

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

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

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| Alimentation Couche-Tard Inc., |) | DECISION AND ORDER |
| a corporation; |) | |
| |) | |
| Circle K Stores Inc., |) | |
| a corporation; |) | Docket No. C- |
| |) | |
| and |) | |
| |) | |
| Giant Eagle, Inc., |) | |
| a corporation. |) | |
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DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondents Alimentation Couche-Tard Inc. (“ACT”) and its wholly-owned subsidiary Circle K Stores Inc. (“Circle K”) of certain outlets from Respondent Giant Eagle Inc. (“Giant Eagle”) (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in

that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Alimentation Couche-Tard Inc. 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, Canada, H7L 0E3. Its United States address for service of process is as follows, 17319 San Pedro Avenue, Suite 400, San Antonio, Texas 78232.
2. Respondent Circle K Stores Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its headquarters and principal place of business located in San Antonio, Texas. Circle K is wholly owned by Alimentation Couche-Tard Inc.
3. Respondent Giant Eagle, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its headquarters and principal place of business located at 700 Cranberry Woods Dr., Cranberry Township, Pennsylvania 16066.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions apply:

- A. “ACT” means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Alimentation Couche-Tard Inc., including Respondent Circle K Stores, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Circle K” means Circle K Stores Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Circle K Stores Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Giant Eagle” means Giant Eagle, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships,

divisions, groups, and affiliates controlled by Giant Eagle, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means:
 - 1. Majors Management; or
 - 2. Any other Person that acquires the Retail Fuel Assets pursuant to this Order.
- F. “Acquisition” means the proposed acquisition described in the agreement titled “Unit Purchase Agreement by and among Mac’s Convenience Stores LLC, Giant Eagle, Inc., Riser Foods Company, and GetGo Operating, LLC,” dated August 16, 2024.
- G. “Acquisition Date” means the date Respondents consummate the Acquisition.
- H. “Business Information” means books, records, data, and information, wherever located and however stored, used in the operation of the Retail Fuel Business relating to the Retail Fuel Assets, including documents, written information, graphic materials, and data and information in electronic format, along with the knowledge of employees, contractors, and representatives. Business Information includes books, records, information, and data relating to sales, marketing, logistics, products and SKUs, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, research and development, Equipment, operations, and all other information used in the operation of the Retail Fuel Business relating to the Retail Fuel Assets.
- I. “Confidential Information” means all Business Information not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondent ACT.
- J. “Consent” means an approval, consent, ratification, waiver or other authorization.
- K. “Contract” means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether legally binding with third parties.
- L. “Direct Cost” means the cost of labor, materials, travel, and other expenditures directly incurred. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor; *provided, however*, that with respect to the transitional supply of Fuel Products, Fuel Products Cost shall be calculated net of any rebates, Renewable Identification Number sharing, or other discounts or allowances and shall not include any mark-up, profit, overhead, minimum volume penalties, or other upward adjustments by Respondent ACT.
- M. “Divestiture Agreement” means the “Purchase and Sale Agreement by and between Majors Management, LLC and Mac’s Convenience Stores LLC,” dated November 26, 2024, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules attached to this Order as Nonpublic Appendix A.

- N. “Divestiture Date” means the closing date of the Retail Fuel Assets by the Acquirer as required by this Order.
- O. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Section IX of this Order.
- P. “Employee Information” means to the extent permitted by law, the following information summarizing the employment history of each employee that includes:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The employee’s base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents’ last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- Q. “EMV Compliance” means compliance with the current standards and practices related to payment card chip technology at fuel dispensers promulgated or endorsed by the EMVCo.
- R. “Equipment” means all tangible personal property (other than Inventories) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Business, including all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Retail Fuel Business at the Locations, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part, to the extent such warranty is transferrable, and all maintenance records and other related documents.

