

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
Alimentation Couche-Tard Inc.,)	
a corporation;)	Docket No. C-4631
)	
and)	
)	
CrossAmerica Partners LP,)	
a limited partnership.)	

PETITION OF ALIMENTATION COUCHE-TARD INC. AND CROSSAMERICA PARTNERS LP FOR APPROVAL OF THE PROPOSED DIVESTITURE OF THE RETAIL FUEL ASSETS TO PPBB LLC AND MARKETPLACE DEVELOPMENT LLC

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Alimentation Couche-Tard Inc. (“ACT”) and CrossAmerica Partners LP (“CAPL”) (ACT and CAPL together, “Respondents”) hereby petition the Commission to approve the divestiture of the Retail Fuel Assets¹ to PPBB LLC (“PPBB”) and Marketplace Development LLC (“Marketplace”) (PPBB and Marketplace are, together, the “Proposed Acquirers”).

I. Introduction

On November 16, 2017, Respondents executed an Agreement Containing Consent Orders that included a Decision and Order and an Order to Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges related to Respondents’ acquisitions

¹ All capitalized terms have the meanings given to them in the Decision and Order unless otherwise specified herein.

of assets from Jet-Pep, Inc. (“Jet Pep”). On November 22, 2017, the Commission accepted the Consent Agreement for public comment, and the acquisition was consummated shortly thereafter.

Paragraph II.A. of the Decision and Order requires Respondents to divest the Retail Fuel Assets. Pursuant to this requirement, Respondents have diligently sought buyers that would be acceptable to the Commission. Respondents have entered into Asset Purchase Agreements with PPBB to sell Jet Pep 63 (the “PPBB APA”) and Marketplace to sell Jet Pep 13 and Jet Pep 65 (the “Marketplace APA”).

Respondents wish to complete the proposed divestitures as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, the Proposed Acquirers, and Respondents. Respondents accordingly request that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2), and grant this petition by approving the divestitures of the Retail Fuel Assets pursuant to the proposed agreements as soon as practicable after the close of the public comment period.

II. Proposed Acquirers Are Well-Positioned to Be Effective Competitors

a. Proposed Acquirers Are Well-Established and Experienced Competitors

The Commission requires that a divestiture buyer be capable of operating the divested assets competitively. The Commission has observed that “the most successful buyers appear to be ones that know the most about what they are buying.”²

² Staff of the Bureau of Competition of the Federal Trade Commission, *A Study of the Commission's Divestiture Process* (1999), p. 34 (available at <https://www.ftc.gov/sites/default/files/attachments/mergereview/divestiture.pdf>).

PPBB

PPBB is a limited liability company formed in 2007 by Chiranji Sharma to operate retail assets, including retail fuel stations. Since 2009, PPBB has operated Jet Pep 63 as Jet Pep's commission agent. Thus, PPBB has almost a decade of experience operating Jet Pep 63, and is intimately familiar with the store's operations and the local competitive dynamics. Moreover, Sharma has more than twenty years of experience operating retail fuel stations, and has at various times operated four Jet Pep retail fuel stations in Alabama, including as many as three at the same time. Further, PPBB currently operates a Church's Chicken franchise and a Subway franchise. Thus, PPBB has more than adequate experience with the operation of retail assets, including Jet Pep 63 itself, to immediately compete effectively at the site.

Marketplace

Given its experience and preexisting relationships in the retail fuel industry, Marketplace is well-positioned to compete in the relevant markets as the owner of Jet Pep 13 and Jet Pep 65.

Marketplace's current business includes the operation of retail fuel stations and extensive development of retail real estate. Marketplace owns three retail fuel stations in the Memphis, Tennessee, area. It operates two of these stations, and is currently rebuilding the third station. In addition, Marketplace is currently acquiring four additional retail fuel stations from a third party. Marketplace distributes Valero fuel at its existing stations and therefore has an established wholesale fuel supply relationship on which to build. Marketplace's established retail operations and pending acquisition demonstrate that it is committed to competing and expanding its presence in retail fuel operations in the Southeast United States.

Further, Marketplace employs two consultants, Edward T. Garey and N.R. Newman IV, with extensive experience in the retail fuel industry. Mr. Garey has more than 30 years of experience in the industry, including 15 years at Shell Oil and five years at ExxonMobil. Mr. Newman also has wide-ranging retail fuel experience, including the development and operation of retail fuel assets and negotiation of fuel supply contracts.

