

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

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney**

In the Matter of

**Alimentation Couche-Tard Inc.,
a corporation;**

and

**CST Brands, Inc.,
a corporation.**

Docket No. C-4618

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Alimentation Couche-Tard Inc. (“ACT”), through its wholly-owned subsidiary, Circle K Stores Inc., of Respondent CST Brands, Inc. (“CST”),” and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent ACT is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its headquarters and principal place of business located at 4204 Industriel Blvd., Laval, Quebec H7L 0E3, Canada, and its United States address for service of process and of the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Circle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.
2. Respondent CST is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 19500 Bulverde Road, San Antonio, Texas 78259.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, and Schedule A and Schedule B, which are attached to the Decision and Order and identify the Assets To Be Divested, are incorporated herein by reference and made a part hereof, and shall apply:

- A. “ACT” means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Alimentation Couche-Tard Inc., including Circle K Stores and Ultra, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, ACT shall include CST.
- B. “Circle K Stores” means Circle K Stores Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, and its directors, officers, employees, agents, representatives, successors, and assigns. Circle K Stores is a wholly-owned subsidiary of ACT.

- C. “CST” means CST Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (including, but not limited to, CrossAmerica Partners, LP), in each case controlled by CST Brands, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means ACT and CST, individually and collectively.
- E. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and to the extent that it is related to or used in connection with the Assets To Be Divested or the conduct of the Retail Fuel Outlet Business at the Retail Fuel Outlets To Be Divested. The term “Confidential Business Information” excludes the following:
1. Information that is contained in documents, books, or records of Respondents that is provided to an Acquirer that is unrelated to the Assets To Be Divested or that is exclusively related to the Respondents’ retained businesses; and
 2. Information that: (a) is or becomes generally available to the public other than as a result of disclosure in breach of the prohibitions of this Order; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be included in Respondents’ mandatory regulatory filings; (d) is information the disclosure of which is consented to by the Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement or any Remedial Agreement; (f) is disclosed in complying with the Order; (g) is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Governmental Entities; or (h) is disclosed in obtaining legal advice.
- F. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- G. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph IV. of this Order to Maintain Assets.
- H. “Orders” means the Decision and Order in this matter and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective and until the Divestiture Date:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of any of the Assets To Be Divested. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested.
- B. Respondents shall conduct or cause the business of the Assets To Be Divested to be conducted in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice.
- C. Respondents shall not terminate the operation of any of the Assets To Be Divested, and shall continue to maintain the Inventory of each of the Assets To Be Divested at levels and selections in the regular and ordinary course of business, in accordance with past practice.
- D. Respondents shall maintain the organization and properties of each of the Assets To Be Divested, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Assets To Be Divested. Among other actions as may be necessary to comply with these obligations, Respondents shall, without limitation:
 - 1. Maintain all operations at each of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice, including maintaining customary hours of operation and departments;
 - 2. Use best efforts to retain employees at each of the Assets To Be Divested; when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice; and not transfer any employees from any of the Assets To Be Divested;
 - 3. Provide each employee of the Assets To Be Divested with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Assets To Be Divested;

4. Not transfer Inventory from any Asset To Be Divested, other than in the ordinary course of business, in accordance with past practice;
5. Make all payments required to be paid under any Contract when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Assets To Be Divested, in each case in a manner in accordance with past practice;
6. Maintain the Books and Records of each of the Assets To Be Divested;
7. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at any Asset To Be Divested to another location, or that indicates an Asset To Be Divested will close;
8. Not conduct any “going out of business,” “close-out,” “liquidation,” or similar sales or promotions at or relating to any Asset To Be Divested;
9. Not materially change or modify the existing pricing or advertising practices, marketing, or merchandising programs and policies, or price zones for or applicable to any of the Assets To Be Divested, other than changes or modifications in the regular and ordinary course of business, in accordance with past practices and business strategy;
10. Provide each of the Assets To Be Divested with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Assets To Be Divested;
11. Continue, at least at their scheduled pace, any additional expenditures for each of the Assets To Be Divested authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
12. Provide such resources as may be necessary to respond to competition and to prevent any diminution in sales at each of the Assets To Be Divested;
13. Make available for use by each of the Assets To Be Divested funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Assets To Be Divested;

14. Provide support services to each of the Assets To Be Divested at least at the level as were being provided to such Assets To Be Divested by Respondents as of the date the Consent Agreement was signed by Respondents; and
15. Maintain, and not terminate or permit the lapse of, any Governmental Permits necessary for the operation of any Asset To Be Divested;

Provided, however, that it shall not be a violation of this Paragraph II.D. if Respondents take actions that have been requested or agreed to by the Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Assets To Be Divested and consistent with the purposes of the Orders.