- S. “Fuel Products” means refined petroleum gasoline and diesel products.
- T. “Governmental Authorization” means a Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- U. “Intellectual Property” means all intellectual property, including commercial names, assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; patents, patent applications and inventions and discoveries that may be patentable; registered and unregistered copyrights in both published works and unpublished works; know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and rights in internet web sites and internet domain names presently used.
- V. “Inventories” means all inventories of every kind and nature held for retail sale associated with the Retail Fuel Assets, including: (1) all Fuel Products, kerosene, and other petroleum-based motor fuels stored in bulk and held for sale to the public; and (2) all usable, non-damaged and non-out-of-date products and items held for sale to the public, including, without limitation, all food-related items requiring further processing, packaging, or preparation and ingredients from which prepared foods are made to be sold.
- W. “Location” means any existing retail facility engaged in the activities of the Retail Fuel Business.
- X. “Majors Management” means Majors Management, LLC, a limited liability company organized, existing, and doing business under, and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1255 Lakes Pkwy, Suite 180, Lawrenceville, Georgia 30043.
- Y. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- Z. “Orders” means this Order and the Order to Maintain Assets.
- AA. “PCI Compliance” means compliance with the current standards and practices promulgated or endorsed by the PCI Security Standards Council.
- BB. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- CC. “Relevant Employee” means full-time employees, part-time employees, or contract employees, who were employed by or under contract with Respondents at any time during the 90 days preceding the Acquisition Date or at any time after the Acquisition Date, and whose duties relate or related to operating the Retail Fuel Business at the Locations identified in Appendix B of this Order, including (1) store-level employees, and (2) up to 4 district managers.
- DD. “Retail Fuel Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and

description, wherever located, used in, or relating to the Retail Fuel Businesses identified in Appendix B of this Order, including:

1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. All Equipment, including any Equipment removed from the Location since the date of the announcement of the Acquisition and not replaced;
3. All Inventories;
4. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
5. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
6. All Business Information; and
7. All intangible rights and property, including going concern value, goodwill, and telephone listings.

Provided, further, however, that the Retail Fuel Assets need not include the Retained Assets or (i) corporate or regional offices, and (ii) trade secrets, trade names, and trademarks used corporate-wide.

- EE. “Retail Fuel Business” means all business activities conducted by Respondents prior to the Acquisition Date including (1) the retail sale of Fuel Products, and (2) the operation of any associated convenience store and other business or service.
- FF. “Retained Assets” means Respondent ACT’s:
1. Corporate or regional offices;
 2. All Intellectual Property or rights of any nature or kind owned, licensed, or used by Respondent ACT, including but not limited to the “Circle K,” “Corner Store,” “Dairy Mart,” “Holiday,” or “Kangaroo Express” names, other trade names, service marks, trademarks, trade dress, web sites, web pages, domain names and registrations therefor;
 3. Tangible assets that are not located at any Location identified in Appendix B of this Order (unless included in the Retail Fuel Assets pursuant to Paragraph I.DD;
 4. Software that can readily be purchased or licensed from sources other than Respondent ACT and that has not been materially modified (other than through user preference settings);

5. Enterprise software that Respondent ACT used primarily to manage and account for businesses other than the relevant business to be divested;
 6. Any tax asset relating to (a) the Retail Fuel Assets for pre-Divestiture Date tax periods or (b) any tax liability for which Respondent ACT is responsible; and
 7. All accounts receivable, notes receivable, rebates receivable and other miscellaneous receivables of Respondent ACT that arise out of the operation of the Retail Fuel Business relating to the Retail Fuel Assets prior to the Divestiture Date; and
 8. Assets identified in Nonpublic Appendix A to this Order.
- GG. “Transitional Assistance” means technical services, personnel, assistance, training, the supply of Fuel Product, and other logistical, administrative, and other transitional support as required by the Acquirer to facilitate the transfer of the Retail Fuel Assets from Respondent ACT to the Acquirer, including services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems, maintenance and repair of facilities and equipment, Fuel Products supply, purchasing, quality control, R&D support, technology transfer, use of Respondent ACT’s brands for transitional purposes, operating permits and licenses, regulatory compliance, PCI Compliance, EMV Compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 20 days after the Acquisition Date, Respondent ACT shall divest the Retail Fuel Assets as ongoing Retail Fuel Businesses, absolutely and in good faith, to Majors Management.

Provided, however, that, if within 12 months after issuing this Order, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or more Retained Assets to operate the Retail Fuel Assets in a manner that achieves the purposes of this Order, Respondent ACT shall divest, absolutely and in good faith, such needed Retained Assets to the Acquirer;

Provided, further, however, that if Business Information includes information (i) that also relates to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Retail Fuel Assets or (ii) where Respondents have a legal obligation to retain the original copies, then Respondents shall provide only copies of the materials containing such information with appropriate redactions to the Acquirer and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.

B. If Respondents have divested the Retail Fuel Assets to the Acquirer prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. The Acquirer is not an acceptable purchaser of the relevant Retail Fuel Assets, then Respondent ACT shall rescind the divestiture to that Acquirer within 5 days of notification, and shall divest the relevant Retail Fuel Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
2. The manner in which the divestiture to the Acquirer was accomplished is not acceptable, and the Commission may direct Respondent ACT, or appoint a Divestiture Trustee, to modify the manner of divestiture of the relevant Retail Fuel Assets as the Commission may determine is necessary to satisfy the requirements of this Order.

C. Respondents shall obtain, no later than the Divestiture Date and at its sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to affect the complete transfer and divestiture of those Retail Fuel Assets on such Divestiture Date and for the Acquirer to operate any aspect of the relevant Retail Fuel Business.

Provided, further, however, that Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and

Provided, further, however, that with respect to any Governmental Authorizations that are not transferable, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the Retail Fuel Business at the relevant Location under Respondents' Governmental Authorizations pending the Acquirer's receipt of its own Governmental Authorizations, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorizations.

D. Respondents shall assist the Acquirer to conduct a due diligence investigation of the Retail Fuel Assets the Acquirer seeks to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording the Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

E. Respondent ACT shall release, and shall not exercise, any right or cause of action against any relevant landlord that is provided to Respondent ACT by a lease agreement related to any Retail Fuel Outlet transferred to an Acquirer pursuant to this Order, with respect to rights or causes of action accruing on or after the date of such transfer.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondent ACT to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in this Order such that Respondent ACT cannot fully comply with both, Respondent ACT shall comply with this Order.
- B. Respondent ACT shall not modify or amend the terms of the Divestiture Agreement after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information and divested all Retail Fuel Assets to the Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to that Business Information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of the Acquirer, Respondent ACT shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Retail Fuel Assets to the Acquirer and (2) allow the Acquirer to operate the Retail Fuel Business with the related Retail Fuel Assets at each Location in a manner that is equivalent in all material respects to the manner in which Respondent ACT did so prior to the Acquisition.
- C. Respondent ACT shall provide Transitional Assistance:
 - 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - 3. For a period sufficient to meet the requirements of this Section IV.
- D. Respondent ACT shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.

- E. Respondent ACT shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent ACT's breach of the Divestiture Agreement.

V. Employees

IT IS FURTHER ORDERED that:

- A. Until one year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer to evaluate independently and offer employment to any Relevant Employee.
- B. Until 90 days after the Divestiture Date, Respondents shall:
1. No later than 10 days after a request from the Acquirer, provide a list of the requested Relevant Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide an opportunity to privately interview any of the Relevant Employees outside the presence or hearing of any employee or agent of Respondents, and to make offers of employment to any of the Relevant Employees;
 3. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Acquirer, including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Relevant Employee who receives an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 4. Continue to provide Relevant Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
 5. Provide reasonable financial incentives to encourage Relevant Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Relevant Employees by the Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring, recruiting, or employing by the Acquirer of any Relevant Employee, including not offering any incentive to such employees to decline employment with the Acquirer.
- C. Respondents shall not:

1. For a period of 90 days after Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed at the store level by the Acquirer to terminate his or her employment with the Acquirer; and
2. For a period of 180 days after the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed above the store level by the Acquirer to terminate his or her employment with the Acquirer.

Provided, however, Respondents may (i) hire any such Person whose employment has been terminated by the Acquirer; (ii) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or (iii) hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section V.

