

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT**
In the Matter of Alimentation Couche-Tard, Inc.
File No. 241-0111, Docket No. C-

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 Giant Eagle, Inc. (“Giant Eagle”) (collectively, the “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from ACT’s proposed acquisition of retail fuel assets from Giant Eagle.

Under the terms of the proposed Decision and Order (“Order”) contained in the Consent Agreement, Respondent ACT must divest certain assets as ongoing retail fuel businesses in 35 local markets in Indiana, Ohio, and Pennsylvania. Respondent ACT must complete the divestiture to Majors Management (“Majors”) within 20 days after the closing of the acquisition. The Commission and Respondent ACT have agreed to an Order to Maintain Assets that requires ACT to operate and maintain each divestiture outlet in the normal course of business through the date Majors acquires the divested assets.

The Commission has placed the 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 review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Respondent ACT is a publicly traded company headquartered in Laval, Quebec, Canada. ACT operates more than 16,800 stores in 31 countries, and almost 13,100 of these locations sell fuel. In the United States, ACT operates over 7,100 convenience stores, almost entirely under the Circle K brand.

Respondent Giant Eagle is a privately-owned grocery store chain headquartered in Cranberry Township, Pennsylvania. Giant Eagle operates more than 270 retail fuel outlets in Indiana, Maryland, Ohio, Pennsylvania, and West Virginia under the brand name GetGo.

III. The Proposed Acquisition

On August 16, 2024, ACT entered into an agreement to acquire certain retail and wholesale fuel assets from Giant Eagle (the “Acquisition”). The Commission’s Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the Acquisition 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 in 35 local markets in Indiana, Ohio, and Pennsylvania,

and by substantially lessening competition for the retail sale of diesel fuel in 19 local markets in Indiana, Ohio, and Pennsylvania.

IV. The Retail Sale of Gasoline and Diesel Fuel

The Commission alleges that the relevant product markets in which to analyze the Acquisition are the retail sale of gasoline and the retail sale of diesel fuel. Consumers require either gasoline or diesel fuel for their vehicles and can only purchase gasoline or diesel at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel fuel constitute separate relevant markets because the two are not interchangeable. Vehicles that run on gasoline cannot run on diesel fuel, and vehicles that run on diesel fuel cannot run on gasoline.

The Commission alleges that the relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of gasoline are 35 local markets in Indiana, Ohio, and Pennsylvania. The relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of diesel fuel are 19 local markets in Indiana, Ohio, and Pennsylvania.

The geographic markets for retail gasoline and retail diesel fuel are highly localized, based on the unique circumstances of each area. Each relevant market is distinct and fact-dependent, reflecting many considerations, including commuting patterns, traffic flows, driving distance, and outlet characteristics. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel fuel are similar to the corresponding geographic markets for retail gasoline, as many diesel fuel consumers exhibit preferences and behaviors similar to those of gasoline consumers.

The Acquisition would substantially lessen competition in each of these local markets, resulting in 35 highly concentrated markets for the retail sale of gasoline and 19 highly concentrated markets for the retail sale of diesel fuel. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic routes, and with similar store characteristics. In each of the local gasoline and diesel fuel retail markets, the Acquisition would reduce the number of competitively constraining independent market participants to five or fewer. The combined entity would be able to raise prices unilaterally in markets where ACT and Giant Eagle are close competitors today. Absent the Acquisition, ACT and Giant Eagle would continue to compete head-to-head in these local markets.

Moreover, the Acquisition would enhance the incentives for interdependent behavior in local markets where five or fewer constraining independent market participants would remain. Two key aspects of the retail fuel industry make it vulnerable to such coordination. First, retail fuel prices are transparent and easily monitored from street signs, the internet, or smartphone applications. Second, retail fuel outlets track their competitors' fuel prices on a daily basis and change their own prices in response. These repeated interactions give retail fuel outlets considerable familiarity with the pricing strategies of their competitors price and may encourage coordination in concentrated local markets.

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 Consent Agreement

The proposed Order would remedy the Acquisition's likely anticompetitive effects by requiring ACT to divest certain retail fuel assets to Majors in each local market. Majors is an experienced operator of retail fuel sites and will be a new entrant into the local markets.

The proposed Order requires that the divestiture be completed no later than 20 days after ACT and Giant Eagle consummate the Acquisition. The proposed Order further requires ACT to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture to Majors is complete.

In addition to requiring outlet divestitures, the proposed Order prohibits Respondent ACT from re-acquiring the divested assets for a period of ten years. The proposed Order also requires Respondent ACT to notify the Commission before acquiring any stations designated by the Commission as competitively significant in the local markets of the divested assets for ten years. The prior notice provision is necessary because an acquisition in close proximity to the divested assets likely would raise the same competitive concerns as the Acquisition and may fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The Consent Agreement contains additional provisions designed to ensure the effectiveness of the 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 Respondent ACT to operate and maintain each divestiture outlet in the normal course of business, through the date the divestiture is complete. The proposed Order also includes a provision that allows the Commission to appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the Order.

The purpose of this analysis is to facilitate public comment on the Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.