ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Casey's General Stores, Inc.
File No. 211-0028, Docket No. C-4742

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Casey's General Stores, Inc. ("Casey's") and Buck's Intermediate Holdings, LLC and Steven Buchanan ("Bucky's," and collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Casey's proposed acquisition of retail fuel assets from Bucky's.

Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, Respondents must divest certain retail fuel assets in seven local markets in Nebraska and Iowa. Respondents must complete the divestiture within 10 days after the closing of the acquisition. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the upfront buyers acquire the divested assets.

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

II. The Respondents

Respondent Casey's, a publicly traded company headquartered in Ankeny, Iowa, owns and operates roughly 2,200 retail fuel outlets and convenience stores in 16 Midwestern states, primarily Iowa, Missouri and Illinois. Casey's convenience stores operate under the Casey's name, and its retail fuel outlets sell under unbranded fuel banners.

Respondent Bucky's is a family-owned chain of retail fuel outlets and convenience stores headquartered in Omaha, Nebraska. It has approximately 170 stores in its network, including 94 company operated sites, and currently operates the largest chain of convenience stores in the Omaha metro area, under the Bucky's name, with additional stores in Chicago, Illinois. Bucky's retail fuel outlets sell under a variety of third-party branded and unbranded fuel banners.

III. The Proposed Acquisition

On November 8, 2020, Casey's entered into an agreement to acquire certain retail and wholesale fuel assets from Bucky's and related entities (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 that the Acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the retail sale of gasoline in seven local markets in Nebraska and Iowa, and by substantially lessening competition for the retail sale of diesel fuel in four local markets in Nebraska.

IV. The Retail Sale of Gasoline and Diesel Fuel

The Commission alleges that the relevant product markets in which to analyze 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. Likewise, consumers require diesel fuel for their diesel-powered vehicles and can purchase diesel fuel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel fuel constitute separate relevant markets because the two are not interchangeable. Vehicles that run on gasoline cannot run on diesel fuel, and vehicles that run on diesel fuel cannot run on gasoline.

The Commission alleges that the relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of gasoline are seven local markets in and around the following cities: Omaha, Nebraska; Papillion, Nebraska, and Council Bluffs, Iowa. The relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of diesel fuel are four local markets in and around the following cities: Omaha, Nebraska and Papillion, Nebraska.

The geographic markets for retail gasoline and retail diesel fuel are highly localized, depending on the unique circumstances of each area. Each relevant market is distinct and fact-dependent, reflecting many considerations, including commuting patterns, traffic flows, and outlet characteristics. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel fuel are similar to the corresponding geographic markets for retail gasoline, as many diesel fuel consumers exhibit preferences and behaviors similar to those of gasoline consumers.

The Acquisition would substantially lessen competition in each of these local markets, resulting in seven highly concentrated markets for the retail sale of gasoline and three highly concentrated markets for the retail sale of diesel fuel. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. In each of the local gasoline and diesel fuel retail markets, the Acquisition would reduce the number of competitively constraining independent market participants to three or fewer. The combined entity would be able to raise prices unilaterally in markets where Casey’s and Bucky’s are close competitors. Absent the Acquisition, Casey’s and Bucky’s would continue to compete head to head in these local markets.

Moreover, the Acquisition would enhance the incentives for interdependent behavior in local markets where only two or three competitively constraining independent market participants would remain. Two aspects of the retail fuel industry make it vulnerable to such coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors easily to observe each other’s fuel prices. Second, retail fuel outlets regularly track their competitors’ fuel prices and change their own prices in response. These repeated interactions give retail fuel outlets familiarity with how their competitors price and how changing prices affect fuel sales.

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.

V. The Consent Agreement

The proposed Order would remedy the Acquisition's likely anticompetitive effects by requiring Casey's to divest certain Casey's and Bucky's retail fuel assets to Western Oil II, LLC and Danco II, LLC (collectively "Western Oil") in each local market. Western Oil is an experienced operator or supplier of retail fuel sites and will be a new entrant into the local markets.

The proposed Order requires that the divestiture be completed no later than 10 days after Casey's consummates the Acquisition. The proposed Order further requires Casey's and Bucky's to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture to Western Oil is complete.

In addition to requiring outlet divestitures, the proposed Order requires Respondents to provide the Commission notice before acquiring retail fuel assets within a fixed distance of any Casey's outlet in a market involving a divestiture for ten years. The prior notice provision is necessary because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Acquisition and may fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The Consent Agreement contains additional provisions designed to ensure the effectiveness of the relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date the Respondents complete the divestiture. The proposed Order also includes a provision that allows the Commission to appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the Order.

The purpose of this analysis is to facilitate public comment on the Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.