



3. Respondent ACT and the corporate entities under its control 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.

### CST

4. Respondent CST Brands, Inc. (“CST”) 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 19500 Bulverde Road, San Antonio, Texas.

5. Respondent CST 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.

6. Respondent CST and the corporate entities under its control 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.

## **II. THE PROPOSED ACQUISITION**

7. Pursuant to an Agreement and Plan of Merger dated August 21, 2016, ACT, through its wholly-owned subsidiary Circle K Stores Inc., proposes to acquire all issued and outstanding shares of CST, with CST surviving post-acquisition as a wholly-owned subsidiary of Circle K Stores Inc. (the “Acquisition”), for approximately \$4.4 billion.

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

## **III. THE RELEVANT MARKET**

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

10. Relevant geographic markets in which to analyze the effects of the Acquisition include 71 local markets within the following metropolitan statistical areas: Phoenix, Arizona; Sierra Vista, Arizona; Tucson, Arizona; Colorado Springs, Colorado; Denver, Colorado; Jacksonville, Florida; Albany, Georgia; Savannah, Georgia; Warner Robins, Georgia; Shreveport, Louisiana; Albuquerque, New Mexico; Las Cruces, New Mexico; Cleveland, Ohio; Austin, Texas; Corpus Christi, Texas; and El Paso, Texas.

11. The relevant geographic markets for retail gasoline and retail diesel are highly localized, ranging from a few blocks to a few miles. None of the relevant geographic markets exceeds three driving miles from an overlapping retail fuel outlet. Each relevant market is distinct and reflects the 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**

12. The Acquisition, if consummated, would create a monopoly in ten local markets. In 20 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from three to two. In 41 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from four to three. The Acquisition would result in a highly concentrated market in each of these 71 markets.

#### **V. BARRIERS TO ENTRY**

13. 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**

14. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in 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 Respondent ACT would unilaterally exercise market power in the relevant markets; and
- b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in the relevant markets.

#### **VII. VIOLATIONS CHARGED**

15. 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.

16. The Merger Agreement entered into by Respondents ACT and CST 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-third day of June, 2017, issues its Complaint against Respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL: