

Complaint

IN THE MATTER OF

ALIMENTATION COUCHE-TARD INC.
AND
CST BRANDS, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4618; File No. 161 0207
Complaint, June 23, 2017 – Decision, August 4, 2017

This consent order addresses the \$4.4 billion acquisition by Alimentation Couche-Tard Inc. of certain assets of CST Brands, Inc. The complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for the retail sale of gasoline and diesel in 71 local markets across 16 metropolitan statistical areas. Under the order, Alimentation Couche-Tard (“ACT”) must divest to a Commission-approved buyer certain CST retail fuel outlets and related assets in 70 local markets in 16 metropolitan statistical areas, and at the buyer’s option, an ACT site in one local market.

Participants

For the *Commission*: Nicholas Bush, Mary Casale, Eric Olson, Marc Schneider and Julia Zhang.

For the *Respondents*: Brian Byrne and David Gelfand, Cleary Gottlieb Steen & Hamilton LLP; Craig Coleman and Richard Duncan, Faegre Baker Daniels LLP; Nelson Fitts and Christina Ma, Wachtell, Lipton, Rosen & Katz.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Alimentation Couche-Tard Inc. has entered into an agreement to acquire Respondent CST Brands, Inc., that such acquisition, if consummated, would violate 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, and that a proceeding in respect thereof would be in the public

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interest, hereby issues this complaint, stating its charges as follows.

I. **RESPONDENTS**

ACT

1. Respondent Alimentation Couche-Tard Inc. (“ACT”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of Quebec, Canada, with its office and principal place of business located at 4204 Industriel Boulevard, Laval, Quebec H7L OE3, Canada.

2. Respondent ACT is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

3. Respondent ACT and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

CST

4. Respondent CST Brands, Inc. (“CST”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 19500 Bulverde Road, San Antonio, Texas.

5. Respondent CST is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

6. Respondent CST and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

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ii. THE PROPOSED ACQUISITION

7. Pursuant to an Agreement and Plan of Merger dated August 21, 2016, ACT, through its wholly-owned subsidiary Circle K Stores Inc., proposes to acquire all issued and outstanding shares of CST, with CST surviving post-acquisition as a wholly-owned subsidiary of Circle K Stores Inc. (the “Acquisition”), for approximately \$4.4 billion.

8. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

iii. THE RELEVANT MARKET

9. Relevant product markets in which to analyze the effects of the Acquisition 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. Consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. No economic or practical alternative to the retail sale of gasoline or diesel at retail fuel outlets exists.

10. Relevant geographic markets in which to analyze the effects of the Acquisition include 71 local markets within the following metropolitan statistical areas: Phoenix, Arizona; Sierra Vista, Arizona; Tucson, Arizona; Colorado Springs, Colorado; Denver, Colorado; Jacksonville, Florida; Albany, Georgia; Savannah, Georgia; Warner Robins, Georgia; Shreveport, Louisiana; Albuquerque, New Mexico; Las Cruces, New Mexico; Cleveland, Ohio; Austin, Texas; Corpus Christi, Texas; and El Paso, Texas.

11. The relevant geographic markets for retail gasoline and retail diesel are highly localized, ranging from a few blocks to a few miles. None of the relevant geographic markets exceeds three driving miles from an overlapping retail fuel outlet. Each relevant market is distinct and reflects 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.

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IV. **MARKET STRUCTURE**

12. The Acquisition, if consummated, would create a monopoly in ten local markets. In 20 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from three to two. In 41 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from four to three. The Acquisition would result in a highly concentrated market in each of these 71 markets.

V. **BARRIERS TO ENTRY**

13. 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.

VI. **EFFECTS OF THE ACQUISITION**

14. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

- a. increasing the likelihood that Respondent ACT would unilaterally exercise market power in the relevant markets; and
- b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in the relevant markets.

VII. **VIOLATIONS CHARGED**

15. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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16. The Merger Agreement entered into by Respondents ACT and CST constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this twenty-third day of June, 2017, issues its Complaint against Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Alimentation Couche-Tard Inc. (“ACT”), through its wholly-owned subsidiary, Circle K Stores Inc., of Respondent CST Brands, Inc. (“CST”), and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent ACT 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 H7L 0E3, Canada, and its United States address for service of process and of the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Circle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.
2. Respondent CST is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 19500 Bulverde Road, San Antonio, Texas 78259.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, and Schedule A and Schedule B, which are attached to the Decision and Order and identify the Assets To Be Divested, are incorporated herein by reference and made a part hereof, and shall apply:

- A. “ACT” means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives,

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successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Alimentation Couche-Tard Inc., including Circle K Stores and Ultra, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, ACT shall include CST.

- B. “Circle K Stores” means Circle K Stores Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, and its directors, officers, employees, agents, representatives, successors, and assigns. Circle K Stores is a wholly-owned subsidiary of ACT.
- C. “CST” means CST Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (including, but not limited to, CrossAmerica Partners, LP), in each case controlled by CST Brands, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means ACT and CST, individually and collectively.
- E. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and to the extent that it is related to or used in connection with the Assets To Be Divested or the conduct of the Retail Fuel Outlet Business at the Retail Fuel Outlets To Be Divested. The term “Confidential Business Information” excludes the following:
 - 1. Information that is contained in documents, books, or records of Respondents that is provided to an Acquirer that is unrelated to the Assets To Be Divested or that is exclusively related to the Respondents’ retained businesses; and

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2. Information that: (a) is or becomes generally available to the public other than as a result of disclosure in breach of the prohibitions of this Order; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be included in Respondents' mandatory regulatory filings; (d) is information the disclosure of which is consented to by the Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement or any Remedial Agreement; (f) is disclosed in complying with the Order; (g) is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Governmental Entities; or (h) is disclosed in obtaining legal advice.

F. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

G. "Monitor" means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph IV. of this Order to Maintain Assets.

H. "Orders" means the Decision and Order in this matter and this Order to Maintain Assets.

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II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective and until the Divestiture Date:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of any of the Assets To Be Divested. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested.
- B. Respondents shall conduct or cause the business of the Assets To Be Divested to be conducted in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice.
- C. Respondents shall not terminate the operation of any of the Assets To Be Divested, and shall continue to maintain the Inventory of each of the Assets To Be Divested at levels and selections in the regular and ordinary course of business, in accordance with past practice.
- D. Respondents shall maintain the organization and properties of each of the Assets To Be Divested, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Assets To Be Divested. Among other actions as may be necessary to comply with these obligations, Respondents shall, without limitation:

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1. Maintain all operations at each of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice, including maintaining customary hours of operation and departments;
2. Use best efforts to retain employees at each of the Assets To Be Divested; when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice; and not transfer any employees from any of the Assets To Be Divested;
3. Provide each employee of the Assets To Be Divested with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Assets To Be Divested;
4. Not transfer Inventory from any Asset To Be Divested, other than in the ordinary course of business, in accordance with past practice;
5. Make all payments required to be paid under any Contract when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Assets To Be Divested, in each case in a manner in accordance with past practice;
6. Maintain the Books and Records of each of the Assets To Be Divested;
7. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at any Asset To Be Divested to another location, or that indicates an Asset To Be Divested will close;
8. Not conduct any “going out of business,” “close-out,” “liquidation,” or similar sales or promotions

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at or relating to any Asset To Be Divested;

9. Not materially change or modify the existing pricing or advertising practices, marketing, or merchandising programs and policies, or price zones for or applicable to any of the Assets To Be Divested, other than changes or modifications in the regular and ordinary course of business, in accordance with past practices and business strategy;
10. Provide each of the Assets To Be Divested with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Assets To Be Divested;
11. Continue, at least at their scheduled pace, any additional expenditures for each of the Assets To Be Divested authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
12. Provide such resources as may be necessary to respond to competition and to prevent any diminution in sales at each of the Assets To Be Divested;
13. Make available for use by each of the Assets To Be Divested funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Assets To Be Divested;
14. Provide support services to each of the Assets To Be Divested at least at the level as were being provided to such Assets To Be Divested by

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Respondents as of the date the Consent Agreement was signed by Respondents; and

15. Maintain, and not terminate or permit the lapse of, any Governmental Permits necessary for the operation of any Asset To Be Divested;

Provided, however, that it shall not be a violation of this Paragraph II.D. if Respondents take actions that have been requested or agreed to by the Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Assets To Be Divested and consistent with the purposes of the Orders.

