

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**Tops Markets LLC,**  
a limited liability company,

**Morgan Stanley Capital Partners V U.S.  
Holdco LLC,**  
a limited liability company,

and

**The Penn Traffic Company,**  
a corporation.

File No. 101-0074

**AGREEMENT CONTAINING CONSENT ORDERS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Tops Markets LLC (“Tops”), a subsidiary of Morgan Stanley Capital Partners V U.S. Holdco LLC (“Holdco”), of certain assets of The Penn Traffic Company (“Penn Traffic”), hereinafter “Proposed Respondents,” and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Tops is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of New York, with its office and principal place of business located at 6363 Main Street, Williamsville, New York 14221.
2. Proposed Respondent Penn Traffic is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1200 State Fair Boulevard, Syracuse, New York 13221.
3. Proposed Respondent Holdco is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1585 Broadway, Floor 39, New York, New York 10036.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.
5. Proposed Respondents waive:
  - a. any further procedural steps;
  - b. the requirement that the Commission's Decision and Order and Order to Maintain Assets, both of which are attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise challenge or contest the validity of the Decision and Order or the Order to Maintain Assets entered pursuant to this Consent Agreement; and
  - d. any claim under the Equal Access to Justice Act.
6. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
7. Not later than thirty (30) days after the date this Consent Agreement is signed by the Proposed Respondents, each Proposed Respondent shall submit an initial report, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33. Each Proposed Respondent shall also submit subsequent reports every thirty (30) days thereafter until the Order to Maintain Assets becomes final, at which time the reporting obligations contained in the Order to Maintain Assets (other than the requirement to submit an initial report pursuant to this Consent Agreement) shall control. Such reports shall be signed by each Proposed Respondent and set forth in detail the manner in which such Proposed Respondent has complied and will comply with the Order to Maintain Assets and the Decision and Order. Such reports will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.
8. In each of the reports described in Paragraph 7, each Proposed Respondent shall provide sufficient information and documentation to enable the Commission to determine independently whether the Proposed Respondent is in compliance with this Consent Agreement and each of the Orders. All reports shall be verified by a notarized signature or sworn statement of the Chief Executive Officer or other officer or director of the Proposed Respondent specifically authorized to perform this function, or self verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Each Proposed Respondent shall file an original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division.

9. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
10. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
11. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (b) issue and serve its Order to Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.
12. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent Tops by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) including, but not limited to, delivery to an office within the United States of Kevin J. Arquit, Esq.; of Simpson Thacher & Bartlett LLP; or of any other lawyer or law firm listed as Counsel for Tops Markets LLC on this Consent Agreement shall constitute service as to Proposed Respondent Tops. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent Penn Traffic by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) including, but not limited to, delivery to an office within the United States of James R. Wade, Esq.; of Haynes and Boone, LLP; or of any other lawyer or law firm listed as Counsel for The Penn Traffic Company on this Consent Agreement shall constitute service as to Proposed Respondent Penn Traffic. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent Holdco by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) including, but not limited to, delivery to an office within the United States of Kevin J. Arquit, Esq.; of Simpson Thacher & Bartlett LLP; or of any other lawyer or law firm listed as Counsel for Holdco on this Consent Agreement shall constitute service as to Proposed Respondent Holdco. Each Proposed Respondent waives any right it may have to any other manner of

service. Each Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agrees that it is bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession of copies of such Appendices.

13. The Complaint may be used in construing the terms of the Decision and Order and the Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Maintain Assets, or the Consent Agreement may be used to limit or contradict the terms of the Decision and Order or the Order to Maintain Assets.
14. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments, and transfers) and the Order to Maintain Assets and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are: (1) within the control of the party to this Consent Agreement; or (2) will be in the control of the party to this Consent Agreement after the proposed acquisition.
15. Proposed Respondents have read the draft of Complaint, the Decision and Order, and the Order to Maintain Assets contemplated hereby. Proposed Respondents understand that once the Decision and Order and the Order to Maintain Assets have been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Decision and Order and the Order to Maintain Assets.
16. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order and the Order to Maintain Assets from the date it signs this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and of the Order to Maintain Assets after they become final.

**TOPS MARKETS LLC**

By: \_\_\_\_\_  
Frank Curci  
President and  
Chief Executive Officer  
Tops Markets LLC  
Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin J. Arquit, Esq.  
Aimee Goldstein, Esq.  
Simpson Thacher & Bartlett LLP  
Counsel for Tops Markets LLC

**THE PENN TRAFFIC COMPANY**

By: \_\_\_\_\_  
Gregory J. Young  
President and  
Chief Executive Officer  
The Penn Traffic Company  
Date: \_\_\_\_\_

\_\_\_\_\_  
James R. Wade, Esq.  
Haynes and Boone LLP  
Counsel for The Penn Traffic Company

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Jeanne Liu  
Michelle Fetterman  
Attorneys  
Bureau of Competition

**APPROVED:**

By: \_\_\_\_\_  
Matthew J. Reilly  
Assistant Director  
Bureau of Competition

\_\_\_\_\_  
Norman Armstrong, Jr.  
Deputy Director  
Bureau of Competition  
Date: \_\_\_\_\_

\_\_\_\_\_  
Richard A. Feinstein  
Director  
Bureau of Competition  
Date: \_\_\_\_\_

**MORGAN STANLEY CAPITAL PARTNERS V  
U.S. HOLDCO LLC**

By: \_\_\_\_\_

[insert]

President and

Chief Executive Officer

Morgan Stanley Capital Partners V U.S.

Holdco LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin J. Arquit, Esq.

Aimee Goldstein, Esq.

Simpson Thacher & Bartlett LLP

Counsel for Morgan Stanley Capital Partners V

U.S. Holdco LLC