

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT**
In the Matter of Alimentation Couche-Tard Inc. and CrossAmerica Partners LP
File No. 171-0184, Docket No. C-4635

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Alimentation Couche-Tard Inc. (“ACT”) and CrossAmerica Partners LP (“CAPL”) (collectively, the “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from ACT’s proposed acquisition of Holiday Companies (“Holiday”).

Under the terms of the proposed Consent Agreement, ACT and CAPL must divest to a Commission-approved buyer (or buyers) certain CAPL and Holiday retail fuel outlets and related assets in ten local markets in Minnesota and Wisconsin. ACT and CAPL must complete the divestiture no later than 120 days after the closing of ACT’s acquisition of Holiday. 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 Commission-approved buyer 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 ACT, a publicly traded company headquartered in Laval, Quebec, Canada, operates convenience stores and retail fuel outlets throughout the United States and the world. ACT is the parent of wholly owned subsidiary Circle K Stores Inc. (“Circle K”). ACT’s current U.S. network consists of approximately 7,200 stores located in 42 states. Over 5,000 locations are company-operated, making ACT the largest convenience store operator in terms of company-owned stores and the second-largest chain overall in the country. ACT convenience store locations operate primarily under the Circle K, Kangaroo Express, and Corner Store banners, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent CAPL, a publicly traded master limited partnership headquartered in Allentown, Pennsylvania, markets fuel at wholesale, and owns and operates convenience stores and retail fuel outlets. ACT, via Circle K, acquired CST Brands, Inc. in June 2017, which gave Circle K operational control and management of CAPL. CAPL supplies fuel to nearly 1,200 sites across 29 states.

III. The Proposed Acquisition

On July 10, 2017, ACT, through its wholly owned subsidiary Oliver Acquisition Corp., entered into an agreement to acquire certain Holiday equity interests, including Holiday's retail fuel outlets (the "Transaction"). The Transaction would cement ACT's position as one of the largest operators of retail fuel outlets in the United States.

The Commission's Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the Transaction 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 ten local markets in Minnesota and Wisconsin.

IV. The Retail Sales of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction 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. 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 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 Transaction include ten local markets within the following cities: Aitkin, Hibbing, Minnetonka, Mora, Saint Paul, and Saint Peter in Minnesota, and Hayward, Siren, and Spooner in Wisconsin.

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 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. The geographic markets for the retail sale of diesel may be similar to the corresponding geographic markets for retail gasoline as many diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Transaction would substantially increase the market concentration in each of the ten local markets, resulting in highly concentrated markets. In five local markets, the Transaction would reduce the number of competitively constraining independent market participants from three to two. In the remaining five local markets, the Transaction would reduce the number of competitively constraining independent market participants from four to three.

The Transaction would substantially lessen competition for the retail sale of gasoline and the retail sale of diesel in these local markets. 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 markets where ACT and Holiday are close competitors. Absent the Transaction, ACT and Holiday would continue to compete head to head in these local markets.

Moreover, the Transaction would increase the likelihood of coordination 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 coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors to observe each other's fuel prices without difficulty. 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 their competitors respond to their own prices.

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 ACT and CAPL to divest certain CAPL and Holiday retail fuel outlets and related assets in ten local markets.

The proposed Consent Agreement requires that the divestiture occur no later than 120 days after ACT consummates the Acquisition. This Agreement protects the Commission's ability to obtain complete and effective relief given the small number of outlets to be divested. Further, based on Commission staff's investigation, the Commission believes that ACT can identify an acceptable buyer (or buyers) within 120 days.

The proposed Consent Agreement further requires ACT and CAPL to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the Commission approves a buyer (or buyers) and the divestiture is complete. For up to twelve months following the divestiture, ACT and CAPL must make available transitional services, as needed, to assist the buyer of each divestiture asset.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires ACT and CAPL to provide the Commission notice before acquiring designated outlets in the ten local areas for ten years. The prior notice provision is necessary because acquisitions of the designated outlets likely raise 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 divestiture of the outlet. During this period, and until such time as the buyer (or buyers) no longer requires transitional assistance, the Order to Maintain Assets authorizes the Commission to 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.