

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

*Plaintiff,*

v.

ALIMENTATION COUCHE-TARD INC.,

and

CROSSAMERICA PARTNERS LP,

*Defendants.*

Civil Action No.

**PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT**

Plaintiff Federal Trade Commission (“Commission”), having filed its Complaint in the above-captioned case, and having filed on this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of a Final Judgment against Defendants Alimentation Couche-Tard Inc. (“Couche-Tard”) and CrossAmerica Partners LP (“CAPL”). By agreement of the parties, the Final Judgment against Couche-Tard and CAPL, authorized by Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l) and 56(a)(1), provides for the payment by Defendants of civil penalties totaling three million five hundred thousand United States dollars (\$3,500,000). The parties have agreed in the Stipulation that the Final Judgment may be entered on the motion of either party.<sup>1</sup>

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<sup>1</sup> Settlement of this proceeding is not subject to the notification requirements of the Antitrust Procedures and Penalties Act (“Tunney Act”), 15 U.S.C. § 16(b)-(h), because this is not a civil proceeding brought by or on behalf of the United States under the antitrust laws. *See,*

## **BACKGROUND**

The Commission has filed this action pursuant to its above-cited authority to seek relief for violations of its final administrative orders, which were entered with Defendants' consent. As alleged in the Complaint, Defendants violated the Commission's Decision and Order issued in 2018 in Docket No. C-4635 ("Order") by failing to divest ten retail fuel and convenience store properties ("Retail Fuel Assets") by the deadline contained in the Order. Defendants also failed to provide complete and detailed information about their efforts to divest the Retail Fuel Assets in their compliance reports. In addition, Defendants violated the related Order to Maintain Assets issued by the Commission by failing to maintain the operations of the divestiture property located in Hibbing, Minnesota ("Hibbing location"). Finally, Defendants failed to provide complete and detailed information about their efforts to maintain the operations of the Hibbing location in their compliance reports, and failed to timely notify the Commission that the Hibbing location had ceased operations prior to divestiture. Following an investigation by the Commission, Defendants and the Commission reached a settlement of the Complaint allegations with the attached Stipulation for the entry of a Final Judgment to pay civil penalties. The penalty will both penalize and deter Defendants from any future violations of Commission orders, and will deter similarly situated respondents from violating the Commission's orders.

## **STATEMENT OF POINTS AND AUTHORITIES**

The Complaint in this matter alleges that Defendants Couche-Tard and CAPL violated the Order and Order to Maintain Assets of the Federal Trade Commission in FTC

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*e.g., Federal Trade Commission v. Onkyo U.S.A. Corp.*, 1995-2 Trade Cas. (CCH) P71,111, 1995 U.S. Dist. LEXIS 21222, (D.D.C. 1995) at \*5, n.2. *See also* Order at 1-2, *Federal Trade Commission v. Star Pipe Products, Ltd.*, Civ. No. 16-0755, (D.D.C. May 12, 2016).

Docket No. C-4635. Section 5(l) of the FTC Act, 15 U.S.C. §45(l), authorizes the imposition of civil penalties for violations of Federal Trade Commission orders.<sup>2</sup> Accordingly, the Complaint seeks “an appropriate civil penalty.” As the Stipulation and proposed Final Judgment indicate, Defendants have agreed to pay a civil penalty of three million five hundred thousand United States dollars (\$3,500,000), payable within thirty (30) days after entry of the Final Judgment.

The proposed civil penalty settlement in the attached Stipulation is in the public interest because it is fair, adequate, reasonable, and appropriate based on the factors discussed below.<sup>3</sup> These factors include, among others: the need to deter similar conduct by these defendants and others, and the need to vindicate the authority of the Commission and the rule of law.<sup>4</sup>

The civil penalty is a significant amount considering the relatively short duration of the core divestiture violations, coupled with the fact that Defendants did eventually divest all of the Retail Fuel Assets, albeit not by the deadline contained in the Order.<sup>5</sup> This penalty will serve the desired deterrent effect by signaling to Defendants, and other respondents to

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<sup>2</sup> Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 85 FR 2014 (Jan. 14, 2020), authorizes the Court to award civil penalties of up to \$43,280 for each violation, or each day of a continuing violation, of a consent order entered by the Commission.

<sup>3</sup> See *Securities and Exchange Commission v. James H. Randolph, Jr., et al.*, 736 F.3d 525,529 (9th Cir. 1984) (“Unless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.”).

<sup>4</sup> See *United States v. Boston Scientific Corp.*, 253 F. Supp. 3d 85, 98 (D. Mass. 2003).

<sup>5</sup> The violation periods applicable to Defendants’ late divestiture of each of the Retail Fuel Assets ranged from 91 days to 100 days. See Complaint ¶¶ 40-59.

Commission orders, that the Commission requires compliance with its orders, and violations of Commission orders carry serious consequences. It will also demonstrate the Commission's commitment to monitoring compliance with its orders, as well as the Commission's resolve to enforce its orders when respondents fail to comply. In addition, entry of the proposed Final Judgment is in the public interest because it will vindicate the authority of the Commission and the rule of law.

For the above reasons, the Federal Trade Commission respectfully requests that the Court enter the attached Final Judgment in this case.

Respectfully submitted,

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By:     /s/ Kenneth A. Libby    

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