- E. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Assets To Be Divested as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that no Confidential Business Information is disclosed to or received, accessed, or used by Respondents or Respondents' employees except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that, pending divestiture of the Assets To Be Divested,

- A. Respondents shall not, and shall assure that its employees, agents, and representatives shall not:
 1. Receive, access, have access to, or use, directly or indirectly, any Confidential Business Information, other than as is necessary to:

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- a. Comply with the requirements of the Orders;
 - b. Perform their obligations to the Acquirer under the terms of any Remedial Agreement, including providing Transition Services pursuant to a Transition Services Agreement; or
 - c. Comply with financial reporting requirements, defend legal claims, or as otherwise required by applicable law;
2. Disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); or
 3. Use, disclose, or convey, directly or indirectly, any Confidential Business Information that is related to the Fuel Products supply, marketing, promotional activities, or sales of the Assets To Be Divested or of the Acquirer to employees, agents, and representatives with responsibilities relating to the Fuel Products supply, marketing, promotional activities, or sales of Respondents' retained businesses.
- B. Respondents shall institute appropriate procedures and requirements to ensure that the above-described employees, agents, and representatives do not (1) use, disclose, or convey, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets, or (2) solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- C. As part of the procedures and requirements that Respondents are required to implement to comply with Paragraphs III.A. and B., not later than (i) thirty (30)

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days after the date Respondents execute the Consent Agreement or (ii) fifteen (15) days after the date this Order to Maintain Assets is issued by the Commission, whichever is earlier, Respondents shall:

1. Implement and maintain a process and procedures pursuant to which Confidential Business Information may be disclosed and used only by Respondents' employees, agents, and representatives who (i) require access to such Confidential Business Information in order to provide Transition Services or as otherwise required by the Remedial Agreement or permitted by the Orders, (ii) only to the extent such Confidential Business Information is required; and (iii) only after such employees, agents, and representatives have signed an appropriate agreement in writing to maintain the confidentiality of such Confidential Business Information; and
2. Monitor the implementation and enforce the terms of this Paragraph III. as to any of Respondents' employees, agents, and representatives, and take such actions as are necessary to cause each such Person to comply with the terms of this Paragraph III, including training of Respondents' employees, and all other corrective actions that Respondents would take for the failure of their employees and other personnel to comply with such restrictions, and to protect their own confidential and proprietary information.

IV.**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 assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the

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Orders and the Remedial Agreements, including any Transition Services Agreement approved by the Commission.

- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement (“Monitor Agreement”) that, subject to the prior approval of the Commission, confers on the Monitor all rights, powers, and authority necessary to permit the Monitor to monitor Respondents’ compliance with the Orders and the Remedial Agreements, and perform his duties and responsibilities in a manner consistent with the purposes of the Orders, in a fiduciary capacity for the benefit of the Commission, and in consultation with Commission staff. Respondents shall assure, and the Monitor Agreement shall provide, that:
 - 1. The Monitor shall have the responsibility for monitoring the operations and transfer of the Assets To Be Divested; overseeing the maintenance of the Assets To Be Divested; overseeing the provision of Transition Services by Respondents’ employees, agents and representatives pursuant to the Transition Services Agreement; ensuring that the Assets To Be Divested receive continued and adequate funding by Respondents, as provided for in this Order; and monitoring Respondents’ compliance with its obligations pursuant to the Orders and the Remedial Agreements;

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2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
3. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to all of Respondents' facilities, personnel, books, documents, and records relating to the Assets To Be Divested, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements;
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set;
6. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
7. Respondents shall indemnify the Monitor, and hold the Monitor harmless, against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel, and other reasonable expenses incurred, in connection with the preparations 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, willful or wanton acts, or bad faith of the Monitor; and

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8. Respondents shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in any Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.
- D. Respondents may require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act, or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- G. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreement, including for as long as Respondents are providing Transition Services to the Acquirer pursuant to the Transition Services Agreement; *provided, however,* that the Commission may extend or modify this period

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as may be necessary or appropriate to accomplish the purposes of the Orders.

- 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 these Orders or the Remedial Agreement.
- I. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

V.

IT IS FURTHER ORDERED that within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets; *provided, however*, that after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with and submitted to the Commission on the same timing as the reports required to be submitted by the Respondents pursuant to the Decision and Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of any Respondent;

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- B. Any proposed acquisition, merger, or consolidation of any Respondent; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities, and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of Respondents, related to compliance with the Consent Agreement and/or the Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents, and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

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- B. The day after Respondents (or a Divestiture Trustee) complete the divestiture of all of the Assets To Be Divested, as described in and required by the Decision and Order; *provided, however*, that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires the Respondents to rescind any or all of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents (or a Divestiture Trustee) complete the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the Decision and Order; or
- C. The day after Respondents, with the concurrence of the Acquirer, certify in writing to the Commission as to the completion of all Transition Services provided by the Respondents to the Acquirer pursuant to any Transition Services Agreement approved by the Commission; or
- D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

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APPENDIX A**MONITOR AGREEMENT
[Redacted Public Version]****MONITOR AGREEMENT**

This Monitor Agreement (“Monitor Agreement” or “Agreement”) entered into this 13th day of June 2017, among Anthony P. Bartys (“Monitor”), who has been chosen to act as Monitor, and Alimentation Couche-Tard Inc. (“Respondent”) (Monitor and Respondent are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”), provides as follows:

WHEREAS, CST Brands, Inc. (“CST”), and Respondent have entered into an Agreement and Plan of Merger, by and among CST, Circle K Stores Inc., a wholly-owned subsidiary of Respondent, and Ultra Acquisition Corp., an indirect, wholly-owned subsidiary of Respondent (“Ultra”), dated as of August 21, 2016, (the “CST Merger Agreement”), pursuant to which, among other things, Ultra will merge with and into CST, with CST as the surviving corporation and an indirect, wholly-owned subsidiary of Respondent;

WHEREAS, the United States Federal Trade Commission (the “Commission”) has entered into an Agreement Containing Consent Orders with Respondent, which includes an Order to Maintain Assets and a Decision and Order (the “Consent Order”, which is attached hereto as Exhibit A;

WHEREAS, the Consent Order provides for the appointment of a Monitor to assure that Respondent complies with all of its obligations and performs all of its responsibilities required by the Decision and Order, the Order to Maintain Assets, and the Remedial Agreement;

WHEREAS, the Consent Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights, powers, and authority necessary to permit the Monitor to perform its duties and responsibilities pursuant to the Consent Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent, is not effective for any purpose, including but not limited to, imposing rights and responsibilities on Respondent or the Monitor, until this Monitor Agreement has been approved by the Commission and after the Acquisition has been consummated;

WHEREAS, the Monitor is well versed in the operation of the Assets To Be Divested and wishes to accept such appointment upon the terms and conditions stated herein; and

WHEREAS, the Parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the Parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Consent Order.
2. The Monitor shall have all of the powers, authority, and responsibilities conferred upon the Monitor by the Consent Order, including, without limitation, the responsibility, consistent with the Consent Order, for monitoring Respondent’s compliance with its obligations under the Consent Order and the Remedial Agreement. The Monitor shall have

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the authority to employ, in its sole discretion, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

3. In the performance of its functions and duties under this Agreement, the Monitor warrants that he will perform his obligations hereunder in good faith, using his best efforts to perform these services in accordance with generally accepted industry standards.

4. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

5. If the Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of his duties under this Agreement, the Monitor shall promptly inform Respondent and the Commission of any such conflict.

6. The Monitor shall have full and complete access, subject to any legally recognized privilege of Respondent, to Respondent's personnel, books, records, documents, facilities and technical information to the extent relating to the Assets To Be Divested and to Respondent's compliance with its obligations under the Consent Order, including its obligations related to the Assets To Be Divested, as the Monitor may reasonably require to perform the services set forth herein, subject to the limitations contained in the Consent Order. Such access shall include, inter alia, access to all relevant information related to the Assets To Be Divested. Respondent shall cooperate with any reasonable request of the Monitor, including but not limited to complying with Monitor's requests for onsite visits and interviews with employees of Respondent. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Consent Order and the Remedial Agreement.

7. Respondent shall designate a senior employee(s) of Respondent to be a primary contact for the Monitor and to notify the Monitor regarding any changes in the contact personnel. Respondent shall notify the Monitor of meetings and other critical events relating to the Assets To Be Divested, the Consent Order, or the Remedial Agreement, and provide any available minutes of such meetings to the Monitor.

8. Respondent shall provide and the Monitor shall evaluate the reports submitted by Respondent pursuant to the Consent Order, and within 30 days from the date the Monitor receives the first such report, and every 30 days thereafter until the end of the Monitor's term, the Monitor shall report in writing to the Commission concerning performance by Respondent of their obligations under the Consent Order.

9. In response to a request by the Commission or its staff, the Monitor shall further report in writing to the Commission concerning Respondent's compliance with its obligations under the Consent Order.

10. The Monitor shall maintain the confidentiality of all information provided by Respondent, all confidential business information and all confidential aspects of the performance of its duties under this Agreement. Except as provided in this Agreement, such information may be disclosed only to (i) Persons employed by, or working with, the Monitor

Order to Maintain Assets

under this Monitor Agreement (provided that such Person shall execute a confidentiality agreement prior to receiving confidential information), (ii) any other Person to whom disclosure is reasonably necessary for the Monitor to fulfill his duties (provided that such Person shall execute a confidentiality agreement prior to receiving confidential information), or (iii) the Commission and Commission staff. When providing such information to a third party pursuant to this Paragraph, the Monitor shall label such information "Confidential." The Monitor shall request confidential treatment by the Commission and Commission staff of any confidential information turned over to the Commission, including any information labeled "Confidential" by Respondent. The Monitor shall use the information provided by Respondent pursuant to this Agreement or learned in connection with performing its obligations under this Agreement only in performance of the duties set forth herein. At no time shall the Monitor use such information for any other purpose or for the benefit of any other Person. The confidentiality obligations of this Paragraph shall survive the termination of this Agreement.

11. Nothing in this Agreement shall require Respondent or the Monitor to disclose any material or information that is subject to a legally recognized privilege or that Respondent or the Monitor is prohibited from disclosing by reason of law.

12. Respondent will pay the Monitor fees for time spent in the performance of its duties in the amount of [REDACTED] per hour, subject, for the time period described below, to a floor set by a monthly retainer. Respondent will provide the Monitor with a [REDACTED] retainer on the date on which the Acquisition is consummated, and, for each subsequent month until the end of any Transition Services Agreement in effect with any Acquirer, a [REDACTED] retainer. In the event that hourly fees for a particular month exceed the applicable monthly retainer amount, Respondent shall pay the hourly fees in excess of the retainer. In the event that hourly fees for a particular month are below the applicable retainer amount, Respondents shall nonetheless pay the entire retainer. In addition, Respondent will pay all documented out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties, including all fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. Payments under this Paragraph 12 shall be made on a monthly basis until the Monitor ceases its activities under this Agreement. The Monitor shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitor submits an invoice to Respondent. Respondent shall pay such invoices within 30 days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission's Compliance Division for assistance in resolving such disputes. In the event that a Divestiture Trustee is required under Paragraph IV of the Decision and Order and the Monitor serves as the Divestiture Trustee, a new fee schedule would be negotiated to govern that arrangement.

13. Respondent hereby confirms its obligation to indemnify the Monitor (and all Persons retained by the Monitor) and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

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14. In the event of a disagreement or dispute between Respondent and the Monitor that does not involve the Monitor's performance of his duties and responsibilities under the Consent Order, and in the event that such disagreement or dispute cannot be resolved by the Parties, either Party may seek the assistance of the Assistant Director of the Commission's Compliance Division, to resolve the issue. In the event that such disagreement or dispute cannot be resolved by the Parties, the Parties shall submit the matter to binding arbitration before the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning Respondent's obligations pursuant to any Consent Order entered by the Commission.

15. The term of this Agreement shall commence on the Closing Date, and shall continue until the later of (i) the completion of all divestitures required by the Consent Order, and (ii) the end of any Transition Services Agreement in effect with any Acquirer; provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Consent Order. In the event that Monitor is no longer able to perform the duties described in this Agreement, Monitor may terminate this Agreement by providing Respondent 30 days written notice. In the event of such termination, Monitor shall cooperate with Respondent pursuant to Paragraph 17.

16. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with the Respondents' request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information that was obtained while acting as a Monitor.

17. Should the Commission appoint a substitute monitor pursuant to the Order to Maintain Assets or should the Monitor terminate this Agreement pursuant to Paragraph 15, the Monitor shall cooperate with Respondent and the substitute monitor in order to effect a prompt transition to the substitute monitor. Such cooperation shall include, but is not limited to, (i) the prompt return to Respondent of all confidential materials as required by the preceding Paragraph of this Agreement, and (ii) the provision of access to the Monitor and any personnel hired by the Monitor for interviews by Respondent and/or the substitute monitor for purposes of gathering relevant information relating the performance by the Monitor of its duties.

18. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or e-mail to the applicable Party at its address below (or to such other address as to which such Party shall hereafter notify the other party):

Order to Maintain Assets

If to the Monitor, to:

Anthony P. Bartys
23107 Summers Dream
San Antonio, TX 78258
Cellular Phone: (210) 862-0813 (preferred)
Home Phone: (210) 497-1680
Email: tbartys@att.net

If to Respondent, to:

Sylvain Aubry
Senior Director, Legal Affairs and Corporate Secretary at Alimentation Couche-Tard Inc.
4204 Industriel Boulevard
Laval, Québec H7L 0E3, Canada
Phone: +1 (450) 662-6632, ext. 4619
Email: sylvain.aubry@couche-tard.com

19. The Monitor Agreement may not be assigned by Respondent or the Monitor without the prior written consent of the other Party and the Commission.

