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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Joseph J. Simons, Chairman** **Noah Joshua Phillips** **Rohit Chopra** **Rebecca Kelly Slaughter** **Christine S. Wilson**

In the Matter of **Arko Holdings Ltd.,** a corporation, **GPM Southeast, LLC,** a limited liability company, **GPM Petroleum, LLC,** a limited liability company, and **Empire Petroleum Partners, LLC,** a limited liability company.	)	**Docket No. C-4726**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Arko Holdings Ltd., through its indirectly controlled subsidiaries GPM Southeast, LLC, and GPM Petroleum, LLC, entered into an agreement to acquire retail fuel outlets and other interests from Empire Petroleum Partners, LLC, that such 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, and that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows.

I. RESPONDENTS

GPM

1. Respondent Arko Holdings Ltd. (“Arko”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of Israel, with its executive offices and principal place of business located at 3 Hanechushet Street, Building B, 3rd Floor, Tel-Aviv 6971068, Israel, with its United States office for purposes of service of process by the Commission located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

2. Respondent GPM Southeast, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

3. Respondent GPM Petroleum, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

4. Arko, through its subsidiaries GPM Southeast, LLC, and GPM Petroleum, LLC, is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

5. Arko, GPM Southeast, LLC, and GPM Petroleum, LLC (collectively, “GPM”), are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

Empire

6. Respondent Empire Petroleum Partners, LLC (“Empire”), is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 8350 North Central Expressway, M2185, Dallas, Texas 75206.

7. Empire is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

8. Empire is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

9. Pursuant to an Asset Purchase Agreement dated December 17, 2019, GPM proposes to acquire retail outlets and other interests from Empire (the "Acquisition").

10. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

11. The relevant product markets in which to analyze the effects of the Acquisition are the retail sale of gasoline and the retail sale of diesel fuel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Consumers require diesel fuel for their diesel-powered vehicles and can purchase diesel fuel only at retail fuel outlets. No economic or practical alternative to the retail sale of gasoline or diesel fuel exists.

12. The relevant geographic markets in which to analyze the effects of the Acquisition are seven local markets within the following cities: Arlington, Texas; Edmore, Michigan; Hastings, Michigan; Knox, Indiana; Kokomo, Indiana; South Bend, Indiana; and Stevensville, Maryland.

13. The relevant geographic markets for retail gasoline and retail diesel fuel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting such features as commuting patterns, traffic flows, and outlet characteristics unique to each market. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes.

IV. MARKET STRUCTURE

14. With regard to the retail sale of gasoline, the Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from four to three in two local markets, from three to two in four local markets, and from two to one in one local market. The Acquisition would result in a highly concentrated market in each of these markets.

15. With regard to the retail sale of diesel fuel, the Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from three to two in two local markets and from two to one in one local market. The Acquisition would result in a highly concentrated market in each of these markets.

V. BARRIERS TO ENTRY

16. Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing

a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

VI. EFFECTS OF THE ACQUISITION

17. The effects of the Acquisition, as described in Paragraph 9, if consummated, may be to substantially lessen competition or to tend to create a monopoly in each of the relevant markets, with each constituting an independent violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

a. increasing the likelihood that GPM would unilaterally exercise market power in each relevant market; and

b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in each relevant market.

VII. VIOLATIONS CHARGED

18. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Asset Purchase Agreement entered into by GPM and Empire constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this twenty-fifth day of August, 2020, issues its Complaint against Respondents.

By the Commission, Commissioners Slaughter and Wilson not participating.

April J. Tabor
Acting Secretary