VI. Asset Maintenance

IT IS FURTHER ORDERED that until Respondents fully transfer each of the Retail Fuel Assets to the Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets:

- A. Operate the Retail Fuel Business relating to the Retail Fuel Assets in the ordinary course of business consistent with past practices and take all actions necessary to maintain the full economic viability, marketability, and competitiveness of such Retail Fuel Business;
- B. Prevent the destruction, removal, wasting, deterioration, closing, or impairment (other than as a result of ordinary wear and tear) of the Retail Fuel Assets, including:
 1. Maintaining, repairing, and replacing any Equipment to the extent and in a manner consistent with past practices;
 2. Maintaining Inventory levels in a manner consistent with past practices;
 3. Not terminating, canceling, renewing, or amending any Contract, except as consistent with past practices; and
 4. Not entering any Contract that would restrain or restrict the ability of the Acquirers to compete against Respondent ACT;
- C. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Retail Fuel Assets;
- D. Provide the Retail Fuel Business relating to the Retail Fuel Assets with sufficient funds to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, promotional activities, and marketing activities;

- E. Provide resources as may be necessary to respond to competition against the Retail Fuel Business relating to the Retail Fuel Assets, prevent diminution in sales of such Retail Fuel Business, and maintain the competitive strength of such Retail Fuel Business;
- F. Not reduce operating hours;
- G. Not reduce, change, or modify in any material respect, the level of marketing, promotional, pricing, or advertising practices, programs, and policies for the Retail Fuel Business related to the Retail Fuel Assets, other than changes in the ordinary course of business consistent with changes made at Respondents' other businesses that Respondents will not divest;
- H. Not target, encourage, or convert customers of the Retail Fuel Business relating to the Retail Fuel Assets to become customers of Respondents' other businesses that will not be divested; *provided, however*, that nothing in this Paragraph VI.H shall prevent Respondents from engaging in advertising, marketing, and promotion activities: (i) generally applicable to all of Respondents' businesses, or (ii) in the ordinary course of business and in accordance with past practice;
- I. Provide support services at levels customarily provided by Respondents;
- J. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Retail Fuel Business relating to the Retail Fuel Assets, and otherwise operate such Retail Fuel Business in accordance and compliance with all regulatory obligations and requirements;
- K. Not sell, transfer, encumber, or otherwise impair the Retail Fuel Assets (other than in the manner prescribed in the Orders);
- L. Not take any action that lessens the full economic viability, marketability, or competitiveness of the Retail Fuel Assets;
- M. Not terminate the operations of the Retail Fuel Business relating to the Retail Fuel Assets;
- N. Preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Retail Fuel Business relating to the Retail Fuel Assets;
- O. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Retail Fuel Business relating to the Retail Fuel Assets, including:
 - 1. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and

2. Not transferring any employees from the Retail Fuel Business relating to the Retail Fuel Assets to any of Respondents' assets or businesses that Respondents will not divest.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Retail Fuel Assets and consistent with the purposes of the Orders.

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondent ACT shall not (x) disclose (including to Respondent ACT's employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondent ACT; *provided, however,* that Respondent ACT may disclose or use such Confidential Information in the course of:
 1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Fuel Assets or any Retail Fuel Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondent ACT's employees or to any other Person under this Section VII, Respondent ACT shall limit such disclosure or use (1) only to the extent such information is required; (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A; and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent ACT shall enforce the terms of this Section VII and take necessary actions to ensure that its employees and other Persons comply with the terms of this Section VII, including implementing access and data controls, training its employees, and other actions that Respondent ACT would take to protect its own trade secrets and proprietary information.

VIII. Monitor

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 observe and report on Respondents' compliance with all their obligations as required by this Order.