20. It is understood and agreed that the Monitor shall act as an independent contractor in the undertaking of this Agreement and the Monitor shall exercise control over and employ its own means and methods of accomplishing the projects and tasks in performing services hereunder.

21. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

22. This Monitor Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous negotiations, agreements, undertakings and representations, documents, minutes of meetings, letters or notices (whether oral or written) between the Parties and/or their respective affiliates with respect to the subject matter.

23. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Consent Order has been accepted for public comment, and the Acquisition has been consummated. The Consent Order shall govern this Monitor Agreement and any provisions herein that conflict or are inconsistent with such orders may be declared void by the Commission and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

24. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of Delaware.

Order to Maintain Assets

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

Alimentation Couche-Tard Inc.

Monitor:

By:  _____

Name: Sylvain Aubry

Name: _____

Title: Senior Director, Legal Affairs and
Corporate Secretary

Order to Maintain Assets

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

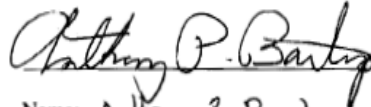
Alimentation Couche-Tard Inc.

Monitor:

By: _____

Name: Sylvain Aubry

Title: Senior Director, Legal Affairs and
Corporate Secretary


Name: Anthony P. Barty

Decision and Order

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Alimentation Couche-Tard Inc. (“ACT”), through its wholly-owned subsidiary, Circle K Stores Inc., of Respondent CST Brands, Inc. (“CST”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent ACT is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its headquarters and principal place of

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business located at 4204 Industriel Blvd., Laval, Quebec H7L 0E3, Canada, and its United States address for service of process and of the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Circle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.

2. Respondent CST is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 19500 Bulverde Road, San Antonio, Texas 78259.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “ACT” means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Alimentation Couche-Tard Inc., including Circle K Stores and Ultra, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, ACT shall include CST.
- B. “Circle K Stores” means Circle K Stores Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, and its directors, officers, employees, agents, representatives, successors, and assigns. Circle K Stores is a wholly-owned subsidiary of ACT.

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- C. “Ultra” means Ultra Acquisition Corp., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its directors, officers, employees, agents, representatives, successors, and assigns. Ultra is an indirect wholly-owned subsidiary of Circle K Stores.
- D. “CST” means CST Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (including, but not limited to, CrossAmerica Partners, LP), in each case controlled by CST Brands, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Respondents” means ACT and CST, individually and collectively.
- F. “Acquirer” means Empire or any other Person approved by the Commission to acquire the Assets To Be Divested pursuant to this Order.
- G. “Acquisition” means the proposed acquisition of CST by Circle K Stores and Ultra pursuant to the Acquisition Agreement.
- H. “Acquisition Agreement” means the Agreement and Plan of Merger by and among Circle K Stores Inc., Ultra Acquisition Corp., and CST Brands, Inc., dated as of August 21, 2016, that was submitted by ACT and CST to the Commission in this matter.
- I. “ACT Outlet” means a Retail Fuel Outlet that was owned or operated by ACT at the time the Consent Agreement was signed by Respondents.
- J. “Actual Fuel Products Costs” means costs not to exceed the actual costs charged to Respondents by (1) Valero Marketing and Supply Company (“Valero”) for Fuel Products pursuant to the Master Agreement effective May 1, 2013, between Valero and CST

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Marketing and Supply Company, LLC, (together with the Branded Distributor Marketing Agreement referred to therein and all other related agreements and documents, as amended) less any reductions resulting from any applicable Valero temporary voluntary allowances, and (2) any common carriers transporting such Fuel Products from terminals to Retail Fuel Outlets To Be Divested, but excluding any Retail Fuel Outlets not currently supplied by Valero. Actual Fuel Products Costs shall not include any mark-ups, profit, overhead, minimum volume penalties, or other price adjustments by Respondents.

- K. “Assets To Be Divested” means the Retail Fuel Outlets To Be Divested and all of Respondents’ rights, title, and interests in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Retail Fuel Outlet Business operated at each of those locations, including, but not limited to:
1. All real property interests (including fee simple interests and real property leases and leasehold interests), including all easements and rights-of-way, together with all buildings and other structures, facilities, appurtenances, and improvements located thereon or affixed thereto (including all attached machinery, fixtures, and heating, plumbing, electrical, lighting, ventilating and air-conditioning equipment), whether owned, leased, or otherwise held;
 2. All Equipment;
 3. All Inventories;
 4. All Contracts and all outstanding offers or solicitations to enter into any Contract (and all rights thereunder and related thereto), to the extent transferable, and at the Acquirer’s option;

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5. All Governmental Permits, and all pending applications thereof or renewals thereof (to the extent transferable);
6. Goodwill;
7. Telephone and fax numbers; and
8. Books and Records;

Provided, however, that in cases in which Books and Records included in the Assets To Be Divested contain information: (a) that relates both to the Assets To Be Divested and 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 Assets To Be Divested, or (b) where Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies of the materials containing such information with appropriate redactions to the Acquirer. In instances where such copies are provided to an Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes;

9. *Provided, however,* that the Assets To Be Divested shall not include:
 - a. Any of the CST Outlets listed on Schedule B for which the corresponding Substitute Retail Fuel Outlets are instead divested;
 - b. Respondents' Brands, except with respect to any purchased Inventory (including private label inventory); *provided further, however,* that, at the Acquirer's option, Respondents shall grant a worldwide, royalty-free, fully paid-up license to the Acquirer to use any of Respondents' Brands as are applicable to the Assets To Be Divested as part of any

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Transition Services Agreement that Respondents may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s);

- c. Assets used in the distribution of Inventories that are not located at the Retail Fuel Outlets identified on Schedule A of this Order;
 - d. All cash or cash equivalents (except change funds or cash on hand), rebates and accounts receivable relating to the operation of the Retail Fuel Outlets immediately prior to the actual date and time that possession of the respective Retail Fuel Outlets are conveyed to the Acquirer; or
 - e. If Empire is the Acquirer, Books and Records, Contracts, and Equipment that will not be conveyed to Empire pursuant to the Empire Divestiture Agreement.
- L. “Books and Records” means all originals and all copies of any operating, financial, environmental, governmental compliance, regulatory, or other information, documents, data, databases, printouts, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, relating to the Assets To Be Divested, including, but not limited to, real estate files; environmental reports; environmental liability claims and reimbursement data, information, and materials; underground storage tank (UST) System registrations and reports; registrations, licenses, and permits (to the extent transferable); regulatory compliance records, data, and files; applications, filings, submissions, communications, and correspondence with Governmental Entities;

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inventory data, records, and information; purchase order information and records; supplier, vendor, and procurement files, lists, and related data and information; credit records and information; account information; marketing analyses and research data; service and warranty records; warranties and guarantees; equipment logs, operating guides and manuals; employee lists and contracts, salary and benefits information, and personnel files and records (to the extent permitted by law); financial statements and records; accounting records and documents; telephone numbers and fax numbers; and all other documents, information, and files of any kind that are necessary for the Acquirer to operate the Assets To Be Divested in a manner consistent with the purposes of this Order.