- E. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Assets To Be Divested as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that no Confidential Business Information is disclosed to or received, accessed, or used by Respondents or Respondents' employees except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that, pending divestiture of the Assets To Be Divested,

- A. Respondents shall not, and shall assure that its employees, agents, and representatives shall not:
 1. Receive, access, have access to, or use, directly or indirectly, any Confidential Business Information, other than as is necessary to:
 - a. Comply with the requirements of the Orders;
 - b. Perform their obligations to the Acquirer under the terms of any Remedial Agreement, including providing Transition Services pursuant to a Transition Services Agreement; or
 - c. Comply with financial reporting requirements, defend legal claims, or as otherwise required by applicable law;
 2. Disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); or

3. Use, disclose, or convey, directly or indirectly, any Confidential Business Information that is related to the Fuel Products supply, marketing, promotional activities, or sales of the Assets To Be Divested or of the Acquirer to employees, agents, and representatives with responsibilities relating to the Fuel Products supply, marketing, promotional activities, or sales of Respondents' retained businesses.
- B. Respondents shall institute appropriate procedures and requirements to ensure that the above-described employees, agents, and representatives do not (1) use, disclose, or convey, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets, or (2) solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- C. As part of the procedures and requirements that Respondents are required to implement to comply with Paragraphs III.A. and B., not later than (i) thirty (30) days after the date Respondents execute the Consent Agreement or (ii) fifteen (15) days after the date this Order to Maintain Assets is issued by the Commission, whichever is earlier, Respondents shall:
1. Implement and maintain a process and procedures pursuant to which Confidential Business Information may be disclosed and used only by Respondents' employees, agents, and representatives who (i) require access to such Confidential Business Information in order to provide Transition Services or as otherwise required by the Remedial Agreement or permitted by the Orders, (ii) only to the extent such Confidential Business Information is required; and (iii) only after such employees, agents, and representatives have signed an appropriate agreement in writing to maintain the confidentiality of such Confidential Business Information; and
 2. Monitor the implementation and enforce the terms of this Paragraph III. as to any of Respondents' employees, agents, and representatives, and take such actions as are necessary to cause each such Person to comply with the terms of this Paragraph III, including training of Respondents' employees, and all other corrective actions that Respondents would take for the failure of their employees and other personnel to comply with such restrictions, and to protect their own confidential and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements, including any Transition Services Agreement approved by the Commission.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement (“Monitor Agreement”) that, subject to the prior approval of the Commission, confers on the Monitor all rights, powers, and authority necessary to permit the Monitor to monitor Respondents’ compliance with the Orders and the Remedial Agreements, and perform his duties and responsibilities in a manner consistent with the purposes of the Orders, in a fiduciary capacity for the benefit of the Commission, and in consultation with Commission staff. Respondents shall assure, and the Monitor Agreement shall provide, that:
 - 1. The Monitor shall have the responsibility for monitoring the operations and transfer of the Assets To Be Divested; overseeing the maintenance of the Assets To Be Divested; overseeing the provision of Transition Services by Respondents’ employees, agents and representatives pursuant to the Transition Services Agreement; ensuring that the Assets To Be Divested receive continued and adequate funding by Respondents, as provided for in this Order; and monitoring Respondents’ compliance with its obligations pursuant to the Orders and the Remedial Agreements;
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 - 3. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor’s ability to monitor Respondents’ compliance with the Orders and the Remedial Agreements;
 - 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to all of Respondents’ facilities, personnel, books, documents, and records relating to the Assets To Be Divested, and such other

relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set;
 6. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 7. Respondents shall indemnify the Monitor, and hold the Monitor harmless, against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel, and other reasonable expenses incurred, in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith of the Monitor; and
 8. Respondents shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in any Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.
- D. Respondents may require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act, or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.

- G. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreement, including for as long as Respondents are providing Transition Services to the Acquirer pursuant to the Transition Services Agreement; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- H. The Commission may, on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of these Orders or the Remedial Agreement.
- I. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets; *provided, however*, that after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with and submitted to the Commission on the same timing as the reports required to be submitted by the Respondents pursuant to the Decision and Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of any Respondent;
- B. Any proposed acquisition, merger, or consolidation of any Respondent; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities, and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of Respondents, related to compliance with the Consent Agreement and/or the Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents, and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondents (or a Divestiture Trustee) complete the divestiture of all of the Assets To Be Divested, as described in and required by the Decision and Order; *provided, however,* that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires the Respondents to rescind any or all of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents (or a Divestiture Trustee) complete the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the Decision and Order;
or

- C. The day after Respondents, with the concurrence of the Acquirer, certify in writing to the Commission as to the completion of all Transition Services provided by the Respondents to the Acquirer pursuant to any Transition Services Agreement approved by the Commission; or
- D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 23, 2017

APPENDIX A
MONITOR AGREEMENT