- B. The Commission shall select the Monitor, subject to the consent of Respondent ACT, which consent shall not be unreasonably withheld. If Respondent ACT has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to the Respondent of the identity of any proposed Monitor, Respondent ACT shall be deemed to have consented to the selection of the proposed Monitor.
- C. Respondent ACT and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
1. Shall be subject to the approval of the Commission;
 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII of this Order or the Section relating to the Monitor in the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondent ACT and the Monitor shall comply with the Monitor Sections; and
 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondent ACT and the Monitor shall comply with the Orders.
- D. The Monitor shall:
1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
 2. Act in consultation with the Commission or its staff;
 3. Serve as an independent third party and not as an employee or agent of Respondent ACT or of the Commission;
 4. Serve without bond or other security;
 5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
 7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;

8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff and at any other time requested by the staff of the Commission; and
 9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondent ACT has satisfied all obligations under Sections II and IV, and files a final report.
- E. Respondent ACT shall:
1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondent ACT's compliance with its obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
 2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
 3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
 4. Not require the Monitor to disclose to Respondent ACT the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
 5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.
- F. Respondent ACT may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on Respondent ACT's compliance with the Orders.
- G. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Paragraphs of the Orders. The Commission shall select the substitute Monitor, subject to the consent of Respondent ACT who:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondent ACT has not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.C; or (b) receives Commission approval.
- 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 the Orders.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondent ACT has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent ACT shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX.A shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent ACT to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent ACT which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent ACT has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent ACT of the identity of any proposed Divestiture Trustee, Respondent ACT shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondent ACT shall execute a trust agreement that, subject to the prior approval of the Commission,

transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to affect the divestitures required by this Order. Any failure by Respondent ACT to comply with a trust agreement approved by the Commission shall be a violation of this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section IX, Respondent ACT shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission;
provided, however, the Commission may extend the divestiture period only 2 times;
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent ACT shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent ACT shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondent ACT shall extend the time for divestitures under this Paragraph IX.D in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent ACT's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to Acquirers that receive the prior approval of the Commission as required by this Order;
provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture

Trustee shall divest to the acquiring person selected by Respondent ACT from among those approved by the Commission;

provided, further, however, that Respondent ACT shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent ACT, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent ACT, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent ACT, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
 6. Respondent ACT shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 or willful misconduct by the Divestiture Trustee;
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order;
 8. The Divestiture Trustee shall report in writing to Respondent ACT and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondent ACT may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;
provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section IX of this Order.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Respondent Prior Notice

IT IS FURTHER ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondent ACT shall not, without providing advance written notification to the Commission (“Notification”), acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, any of the retail fuel outlets identified in Appendix C to this Order.
- B. The Notification required by Paragraph X.A shall:
 - 1. Be provided on the Notification and Report Form (the “Form”) set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice; and Notification is required only of Respondent ACT and not of any other party to the transaction.
 - 2. Include a description of the proposed acquisition and provide:
 - a. A map showing all retail fuel outlets by ownership (e.g., OPIS Corporate Brand) within 5 driving miles of the relevant Appendix C location;
 - b. For each retail fuel outlet owned by Respondent ACT within 5 driving miles of the relevant Appendix C location, a list of the retail fuel outlets that Respondent ACT monitored at any time within the preceding 12 month period (to the extent such information is available); and
 - c. Respondent ACT’s pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph X.B.2(b) of this Order.
- C. Respondent ACT shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). Further, if, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent ACT shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Section X may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Section X for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. No Reacquisition

IT IS FURTHER ORDERED that for a period of 10 years from the date this Order is issued, Respondent ACT shall not, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, any of the Retail Fuel Assets.

XII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent ACT shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and the Divestiture Date no later than 5 days after the occurrence of each; and
 - 2. Submit the Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondent ACT shall file verified written reports (“Compliance Reports”) in accordance with the following:
 - 1. Respondent ACT shall submit:
 - a. Interim Compliance Reports 30 days after this Order is issued, and every 60 days thereafter until Respondent ACT has complied fully with Section II of this Order;
 - b. Annual Compliance Reports one year after the date this Order is issued, and annually thereafter for the next 9 years on the anniversary of that date; and
 - c. Additional Compliance Reports as the Commission or its staff may request.
 - 2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent ACT is in compliance with this Order. Conclusory statements that Respondent ACT has complied with its obligations under this Order are insufficient. Respondent ACT shall include in its Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance a full description of the measures Respondent ACT has implemented or plan to

implement to ensure that it has complied or will comply with each Section of this Order.