- M. “Closing Date” means the closing date for the Acquisition as defined in Section 1.2 of the Acquisition Agreement.
- N. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and to the extent that it is related to or used in connection with the Assets To Be Divested or the conduct of the Retail Fuel Outlet Business at the Retail Fuel Outlets To Be Divested. The term “Confidential Business Information” excludes the following:
1. Information that is contained in documents, books, or records of Respondents that is provided to an Acquirer that is unrelated to the Assets To Be Divested or that is exclusively related to the Respondents’ retained businesses; and
 2. Information that: (a) is or becomes generally available to the public other than as a result of disclosure in breach of the prohibitions of this Order; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be

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included in Respondents' mandatory regulatory filings; (d) is information the disclosure of which is consented to by the Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement or any Remedial Agreement; (f) is disclosed in complying with the Order; (g) is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Governmental Entities; or (h) is disclosed in obtaining legal advice.

- O. "Contract(s)" means all agreements, contracts, licenses, leases (including, but not limited to, ground leases and subleases), consensual obligations, binding commitments, promises and undertakings (whether written or oral and whether express or implied), whether or not legally binding.
- P. "CST Outlet" means a Retail Fuel Outlet that was owned or operated by CST at the time the Consent Agreement was signed by Respondents.
- Q. "Direct Costs" means costs not to exceed the actual cost of labor, goods and material, travel, third party vendors, and other expenditures that are directly incurred to provide and fulfill the Transition Services provided pursuant to the Transition Services Agreement.
- R. "Divestiture Agreement" means any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been proposed for approval by the Commission to accomplish the requirements of this Order.

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- S. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee) close on the divestiture of the Assets To Be Divested as required by Paragraph II. (or Paragraph IV.) of this Order.
- T. “Divestiture Trustee” means any Person appointed by the Commission to serve as a Divestiture Trustee pursuant to Paragraph IV. of this Order.
- U. “Empire” means Empire Petroleum Partners, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 8350 North Central Expressway, Suite M2185, Dallas, Texas 75206; its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Empire Petroleum Partners, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- V. “Empire Divestiture Agreement” means the Asset Purchase Agreement among Empire Petroleum Partners, LLC, Circle K Stores, Inc., and CST Brands, Inc., dated as of June 3, 2017; the Transition Services Agreement among Empire Petroleum Partners, LLC, Circle K Stores, Inc., and CST Brands, Inc., dated as of June 3, 2017; and all amendments, exhibits, attachments, agreements, and schedules submitted to the Commission with the foregoing to accomplish the divestiture of the Assets To Be Divested. The Empire Divestiture Agreement is attached to this Order as Non-Public Appendix E.
- W. “Equipment” means all tangible personal property (other than Inventory(ies)) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlets To Be Divested, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems,

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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 and located at the Retail Fuel Outlets To Be Divested, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, to the extent such warranty is transferrable, and all maintenance records and other documents relating thereto.

- X. “Fuel Products” means refined petroleum gasoline and diesel products.
- Y. “Governmental Entity” means any federal, state, local, or non-U.S. government, or any court, legislature, governmental agency or commission, or any judicial or regulatory authority of any government.
- Z. “Governmental Permit(s)” means all licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any Governmental Entity(ies) necessary to effect the complete transfer and divestiture of the Assets To Be Divested to the Acquirer and for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.
- AA. “Inventory(ies)” means all inventories of every kind and nature for retail sale located at the Retail Fuel Outlets To Be Divested, including: (1) all gasoline, diesel fuel, kerosene, and other petroleum-based motor fuels stored in bulk and held for sale to the public (“Fuel Inventory”); and (2) all usable, non-damaged

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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 (“Merchandise Inventory”).

- BB. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph IV. of the Order to Maintain Assets.
- CC. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- DD. “Person” means any individual, or any partnership, firm, corporation, limited liability company, limited liability partnership, association, trust, unincorporated organization, or other business entity.
- EE. “Proposed Acquirer” means any proposed acquirer of the Assets To Be Divested that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order. “Proposed Acquirer” includes Empire.
- FF. “Relevant Notice Outlets” means the Retail Fuel Outlets To Be Divested and the Retail Fuel Outlets identified on Non-Public Schedule D of this Order.
- GG. “Remedial Agreement” means the Empire Divestiture Agreement if approved by the Commission, or
1. Any other Divestiture Agreement that is approved by the Commission; and
 2. Any other agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer), including any Transition Services Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested, that have

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been approved by the Commission to accomplish the requirements of this Order.

- HH. “Respondents’ Brands” means all of Respondents’ trademarks, trade dress, logos, service marks, trade names, brand names, and all associated intellectual property rights, including rights to the names “Circle K,” “Corner Store,” and “Flash Foods.”
- II. “Retail Fuel Outlet” means: (1) any existing retail facility engaged in the activities of a Retail Fuel Outlet Business; and (2) any property site where construction of a retail facility to be engaged in the activities of a Retail Fuel Outlet Business is planned or underway.
- JJ. “Retail Fuel Outlet Business” means all business activities relating to: (1) the retail sale, promotion, marketing, and provision of motor fuels, including gasoline, diesel fuel, and other fuels, automotive products, and related services; and (2) the operation of associated convenience stores and related businesses and services, including but not limited to the retail sale, promotion, marketing and provision of food and grocery products (including dairy and bakery items, snacks, gum, and candy), foodservice and quick-serve restaurant items, beverages (including alcoholic beverages), tobacco products, general merchandise, ATM services, gaming and lottery tickets and services, money order services, car wash services, and all other businesses and services associated with the business operated or to be operated at each Retail Fuel Outlets To Be Divested.
- KK. “Retail Fuel Outlets To Be Divested” means: (1) the Retail Fuel Outlets identified on Schedule A of this Order, (2) any Substitute Retail Fuel Outlet if substituted for the corresponding CST Outlet identified on Schedule B of this Order, provided, however, that Retail Outlets To Be Divested shall not include any CST Outlet identified in Schedule B of this Order for which the corresponding Substitute Retail Fuel Outlet

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is divested, and (3) the Schedule C Site if included at the Acquirer's option.

- LL. "Schedule C Site" means the property site identified on Schedule C of this Order, which shall be included as part of the Assets To Be Divested only at the Acquirer's sole option.
- MM. "Substitute Retail Fuel Outlet" means each of the ACT Outlets that is identified in Schedule B, corresponding to an identified CST Outlet.
- NN. "Third Party(ies)" means any Person other than the Respondents or the Acquirer.
- OO. "Third Party Consents" means all consents, approvals, permissions, waivers, ratifications, or other authorizations from any Third Party(ies) that are necessary to effect the complete transfer and divestiture of the Assets To Be Divested to the Acquirer and for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.
- PP. "Transition Services" means technical services, personnel, assistance, training, product supply, and other logistical, administrative, and transitional support as required by the Acquirer and approved by the Commission to facilitate the transfer of the Assets To Be Divested from the Respondents to the Acquirer, including, but not limited to, 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 Respondents' Brands for transitional purposes, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

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- QQ. “Transition Services Agreement” means an agreement that receives the prior approval of the Commission between Respondents and the Acquirer to provide, at the option of the Acquirer, Transition Services (or training for an Acquirer to provide services for itself) necessary to transfer the Assets To Be Divested to the Acquirer and to operate the Assets To Be Divested in a manner consistent with the purposes of this Order.

II.**IT IS FURTHER ORDERED** that:

- A. No later than (i) seventy five (75) days after the Closing Date, or (ii) fourteen (14) days after the date this Order is issued as final, whichever is later, Respondents shall divest the Assets To Be Divested, absolutely and in good faith, as ongoing Retail Fuel Outlet Businesses, to Empire pursuant to and in accordance with the Empire Divestiture Agreement.
- B. *Provided, however,* that if Respondents have divested the Assets To Be Divested to Empire pursuant to Paragraph II.A. of this Order prior to the date this Order becomes final, and at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. Empire is not an acceptable Acquirer, then Respondents shall, within five (5) days of notification by the Commission, rescind such transaction with Empire and shall divest the Assets To Be Divested as ongoing Retail Fuel Outlet Businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within ninety (90) days of the date the Commission notifies Respondents that Empire is not an acceptable Acquirer; or
 2. The manner in which the divestiture identified in Paragraph II.A. was accomplished is not

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acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph IV. of this Order, to effect such modifications to the manner of divesting the Assets To Be Divested to Empire (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Remedial Agreements) as may be necessary to satisfy the requirements of this Order.

C. Respondents shall:

1. Prior to the Divestiture Date, obtain, at their sole expense, all required Third Party Consents relating to the divestiture of all Assets To Be Divested;

Provided, however, that:

- a. for each of the CST Outlets identified in Schedule B that require landlord consent in order to effectuate the required divestiture, in the event that Respondents are unable to obtain the necessary landlord consent for divestiture of any one or more of such CST Outlets, Respondents may, in consultation with the Monitor and Commission staff, substitute the corresponding Substitute Retail Fuel Outlet subject to the proviso that the divestiture of any Substitute Retail Fuel Outlet(s) shall not include Respondents' Brands except, at the Acquirer's option, pursuant to a worldwide, royalty-free, fully paid-up license granted by the Respondents to the Acquirer to use any of Respondents' Brands as applicable to the Substitute Retail Fuel Outlet(s) as part of any Transition Services Agreement that Respondents may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s); *provided further* that Respondents shall divest such Substitute Retail Fuel Outlet(s) to the Acquirer no later than fifteen (15) days after receipt of written

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notification from the Commission or its staff directing such divestiture if it has not already occurred; and

- b. Respondents may satisfy this requirement by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies) or has otherwise obtained all necessary consents and waivers; and
 2. With respect to any Governmental Permits relating to the Assets To Be Divested that are not transferable, allow the Acquirer to operate the Assets To Be Divested under Respondents' Governmental Permits pending the Acquirer's receipt of its own Governmental Permits, and provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Permits.
- D. If the Acquirer declines to acquire the Schedule C Site, it shall not become part of the Assets To Be Divested; *provided, however,* that if Respondents subsequently sell, transfer, or otherwise convey the Schedule C Site in whole or in part (including any real property interest or leasehold interest) to a Third Party, then Respondents shall: (1) neither enter into nor enforce any agreement (including, but not limited to, any deed restriction) that restricts in any way the ability of such Third Party to operate or use the Schedule C Site as a Retail Fuel Outlet, and (2) include a copy of any transaction documents regarding such sale, transfer, or conveyance in their compliance report(s) pursuant to Paragraph VII. of this Order.
- E. At the option of the Acquirer, and subject to the prior approval of the Commission, Respondents shall provide Transition Services to the Acquirer pursuant to a Transition Services Agreement for one (1) year following the Divestiture Date, with an opportunity to extend for up to one (1) year at the option of the

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Acquirer; *provided, however*, that any transitional supply of Fuel Products from Respondent to the Acquirer pursuant to a Transition Services Agreement shall terminate on or before 270 days following the Divestiture Date. Such Transition Services Agreement shall provide that: (1) the Acquirer may terminate the Transition Services Agreement at any time upon commercially reasonable notice to the Respondents, and without cost or penalty to the Acquirer; and (2) at the Acquirer's request, Respondents shall agree to extend the term of any Transition Service(s), except for any transitional supply of Fuel Products, for an additional period of up to one (1) year (*i.e.*, in addition to the initial term plus any extension), and shall file with the Commission any request for prior approval to extend the term of the Transition Services Agreement for such Transition Service(s). The Transition Services provided pursuant to the Transition Services Agreement shall be provided at no more than Respondents' Direct Costs, except that any transitional supply of Fuel Products shall be provided at no more than Respondents' Actual Fuel Products Costs, and shall enable the Acquirer to operate Retail Fuel Outlets at least at the same level of quality and service as they were operated prior to the divestiture.

F. Respondents shall:

1. Keep confidential (including as to Respondents' employees) and not use for any purpose any Confidential Business Information received or maintained by Respondents relating to the Assets To Be Divested or the Retail Fuel Outlets identified on Schedule A of this Order; *provided, however*, that Respondents may disclose or use such Confidential Business Information in the course of: (a) performing their Order obligations or as otherwise permitted under this Order, the Order to Maintain Assets, or any Remedial Agreement; or (b) complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or

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enforcing actions threatened or brought against the Assets To Be Divested, or as required by law; and

2. Enforce the terms of Paragraph II.F.1 of this Order as to its employees or any other Person, and take such actions as are necessary to cause each of its employees and any other Person to comply with the terms of Paragraph II.F.1, including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own confidential and proprietary information.
- G. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person pursuant to Paragraph II.F. of this Order, Respondents 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 II.F., and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- H. The purpose of the divestiture is to ensure the continuation of the Assets To Be Divested as ongoing, viable enterprises engaged in the Retail Fuel Outlet Business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from the Proposed Acquirer, or from Commission staff, provide the Proposed Acquirer with the following information for each employee of the Assets To Be Divested, as requested by the Proposed Acquirer, and to the extent permitted by law:

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1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The 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. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- B. Within a reasonable time after a request from a Proposed Acquirer, provide to the Proposed Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one, or all, of the employees of the Assets To Be Divested, and to make offers of employment to any one, or more, of the employees of the Assets To Be Divested.
- C. Not interfere, directly or indirectly, with the hiring or employing by the Proposed Acquirer of any employee of the Assets To Be Divested, not offer any incentive to such employees to decline employment with the Proposed Acquirer, and not otherwise interfere with the recruitment or employment of any employee by the Proposed Acquirer.

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- D. Remove any impediments within the control of Respondents that may deter employees of the Assets To Be Divested from accepting employment with the Proposed Acquirer, including, but not limited to, 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 Proposed Acquirer, and not make any counteroffer to an employee who has an outstanding offer of employment from the Proposed Acquirer or has accepted an offer of employment from the Proposed Acquirer.
- E. Provide all employees with reasonable financial incentives to continue in their positions until the Divestiture Date. Such incentives shall include, but are not limited to, a continuation, until the Divestiture Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting as of the Divestiture Date of any unvested qualified 401(k) plan account balances (to the extent permitted by law, and for those employees covered by a 401(k) plan), offered by Respondents.
- F. Not, for a period of one (1) year following the Divestiture Date, directly or indirectly, solicit, or otherwise attempt to induce any of the employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, that Respondents may:
1. 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 employees of the Assets To Be Divested; or
 2. Hire employees of the Assets To Be Divested who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall

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not prohibit Respondents from making offers of employment to, or employing, any such employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

IV.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested the Assets To Be Divested in the time and manner required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Assets To Be Divested 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(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IV. 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(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents,

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which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondents 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 effect the relevant divestitures or transfers required by the Order.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) 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 two (2) times.

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5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IV. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
6. 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 Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for any of the relevant Assets To Be Divested, and if the Commission determines to approve more than one such acquiring entity for such assets, the Divestiture Trustee shall divest such assets to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

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7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents, 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 required to be divested by this Order.
8. Respondents 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently,

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the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.

10. The Commission or, in the case of a court-appointed 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 divestiture(s) required by this Order.
11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
12. The Divestiture Trustee shall report in writing to the Commission and Respondents every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).
13. Respondents 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*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

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V.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Relevant Notice Outlets.
- B. With respect to the notification:
 - 1. The prior notification required by this Paragraph V. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), 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 the Respondents and not of any other party to the transaction.
 - 2. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). 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), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.
 - 3. Early termination of the waiting periods in this Paragraph V. may be requested and, where

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appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph 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.

VI.**IT IS FURTHER ORDERED** that:

- A. The Remedial Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Remedial Agreement, and any failure by Respondents to comply with the terms of any Remedial Agreement shall constitute a violation of this Order. If any term of any Remedial Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.
- D. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. §2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

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VII.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II. and III. of this Order, Respondents shall submit to the Commission and the Monitor verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order; and
- B. One (1) year from the date this Order is issued, annually for the next nine (9) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in the Respondents, including but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

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IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order, for which copying services shall be provided by such Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on August 4, 2027.

By the Commission.

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SCHEDULE A

Divested Outlet	Address	City	State	Zip Code
CAPL - OH0072	7510 Broadview Rd	Cleveland	Ohio	44134
CST - 1105	7799 E Arapahoe Rd	Englewood	Colorado	80112
CST - 1117	15303 E Quincy Ave	Aurora	Colorado	80115
CST - 1133	1004 Us Highway 287	Broomfield	Colorado	80020
CST - 1142	1765 Briargate Blvd	Colorado Springs	Colorado	80920
CST - 1148	7396 W 92Nd Ave	Broomfield	Colorado	80021
CST - 1160	715 Cheyenne Meadows Rd	Colorado Springs	Colorado	80906
CST - 1170	205 W Rockrimmon Blvd	Colorado Springs	Colorado	80919
CST - 1216	5600 Edith Blvd Ne	Albuquerque	New Mexico	87107
CST - 1219	2721 Coors Blvd Nw	Albuquerque	New Mexico	87120
CST - 1240	12521 Menaul Blvd Ne	Albuquerque	New Mexico	87112
CST - 1242	4221 Osuna Rd Ne	Albuquerque	New Mexico	87109
CST - 1248	2695 W Picacho Ave	Las Cruces	New Mexico	88007
CST - 1258	230 S Americas Ave	El Paso	Texas	79907
CST - 1273	11680 Montwood Dr	El Paso	Texas	79936
CST - 1276	1500 N Zaragoza Rd	El Paso	Texas	79936
CST - 1277	850 E Redd Rd	El Paso	Texas	79912

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CST - 1354	201 S Americas Ave	El Paso	Texas	79907
CST - 1355	840 N Zaragoza Rd	El Paso	Texas	79907
CST - 1357	6920 Delta Dr	El Paso	Texas	79905
CST - 1363	629 S Yarbrough Dr	El Paso	Texas	79915
CST - 1369	3815 Pershing Dr	El Paso	Texas	79903
CST - 1445	110 Slaughter Ln W	Austin	Texas	78748
CST - 1500	102 S Sunset Strip St	Kenedy	Texas	78119
CST - 1503	5646 Kostoryz Rd	Corpus Christi	Texas	78415
CST - 1597	2300 N Zaragoza Rd	El Paso	Texas	79938
CST - 1602	7542 E Southern Ave	Mesa	Arizona	85208
CST - 1606	7060 E Baseline Rd	Mesa	Arizona	85209
CST - 1611	20205 N Cave Creek Rd	Phoenix	Arizona	85204
CST - 1613	2160 W Drexel Rd	Tucson	Arizona	85746
CST - 1617	1810 W Prince Rd	Tucson	Arizona	85705
CST - 1618	2409 W Union Hills Dr	Phoenix	Arizona	85207
CST - 1625	6701 W Olive Ave	Peoria	Arizona	85345
CST - 1627	1895 E Valencia Rd	Tucson	Arizona	85706
CST - 1636	5005 N La Canada Dr	Tucson	Arizona	85704
CST - 1638	5905 W Cactus Rd	Glendale	Arizona	85304

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CST - 1640	9520 E 22Nd St	Tucson	Arizona	85748
CST - 1645	2367 S Val Vista Dr	Gilbert	Arizona	85295
CST - 1651	719 E Thunderbird Rd	Phoenix	Arizona	85022
CST - 1654	4305 E Ray Rd	Phoenix	Arizona	85044
CST - 1658	15240 N Oracle Rd	Tucson	Arizona	85739
CST - 1659	9151 E Guadalupe Rd	Mesa	Arizona	85212
CST - 1670	3999 E Fry Blvd	Sierra Vista	Arizona	85635
CST - 1672	3171 E Pecos Rd	Gilbert	Arizona	85295
CST - 1674	1520 N Verrado Way	Buckeye	Arizona	85396
CST - 1677	1636 S Higley Rd	Gilbert	Arizona	85295
CST - 1678	39657 N Gantzel Rd	Queen Creek	Arizona	85140
CST - 1679	21198 E Ocotillo Rd	Queen Creek	Arizona	85142
CST - 1681	Gilbert, Queen Creek Rd & Val Vista Dr, Sec	Gilbert	Arizona	85296
CST - 1701	4020 W Ray Rd	Chandler	Arizona	85226
CST - 1704	8424 S Power Rd	Gilbert	Arizona	85297
CST - 1746	3100 N Mesa Sy	El Paso	Texas	79902
CST - 1828	Nec Staples St & Wooldridge	Corpus Christi	Texas	78411
CST - 238	2001 Highway 71 E	Del Valle	Texas	78617
CST - 380	4910 Barksdale Blvd	Bossier City	Louisiana	71112

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CST - 384	5454 W 70Th St	Shreveport	Louisiana	71129
CST - 4065	8105 N Academy Blvd	Colorado Springs	Colorado	80920
CST - 4136	1310 W Baptist Rd	Colorado Springs	Colorado	80921
CST - 4146	505 W 120Th Ave	Denver	Colorado	80234
CST - 428	3958 Saratoga Blvd	Corpus Christi	Texas	78415
CST - 43	701 S State Highway 359	Mathis	Texas	78368
CST - 865	3001 N Yarbrough Dr	El Paso	Texas	79925
CST-5044 (FF – 115)	4409 Timuquana Rd	Jacksonville	Florida	32210
CST-5190 (FF – 128)	850850 Us Hwy 17	Yulee	Florida	32097
CST-5060 (FF – 140)	1145 Airport Rd	Jacksonville	Florida	32218
CST-5062 (FF – 142)	201 N Kings Rd	Hilliard	Florida	32046
CST-5066 (FF – 146)	7308 Ga Highway 21	Savannah	Georgia	31407
CST-5081 (FF – 171)	1412 Gerbing Rd	Fernandina Beach	Florida	32034
CST-5082 (FF – 172)	1884 S Kings Rd	Callahan	Florida	32011
CST-5140 (FF – 267)	1417 Sam Nunn Blvd	Perry	Georgia	31069

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Schedule B

If landlord consent to assignment of the lease for any of the CST Outlets listed below cannot be obtained, for each and every CST Outlet for which assignment has not been obtained, Respondents shall substitute the corresponding ACT Outlet listed below, in consultation with the Monitor and staff of the Commission.

CST Outlet	Address	Corresponding ACT Outlet to be divested	Address
CST - 1170	205 W Rockrimmon Blvd Colorado Springs, Colorado 80919	ACT - 2709840	7055 Commerce Center Dr Colorado Springs, Colorado 80919
CST - 1369	3815 Pershing Dr El Paso, Texas 79903	ACT - 2701418	3910 A Dyer St El Paso, Texas 79930
CST - 1500	102 S Sunset Strip St Kenedy, Texas 78119	ACT - 2704059	101 S Sunset Strip St Kenedy, Texas 78119
CST - 1651	719 E Thunderbird Rd Phoenix, Arizona 85022	ACT - 2701855	15400 N 7 th St Phoenix, Arizona 85022

Schedule C

Site	Address	City	State	Zip Code
ACT - 2723891	1541 S Mock Rd	Albany	Georgia	31705

Analysis to Aid Public Comment

NON-PUBLIC SCHEDULE D:

RELEVANT NOTICE RETAIL FUEL OUTLETS

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

NON-PUBLIC APPENDIX E:

EMPIRE DIVESTITURE AGREEMENT

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

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

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

Under the terms of the proposed Consent Agreement, ACT must divest to a Commission-approved buyer certain CST retail fuel outlets and related assets in 70 local markets in 16 metropolitan statistical areas (“MSAs”), and at the buyer’s option, an ACT site in one local market. The divestiture must be

Analysis to Aid Public Comment

completed no later than 75 days after the closing of ACT's acquisition of CST or 14 days after the Consent Agreement is issued as final. 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's current U.S. network consists of over 6,050 stores located in 41 states. Nearly 4,700 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. Approximately 88 percent of ACT's company-operated locations also sell fuel. ACT convenience store locations operate primarily under the Circle K and Kangaroo Express banners, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent CST operates convenience stores and retail fuel outlets in the United States and Canada. With 1,146 convenience stores and retail fuel outlets in the United States, CST is one of the largest chains in the country. CST's U.S. convenience stores operate primarily under the Corner Store banner, while its retail fuel outlets operate primarily under the Valero brand. CST also is the general partner and operator of CrossAmerica Partners LP, a publicly traded master limited partnership that offers wholesale fuels marketing, and owns and operates convenience stores and retail fuel outlets.

Analysis to Aid Public Comment

III. The Proposed Acquisition

On August 21, 2016, ACT, through its wholly-owned subsidiary Circle K Stores, Inc., entered into an agreement to acquire all outstanding shares of CST for \$4.4 billion, with CST surviving post-acquisition as a wholly-owned subsidiary of Circle K Stores, Inc. (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 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 diesel in 71 local markets across 16 MSAs.

IV. The Retail Sale 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 are 71 local markets within the following MSAs: Phoenix, Arizona; El Paso, Texas; Tucson, Arizona; Colorado Springs, Colorado; Denver, Colorado; Jacksonville, Florida; Albuquerque, New Mexico; Corpus Christi, Texas; Austin, Texas; Shreveport, Louisiana; Albany, Georgia; Cleveland, Ohio; Las Cruces, New Mexico; Savannah, Georgia; Sierra Vista, Arizona; and Warner Robins, Georgia.

The geographic markets for the retail sale of gasoline are highly localized, generally ranging from a few blocks to a few

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miles. None of the relevant geographic markets exceeds three driving miles from an overlapping retail fuel outlet. Fueling up on gasoline is rarely a destination trip for a consumer and therefore consumers are likely to frequent retail fuel outlets close to their planned routes. Each particular geographic market is unique, with factors such as commuting patterns, traffic flows, and outlet characteristics playing important roles in determining the scope of the geographic market. The geographic markets for the retail sale of diesel are similar to the corresponding geographic markets for retail gasoline as diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Transaction would substantially increase the market concentration in each of the 71 local markets, resulting in highly concentrated markets. In ten local markets, the Transaction would result in a monopoly. In 20 local markets, the Transaction would reduce the number of independent market participants from three to two. In 41 local markets, the Transaction would reduce the number of 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 CST is ACT's only or closest competitor. Absent the Transaction, CST and ACT 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 three or two 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.

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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 remedies the Transaction's anticompetitive effects by requiring ACT to divest certain CST retail fuel outlets and related assets in 70 local markets, and an ACT site in one local market at the buyer's option, to Empire Petroleum Partners ("Empire"). Empire is a retail operator and wholesale fuel distributor doing business in 26 states; its executive team has decades of experience with some of the industry's largest players. The Commission is satisfied that Empire is a qualified acquirer of the divested assets.

The proposed Consent Agreement requires ACT to divest to Empire CST's retail fuel outlets in 70 local markets. In the remaining local market, located in Albany, Georgia, the ACT outlet was damaged by a tornado in early 2017. To remedy potential competitive concerns in this local market, the Consent Agreement requires ACT to give Empire the option of acquiring the overlapping ACT site. If Empire declines the option, the Consent Agreement prohibits ACT, for ten years, from restricting the use of the property as a retail fuel outlet in any future sale. The proposed Consent Agreement requires ACT to divest the assets to Empire no later than 75 days after the Transaction closes or 14 days after the Commission issues the Consent Agreement as final.

The proposed Consent Agreement also requires that ACT provide transitional assistance to Empire for one year, with an option for Empire to extend the period for an additional year. Empire may extend the period for a third year, but only with Commission approval. ACT and Empire have entered into a Transition Services Agreement, whereby ACT has agreed to allow Empire to continue using the CST brand names and the store-specific licenses and permits during the transitional assistance period. In addition, ACT has agreed to provide temporary

Analysis to Aid Public Comment

wholesale fuel supply to Empire on the same terms CST was receiving, giving Empire time to negotiate its own wholesale supply contracts.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires ACT to provide the Commission notice, for a period of ten years, of certain acquisitions in the 71 local markets at issue. Specifically, the Consent Agreement requires ACT to give the Commission notice of future acquisitions of Commission-identified retail fuel outlets located in the same local markets as the divested assets.

The proposed Consent Agreement contains additional provisions designed to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued 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 store is ultimately divested to a buyer. During this period, and until such time as Empire no longer requires transitional assistance, the Order the 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 Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

BROADCOM LIMITED
AND
BROCADE COMMUNICATIONS SYSTEMS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4622; File No. 171 0027
Complaint, August 17, 2017 – Decision, August 17, 2017

This consent order addresses the \$5.9 billion acquisition by Broadcom Limited of certain assets of Brocade Communications Systems, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the worldwide market for fibre channel switches. The complaint further alleges that Broadcom's access to Cisco's competitively sensitive confidential information, provided in furtherance of its ongoing supply relationship for application specific integrated circuits with Broadcom, may substantially lessen competition by increasing the likelihood that Broadcom may unilaterally exercise market power or by increasing the likelihood of coordinated interaction between the two competitors in the fibre channel switch market. Under the order, Broadcom is required to implement firewalls preventing the flow of Cisco's confidential business information outside of an identified group of relevant Broadcom employees, and requires a monitor to oversee compliance with the firewall provisions.

Participants

For the *Commission*: *Stephen Antonio, Michael Blevins and Michael Lovinger.*

For the *Respondents*: *Joshua Holian and Dan Wall, Latham & Watkins LLP; Scott Sher and Christopher Williams, Wilson Sonsini Goodrich & Rosati.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Broadcom Limited ("Broadcom"), a corporation subject to the jurisdiction of the Commission, has agreed to