ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Tri Star Energy, LLC

File No. 201-0074, Docket No. C-4720

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Tri Star Energy, LLC ("Tri Star") and Hollingsworth Oil Company, Inc., C & H Properties, and Ronald L. Hollingsworth ("Hollingsworth" and collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Tri Star's proposed acquisition of retail fuel assets from Hollingsworth.

Under the terms of the proposed Consent Agreement, Tri Star must divest to the upfront buyer, Cox Oil Company, Inc. ("Cox"), retail fuel assets in two local markets in Tennessee. Tri Star must complete the divestiture within 10 days after the closing of Tri Star's acquisition of Hollingsworth. 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 Cox acquires the outlet.

The Commission has placed the proposed 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 again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent Tri Star, a company headquartered in Nashville, Tennessee, owns and operates convenience stores and retail fuel outlets throughout Tennessee, Alabama, Georgia, and Kentucky. Tri Star operates 89 convenience stores with attached retail fuel outlets, including 82 in Tennessee. Tri Star's convenience stores operate under the Twice Daily, Hightail, and t-Fuel names, and its retail fuel outlets sell under a variety of third-party branded and unbranded fuel banners. Tri Star also supplies fuel to a network of 285 dealer locations.

Respondent Mr. Ronald L. Hollingsworth, a resident of the state of Tennessee, controls both Hollingsworth Oil Company, Inc. and C & H Properties, entities operating in Tennessee. Hollingsworth operates a network of 54 convenience stores under the Sudden Service name with attached retail fuel outlets throughout middle Tennessee. Hollingsworth provides a variety of third-party branded and unbranded fuels at its Sudden Service outlets and to 172 wholesale fuel locations.

III. The Proposed Acquisition

On March 6, 2020, Tri Star entered into an agreement to acquire certain retail fuel outlets and other interests, from Hollingsworth and related entities (the "Acquisition"). The Acquisition would expand Tri Star's presence throughout middle Tennessee.

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 and the retail sale of diesel in each of two local markets in Tennessee.

IV. The Retail Sales of Gasoline and Diesel

The Commission's Complaint 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 for their diesel-powered vehicles and can purchase diesel 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 and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Acquisition are two local markets in and around Whites Creek, Tennessee, and Greenbrier, Tennessee.

The geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting a number of 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 are likely similar to the corresponding geographic markets for retail gasoline as many diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Acquisition would eliminate competition in these local markets, resulting in a merger to monopoly in each market for the retail sale of gasoline and 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. The combined entity would be able to raise prices unilaterally in the two local markets. Absent the Acquisition, Tri Star and Hollingsworth would continue to compete head to head in these local markets.

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 Proposed Consent Agreement

The proposed Consent Agreement would remedy the Acquisition's likely anticompetitive effects by requiring Tri Star to divest certain Tri Star and Hollingsworth retail fuel assets to Cox in each local market.

The proposed Consent Agreement requires that the divestiture be completed no later than 10 days after Tri Star consummates the Acquisition. The proposed Consent Agreement further requires Tri Star and Hollingsworth to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture to Cox is complete. For up to twelve months following the divestiture, Tri Star and Hollingsworth must make available transitional services, as needed, to assist Cox with the divestiture assets.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires Respondents to provide the Commission notice before re-acquiring the divested outlets for ten years. The prior notice provision is necessary because an acquisition of either or both divested assets would likely raise the same competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed 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 Commission may appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

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