Marketplace also has experience in broader retail development. Marketplace has developed eight Walmart shopping centers, thirty Family Dollar stores, and two O'Reilly Auto Parts stores. Marketplace generates significant income from leasing these retail locations, which will allow it to make capital investments as needed to ensure the continued competitiveness of Jet Pep 13 and Jet Pep 65.

b. The Proposed Acquisitions Raise No Competitive Issues

PPBB

There are no competitive issues posed by PPBB's acquisition of Jet Pep 63. PPBB does not operate any other stations in the FTC's alleged market. Therefore, there is no competitive overlap as a result of PPBB acquiring Jet Pep 63. Moreover, PPBB has no affiliation or relationship with ACT or CAPL, apart from its current operation of Jet Pep 63. Additionally, PPBB has independently secured financing for the acquisition of Jet Pep 63. Neither ACT nor CAPL will provide any financing for the acquisition.

Marketplace

There are no competitive issues posed by Marketplace's acquisition of Jet Pep 13 and Jet Pep 65. Marketplace does not operate any stations in the FTC's alleged markets. Therefore, there is no competitive overlap as a result of Marketplace acquiring Jet Pep 13 and Jet Pep 65.

Marketplace has an ancillary relationship with ACT at unrelated locations, as described further below, but this relationship does not pose any competitive issues. As described above, Marketplace owns three retail outlets in the Memphis area. At these stations, Marketplace has three franchise agreements with ACT to use the Kangaroo convenience store brand. However, Marketplace does not buy fuel from ACT, and does not have a landlord-tenant relationship with ACT. Marketplace purchases fuel from Valero, and it owns the real estate at each of these sites. Therefore, Marketplace does not rely on ACT for any critical aspect of its retail fuel operations. Marketplace's pending acquisition of four new retail fuel stations unaffiliated with ACT demonstrates that it is committed to competing and expanding independent of ACT.

Marketplace has independently secured financing for the acquisition of Jet Pep 13 and Jet Pep 65. Neither ACT nor CAPL will provide any financing for the acquisition.

c. Proposed Acquirers Will Compete Effectively

PPBB

PPBB intends to continue to operate Jet Pep 63. PPBB has begun engaging with distributors to secure fuel supply at the store. Additionally, PPBB is considering capital investments in Jet Pep 63 to increase its competitiveness.

Marketplace

After acquiring Jet Pep 13 and Jet Pep 65, Marketplace intends to continue their operation as commission-agent stores. As a result, the stores will be in position to compete effectively quickly.

* * *

For these reasons, the Proposed Acquirers are well-positioned to compete vigorously and restore any competition lost as a result of the Acquisition.

d. The PPBB APA and Marketplace APA Satisfy the Requirements of the Decision and Order

Taken together, the PPBB APA and Marketplace APA (the “Divestiture APAs”) satisfy the requirements of the Decision and Order to divest the Retail Fuel Assets.

- Consistent with Paragraph II.A. of the Decision and Order, the Divestiture APAs require Respondents to sell the Retail Fuel Assets to the Proposed Acquirers.
- Consistent with Paragraph II.E. of the Decision and Order’s goal of ensuring that the Retail Fuel Assets remain competitive after the divestiture, the Divestiture APAs include in the sale of the Retail Fuel Assets real property, fuel inventory, and equipment needed for PPBB and Marketplace to compete effectively after the divestiture.
- Consistent with Paragraph II.A. of the Decision and Order’s requirement that Respondents divest the Retail Fuel Assets no later than 120 days after the Decision and Order is issued – in this case, no later than May 7, 2018 – the Divestiture APAs require Respondents to divest the Retail Fuel Assets within the required period.
- Also consistent with Paragraph II.A. of the Decision and Order, the Divestiture APAs are subject to the Proposed Acquirers being approved by the Commission.

III. Request for Confidential Treatment

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Retail Fuel Assets, Respondents have redacted such confidential information (including all exhibits) from the public version of this petition. The disclosure of this information would prejudice Respondents, PPBB, and

Marketplace, cause harm to the ongoing competitiveness of the Retail Fuel Assets, and impair Respondents' ability to comply with their obligations under the Consent Agreement. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c), Respondents request, on their own behalf and on behalf of PPBB and Marketplace, that the confidential version of this petition should be accorded such confidential treatment under Section 552 of the Freedom of Information Act and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure. 5 U.S.C. § 552; 16 C.F.R. § 4.10(a)(2). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), and 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

IV. Conclusion

Respondents, PPBB, and Marketplace have entered into agreements relating to the divestiture of the Retail Fuel Assets that comply with the Commission's Decision and Order. PPBB and Marketplace will be viable and competitive owners of the Retail Fuel Assets. As discussed in greater detail above, PPBB and Marketplace are experienced retail fuel suppliers in the United States. Moreover, PPBB's and Marketplace's acquisitions of the Retail Fuel Assets do not raise competitive issues.

The proposed divestiture of the Retail Fuel Assets to PPBB and Marketplace will accomplish the Commission's goals to ensure the continued use of the Retail Fuel Assets in the same business in which they were engaged when the Acquisition was announced, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. Therefore, Respondents hereby seek Commission approval of the proposed

divestiture to PPBB and Marketplace as soon as possible after the expiration of the public comment period.



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