3. For a period of 5 years after filing a Compliance Report, Respondent ACT shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent ACT's obligations under this Order during the period covered by such Compliance Report. Respondent ACT shall provide copies of these documents to Commission staff upon request.
4. Respondent ACT shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent ACT shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent ACT shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondent

IT IS FURTHER ORDERED that Respondent ACT shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Alimentation Couche-Tard Inc.;
- B. The proposed acquisition, merger, or consolidation of Alimentation Couche-Tard Inc.; or
- C. Any other change in Respondent ACT, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIV. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days notice to Respondent ACT, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the Respondent ACT shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent ACT and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent ACT related to compliance with this Order, which copying services shall be provided by Respondent ACT at the request of the authorized representative of the Commission and at the expense of Respondent ACT; or

- B. To interview officers, directors, or employees of Respondent ACT, who may have counsel present, regarding such matters.

XV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to ensure the continued use of the Retail Fuel Assets in the same Retail Fuel Business in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

XVI. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL

ISSUED:

NONPUBLIC APPENDIX A

[Divestiture Agreement]

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX B

DIVESTITURE LOCATIONS

| Site Owner | Site No. | Address | City | State |
|-------------|----------|---------------------------------------|----------------------|-------|
| ACT | 4702239 | 3470 West 450 South | Columbus | IN |
| ACT | 4702281 | 1821 West 151 st Street | Westfield | IN |
| ACT | 4702284 | 8924 East 116 th Street | Fishers | IN |
| ACT | 4702364 | 14554 Herriman Boulevard | Noblesville | IN |
| ACT | 4705204 | 1150 South Broadway | Geneva | OH |
| ACT | 4705251 | 25605 Miles Road | Warrensville Heights | OH |
| ACT | 4705254 | 8911 Day Drive | Parma | OH |
| ACT | 4705278 | 15560 West High Street | Middlefield | OH |
| ACT | 4705320 | 36071 Chester Road | Avon | OH |
| ACT | 4705335 | 1051 North High Street | Wadsworth | OH |
| ACT | 4705337 | 521 Pearl Road | Brunswick | OH |
| ACT | 4705500 | 1524 State Route 303 | Streetsboro | OH |
| ACT | 4705365 | 1370 East Main Street | Ravenna | OH |
| ACT | 4705413 | 3634 Massillon Road | Uniontown | OH |
| ACT | 4705416 | 4936 Fishcreek Road | Stow | OH |
| ACT | 4705419 | 1830 Waterloo Road | Akron | OH |
| ACT | 4705586 | 11 South Cleveland Massillon Road | Fairlawn | OH |
| ACT | 4705593 | 641 West Portage Trail Extension | Akron | OH |
| ACT | 4705602 | 344 5 th Street Northeast | Barberton | OH |
| ACT | 4705693 | 5999 North Ridge Road | Madison | OH |
| ACT | 4705730 | 2496 East Aurora Road | Twinsburg | OH |
| ACT | 4702274 | 1360 North Green Street | Brownsburg | IN |
| ACT | 4702361 | 6416 East Whitestown Parkway | Whitestown | IN |
| ACT | 4702420 | 2114 Sheek Road | Greenwood | IN |
| ACT | 4705585 | 170 Tallmadge Circle | Tallmadge | OH |
| ACT | 4705731 | 2762 East State Street | Salem | OH |
| ACT | 4704236 | 860 Henderson Avenue | Washington | PA |
| ACT | 4700065 | 10080 U.S. Highway 31 | Taylorsville | IN |
| ACT | 4705578 | 3955 State Road | Cuyahoga Falls | OH |
| ACT | 4705579 | 85 South Main Street | Monroe Falls | OH |
| ACT | 4705726 | 4400 Coonpath Road | Carroll | OH |
| ACT | 4705582 | 1693 West Market Street | Akron | OH |
| ACT | 4705577 | 997 Brown Street | Akron | OH |
| ACT | 4702363 | 10598 North College Avenue, Suite 100 | Indianapolis | IN |
| Giant Eagle | 7528 | 1711 25 th Street | Columbus | IN |

NON PUBLIC APPENDIX C
PRIOR NOTICE LOCATIONS