

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>Alimentation Couche-Tard Inc.,</b>	)	
<b>a corporation;</b>	)	<b>Docket No. C-4635</b>
	)	
<b>and</b>	)	
	)	
<b>CrossAmerica Partners LP,</b>	)	
<b>a limited partnership.</b>	)	
_____	)	

**PETITION OF ALIMENTATION COUCHE-TARD INC. AND CROSSAMERICA PARTNERS LP FOR APPROVAL OF THE PROPOSED DIVESTITURE OF HOLIDAY 251, CAPL MN0016, AND CAPL MN0022 TO NORTHERN TIER RETAIL LLC**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Alimentation Couche-Tard Inc. (“ACT”) and CrossAmerica Partners LP (“CAPL”) (ACT and CAPL together, “Respondents”) hereby petition the Commission to approve the divestiture of Holiday 251, CAPL MN0016, and CAPL MN0022 to Northern Tier Retail LLC (“Northern Tier”), a wholly-owned subsidiary of Andeavor Corporation (“Andeavor”).

**I. Introduction**

On November 29, 2017, Respondents executed an Agreement Containing Consent Orders that included a Decision and Order and an Order to Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges related to ACT’s acquisition of equity interests from Holiday Companies (“Holiday”). On December 15, 2017, the Commission

accepted the Consent Agreement for public comment, and the acquisition was consummated shortly thereafter.

Paragraph II.A. of the Decision and Order requires Respondents to divest the Retail Fuel Assets.<sup>1</sup> Pursuant to this requirement, Respondents have diligently sought buyers that would be acceptable to the Commission. Respondents have entered into an asset purchase agreement to sell Holiday 251, CAPL MN0016, and CAPL MN0022 to Northern Tier for a total base purchase price of [REDACTED] (the “APA”). The APA is attached as Confidential Exhibit 1.

## **II. Northern Tier Is Well-Positioned to Be An Effective Competitor**

### **a. Northern Tier Is A Well-Established and Experienced Competitor and Will Compete Effectively Post-Divestiture**

The Commission requires that a divestiture buyer be capable of operating the divested assets competitively. The Commission has observed that “the most successful buyers appear to be ones that know the most about what they are buying.”<sup>2</sup>

Northern Tier is a wholly-owned subsidiary of Andeavor. Andeavor has extensive operations in the oil and gas industry, including operation of retail fuel outlets, wholesale supply of motor fuel products, and oil refining. Andeavor’s retail and wholesale fuel network comprises more than 3,250 outlets across 18 states, including Minnesota and Wisconsin, primarily selling fuel under the ARCO, Shell, ExxonMobil, and SuperAmerica brands. Additionally, Andeavor owns 51 terminals in 9 states, including Minnesota, with a daily

---

<sup>1</sup> All capitalized terms have the meanings given to them in the Decision and Order unless otherwise specified herein.

<sup>2</sup> Staff of the Bureau of Competition of the Federal Trade Commission, *A Study of the Commission's Divestiture Process* (1999), p. 34 (available at <https://www.ftc.gov/sites/default/files/attachments/mergereview/divestiture.pdf>).

throughput capacity of over 2 billion barrels. Andeavor also operates 10 refineries, including a refinery in St. Paul Park, Minnesota, in the Minneapolis-St. Paul metro area.

Andeavor is thus an experienced operator and supplier of retail fuel outlets, and has extensive operations with the scale and cost-effective fuel supply to be an effective competitor post-divestiture.

**b. The Proposed Divestiture Raises No Competitive Issues**

There are no competitive issues posed by the divestiture to Northern Tier. In its Complaint, the FTC alleged that for each of the Retail Fuel Assets, ACT's acquisition of Holiday would reduce the number of competitors to 3 or fewer in each alleged relevant market. After Northern Tier's acquisition of Holiday 251, CAPL MN0016, and CAPL MN0022, there would be no fewer than 4 competitors in any relevant market. Additionally, neither ACT nor CAPL will provide any financing for the acquisition.

\* \* \*

For these reasons, Northern Tier is well-positioned to compete vigorously and restore any competition lost in the relevant markets as a result of the Acquisition.

**c. The APA Is Consistent with the Requirements of the Decision and Order**

The APA is consistent with the requirements of the Decision and Order to divest the Retail Fuel Assets.

- Consistent with Paragraph II.A. of the Decision and Order, the APA requires Respondents to sell Holiday 251, CAPL MN0016, and CAPL MN0022 to Northern Tier.
- Consistent with Paragraph II.E. of the Decision and Order's goal of ensuring that Holiday 251, CAPL MN0016, and CAPL MN0022 remain competitive after the divestiture, the APA includes in the sale of Holiday 251, CAPL MN0016, and CAPL MN0022 the real

property, fuel inventory, and equipment needed for Northern Tier to compete effectively after the divestiture.

- Consistent with Paragraph II.A. of the Decision and Order's requirement that Respondents divest Holiday 251, CAPL MN0016, and CAPL MN0022 no later than 120 days after the Decision and Order is issued – in this case, no later than June 15, 2018 – the APA requires Respondents to divest Holiday 251, CAPL MN0016, and CAPL MN0022 no later than June 15, 2018.
- Also consistent with Paragraph II.A. of the Decision and Order, the APA is subject to the sale to Northern Tier being approved by the Commission.

### **III. Request for Confidential Treatment**

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Retail Fuel Assets, Respondents have redacted such confidential information (including all exhibits) from the public version of this petition. The disclosure of this information would prejudice Respondents and Northern Tier, cause harm to the ongoing competitiveness of the Retail Fuel Assets, and impair Respondents' ability to comply with their obligations under the Consent Agreement. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c), Respondents request, on their own behalf and on behalf of Northern Tier, that the confidential version of this petition should be accorded such confidential treatment under Section 552 of the Freedom of Information Act and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure. 5 U.S.C. § 552; 16 C.F.R. § 4.10(a)(2). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4),

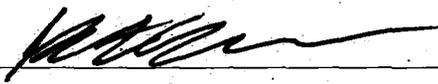
552(b)(7)(A), 552(b)(7)(B), and 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

**IV. Conclusion**

The proposed divestiture of Holiday 251, CAPL MN0016, and CAPL MN0022 to Northern Tier will accomplish the Commission's goals to ensure the continued use of the Retail Fuel Assets in the same business in which they were engaged when the Acquisition was announced, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

Respondents wish to complete the proposed divestiture as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, Northern Tier, and Respondents. Respondents accordingly request that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), and grant this petition by approving the divestiture of Holiday 251, CAPL MN0016, and CAPL MN0022 pursuant to the proposed agreement as soon as practicable after the close of the public comment period.

---



David Gelfand  
Matthew Bachrack  
Grant Bermann  
Mark Rohan  
Cleary Gottlieb Steen & Hamilton LLP 2000  
Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 974-1500

Counsel for Respondents  
Dated: May 15, 2018