure the successful implementation and remedial intent of the proposed Consent Agreement. Some of these provisions are highlighted below.

#### **A. Access to and Use of the TCH Fuel Card System**

The Order requires Respondents to provide access to and use of the TCH LLC ("TCH") Fuel Card System upon request from Love's. Paragraph II.C. of the Order provides that at Love's option, and upon reasonable notice, Respondents shall provide non-discriminatory access to and use of the TCH Fuel Card System for a period of up to three years pursuant to a TCH Merchant Agreement. If Love's elects to use the TCH Fuel Card System, Respondents shall institute a firewall protocol whereby: (a) Respondents' employees affiliated with the TCH Fuel Card System are prohibited from providing TCH Customer Confidential Business Information to either the TCH Executive Board or to a Respondent; and (b) Pilot shall appoint an internal compliance officer who will be responsible for assuring that the firewall protocols are met.

#### **B. Continued Operation of Restaurants**

The Order also provides for the continuity of operation at Wendy's restaurants affiliated with the sites acquired by Love's. Paragraph II.E. of the Order provides that, for a period of one year, Pilot shall manage and operate the Wendy's Restaurants affiliated with those sites.

To assure the efficient transfer and continuity of operation of the divested travel centers, the Order requires Respondents to provide assistance for, and information regarding, employees of those travel centers. Paragraphs II.F. and II.G. of the Order require Respondents to provide, for a period no longer than six months, assistance for, and employment and salary information regarding, knowledgeable employees of Respondents in the transfer of the travel centers from Respondents to Love's. Paragraphs II.H. and II.I. of the Order provide that, for a period of one year, Respondents shall not interfere with the hiring or employing of employees by Love's relating to the divested sites, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with Love's. Paragraph II.J. of the Order prohibits Respondents from directly or indirectly soliciting, inducing, or attempting to solicit or induce any employees of the divested travel centers who have accepted offers of employment with Love's to terminate that employment.

**C. Transfer of Confidential Businesses Information and Maintenance of Economic Viability**

To further assure the efficient transfer and economic viability of the acquired travel centers, Paragraphs II.K. and II.L. of the Order require Respondents to provide all Confidential Business Information relating to the Travel Centers Businesses and to maintain the full economic viability and marketability of such assets until Respondents complete the divestiture required by the Order.

**D. Compliance and Notification Requirements**

Paragraph III. of the Order allows the Commission to appoint an Interim Monitor to assure that Respondents expeditiously comply with their obligations and perform all of their responsibilities as required by the Order.

To assure that Respondents fully comply with the obligations of the Order, Paragraph IV. of the Order allows the Commission to appoint a Divestiture Trustee to assign, grant, license, divest, transfer, deliver, or otherwise convey the travel centers.

Paragraph V. of the Order provides that each Remedial Agreement related to the divested sites shall be incorporated by reference into the Order and that Respondents shall not modify or amend the terms of any Remedial Agreement without prior approval of the Commission.

Paragraphs VI.A. and VI.B. of the Order require official notification of the date on which the acquisition occurs and subsequent periodic reports until the Commission is satisfied that the divestiture has been completed in a timely manner and in good faith. Paragraph VI.C. of the Order requires annual written reports of compliance, upon the Commission's request, until the Order terminates in ten years.

Paragraph VII. of the Order requires Respondents to give the Commission prior notice of certain events that might affect compliance obligations arising from the Order.

#### **E. Additional Provisions**

Paragraph VIII. of the Order provides that the Commission shall, with proper notice, have access to documents and personnel at the offices of Respondents for the purpose of determining or securing compliance with the Order.

Paragraph IX. of the Order provides that the Order shall terminate after ten years.

#### **IV. Order to Maintain Assets**

The Commission also has issued an Order to Maintain Assets in this proceeding. The purpose of the Order to Maintain Assets is: (a) to maintain the full economic viability, marketability and competitiveness of the travel centers through their full transfer and delivery to Love's; (b) to minimize any risk of loss of competitive potential for the travel centers; (c) to prevent the destruction, removal, wasting, deterioration, or impairment of any of the travel centers, except for ordinary wear and tear; and (d) to prevent disclosure of any Confidential Business Information related to the travel centers to any person except Love's or persons specifically authorized by Love's to receive such information. The Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets.