

Interlocutory Orders, Etc.

IN THE MATTER OF

**ALIMENTATION COUCHE-TARD INC.
AND
CROSSAMERICA PARTNERS LP***Docket No. C-4631. Order, June 18, 2018*

Letter approving the divestiture of certain retail fuel assets to Marketplace Development LLC and to divest a third retail station and related retail fuel assets to PPBB LLC.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

David Gelfand, Esq.
Cleary Gottlieb Steen & Hamilton LLP

*Re: In the Matter of Alimentation Couche-Tard Inc. and
CrossAmerica Partners LP Docket No. C-4631*

Dear Mr. Gelfand:

This is in further reference to the Petition for the approval of the proposed divestiture of certain assets filed by Alimentation Couche-Tard Inc. and CrossAmerica Partners LP (collectively “ACT”) and received on March 12, 2018 (“Petition”). In that Petition, pursuant to the Decision and Order in Docket No. C-4631, ACT requested prior Commission approval of its proposal to divest two retail fuel stations and related retail fuel assets to Marketplace Development LLC (“Marketplace”), and to divest a third retail station and related retail fuel assets to PPBB LLC (“PPBB”).

On June 5, 2018, the Commission approved the proposed divestiture to Marketplace, as set forth in the Petition. After consideration of ACT’s Petition and other available information, the Commission has now determined to approve the proposed divestiture to PPBB, as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by ACT and PPBB in connection with the Petition, and has assumed them to be accurate and complete.

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By direction of the Commission.

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IN THE MATTER OF

IMPAX LABORATORIES, INC.*Docket No. 9373. Order, June 27, 2018*

Order granting Complaint Counsel's Motion to Dismiss Respondent's Notice of Cross-Appeal and scheduling briefing.

ORDER OF THE COMMISSION

On May 11, 2018, Chief Administrative Law Judge D. Michael Chappell issued an Initial Decision concluding that the evidence adduced in this proceeding failed to prove a violation of Section 5 of the FTC Act and ordering that the Complaint be dismissed. After Complaint Counsel filed a Notice of Appeal, Respondent Impax Laboratories, Inc. (apparently now Impax Laboratories, LLC) filed a Notice of Cross Appeal, stating an intention to cross-appeal "portions of the Initial Decision . . . related to relevant market and market power, as well as any related findings of fact and conclusions of law." Respondent's Notice of Cross Appeal (May 29, 2019). On June 5, 2018, Complaint Counsel moved to Dismiss Respondent's Notice of Cross Appeal.

Complaint Counsel argue that Respondent's cross-appeal is improper because the Initial Decision dismissed the complaint and the cross-appeal seeks only to address alternative grounds for affirming the dismissal. Respondent opposes Complaint Counsel's motion. Respondent argues that Commission Rule 3.52(b)(1), 16 C.F.R. § 3.52(b)(1), which provides that "any party may file objections to the initial decision or order of the Administrative Law Judge" by filing a notice of appeal that "designat[es] the initial decision or order or part thereof appealed from," is not limited to parties that have been found to have violated the FTC Act. Commission Rule 3.52(b)(1), however, does not expressly address the setting where a respondent seeks to appeal an order dismissing the complaint.

The only recent case addressing the application of Rule 3.52(b)(1) was *In the Matter of LabMD, Inc.*, Docket No. 9357, Order (F.T.C. Dec. 18, 2015) ("LabMD Order"). In that case, the