

Complaint

IN THE MATTER OF

**ARKO HOLDINGS LTD.,
GPM SOUTHEAST, LLC,
GPM PETROLEUM, LLC,
AND
EMPIRE PETROLEUM PARTNERS, LLC**

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-4726; File No. 201 0041
Complaint, August 25, 2020 – Decision, October 5, 2020*

This consent order addresses the \$415 million acquisition of certain assets of Empire Petroleum Partners, LLC by Arko Holdings Ltd., GPM Southeast, LLC, and GPM Petroleum, LLC. The complaint alleges that the Acquisition, 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 in seven local markets in Indiana, Michigan, Maryland, and Texas, and by substantially lessening competition for the retail sale of diesel fuel in three local markets in Indiana, Michigan, and Texas. Under the order respondents must divest certain retail fuel assets in seven local markets in Indiana, Michigan, Maryland, and Texas.

Participants

For the *Commission*: Steven R. Couper and Nicolas Stebinger.

For the *Respondents*: Stephen M. Pepper, Greenberg Traurig LLP; Edward G. Biester III, Duane Morris LLP.

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 Arko Holdings Ltd., through its indirectly controlled subsidiaries GPM Southeast, LLC, and GPM Petroleum, LLC, entered into an agreement to acquire retail fuel outlets and other interests from Empire Petroleum Partners, LLC, 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 interest, hereby issues this Complaint, stating its charges as follows.

I. RESPONDENTS**GPM**

1. Respondent Arko Holdings Ltd. (“Arko”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of Israel, with its executive offices and principal

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place of business located at 3 Hanechushet Street, Building B, 3rd Floor, Tel-Aviv 6971068, Israel, with its United States office for purposes of service of process by the Commission located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

2. Respondent GPM Southeast, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

3. Respondent GPM Petroleum, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

4. Arko, through its subsidiaries GPM Southeast, LLC, and GPM Petroleum, LLC, 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.

5. Arko, GPM Southeast, LLC, and GPM Petroleum, LLC (collectively, “GPM”), 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.

Empire

6. Respondent Empire Petroleum Partners, LLC (“Empire”), is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 8350 North Central Expressway, M2185, Dallas, Texas 75206.

7. Empire 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.

8. Empire is, and at all times relevant herein has 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.

II. THE PROPOSED ACQUISITION

9. Pursuant to an Asset Purchase Agreement dated December 17, 2019, GPM proposes to acquire retail outlets and other interests from Empire (the “Acquisition”).

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

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III. THE RELEVANT MARKET

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

12. The relevant geographic markets in which to analyze the effects of the Acquisition are seven local markets within the following cities: Arlington, Texas; Edmore, Michigan; Hastings, Michigan; Knox, Indiana; Kokomo, Indiana; South Bend, Indiana; and Stevensville, Maryland.

13. The relevant geographic markets for retail gasoline and retail diesel fuel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting such features as 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.

IV. MARKET STRUCTURE

14. With regard to the retail sale of gasoline, the Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from four to three in two local markets, from three to two in four local markets, and from two to one in one local market. The Acquisition would result in a highly concentrated market in each of these markets.

15. With regard to the retail sale of diesel fuel, the Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from three to two in two local markets and from two to one in one local market. The Acquisition would result in a highly concentrated market in each of these markets.

V. BARRIERS TO ENTRY

16. 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

17. The effects of the Acquisition, as described in Paragraph 9, if consummated, may be to substantially lessen competition or to tend to create a monopoly in each of the relevant markets, with each constituting an independent 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:

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

VII. VIOLATIONS CHARGED

18. 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.

19. The Asset Purchase Agreement entered into by GPM and Empire 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-fifth day of August, 2020, issues its Complaint against Respondents.

By the Commission, Commissioners Slaughter and Wilson not participating.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by GPM Southeast, LLC, and GPM Petroleum, LLC, indirectly controlled by Arko Holdings Ltd., of certain assets of Empire Petroleum Partners, LLC (each a “Respondent” and collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

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

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The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Respondent Arko Holdings Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Israel with its executive offices and principal place of business located at 3 Hanechushet Street, Building B, 3rd Floor, Tel-Aviv 6971068, Israel, with its United States office for purposes of service of process by the Commission located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
2. Respondent GPM Southeast, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
3. Respondent GPM Petroleum, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
4. Respondent Empire Petroleum Partners, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 8350 North Central Expressway, M2185, Dallas, Texas 75206.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I. Definitions**

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Arko” means Arko Holdings Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Arko Holdings Ltd., including GPM Southeast and GPM Petroleum, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- B. “GPM Southeast” means GPM Southeast, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Southeast, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “GPM Petroleum” means GPM Petroleum, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Petroleum, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Empire” means Empire Petroleum Partners, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Empire Petroleum Partners, LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- F. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that until Respondents fully transfer each Retail Fuel Business and related Retail Fuel Assets to each Acquirer, Respondents shall ensure that each Retail Fuel Business and related Retail Fuel Assets are operated and maintained in the ordinary course of business consistent with past practices. Included in these obligations, Respondents shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Retail Fuel Business and related Retail Fuel Assets, minimize the risk of any loss of their competitive potential, operate them in a manner consistent with applicable laws and regulations, and prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).

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- B. Not sell, transfer, encumber, or otherwise impair the Retail Fuel Business and related Retail Fuel Assets, or terminate any of their operations, other than in the ordinary course of business consistent with past practice or as prescribed in the Orders.
- C. Make all payments required to be paid under any contract or lease when due, and pay all liabilities and satisfy all obligations associated with each Retail Fuel Business and related Retail Fuel Assets.
- D. Provide each Retail Fuel Business and related Retail Fuel Assets with sufficient working capital to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on, at least at their scheduled pace, all capital projects, business plans, promotional plans, capital expenditure plans, research and development plans, and commercial activities.
- E. Use best efforts to preserve the existing relationships and goodwill with suppliers, customers, employees, vendors, distributors, landlords, licensors, licensees, government entities, brokers, contractors, and others having business relations with each Retail Fuel Business and related Retail Fuel Assets.
- F. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each Retail Fuel Business and related Retail Fuel Assets, including by:
 - 1. Filling vacancies that occur in the regular and ordinary course of business consistent with past practice; and
 - 2. Not transferring any employees from any Retail Fuel Business to another of Respondents' businesses.
- G. Maintain and preserve the Business Information of each Retail Fuel Business and related Retail Fuel Assets.
- H. Provide the resources necessary for each Retail Fuel Business and related Retail Fuel Assets to respond to competition, prevent diminution in sales, and maintain its competitive strength.
- I. Continue providing customary levels of support services to each Retail Fuel Business and related Retail Fuel Assets.
- J. Maintain all licenses, permits, approvals, authorizations, or certifications used in the operation of each Retail Fuel Business and related Retail Fuel Assets, and operate each Retail Fuel Business and related Retail Fuel Assets in accordance and in compliance with all regulatory obligations and requirements.

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- K. Maintain the levels of production, quality, pricing, service, or customer support typically associated with each Retail Fuel Business and related Retail Fuel Assets.

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

III. Transitional Services**IT IS FURTHER ORDERED** that:

- A. Until Respondents have transferred all Business Information included in the Retail Fuel Assets to the relevant Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the relevant Acquirer with access to that Business Information (wherever located and however stored) and to employees who possess the Business Information.
- B. At the option of an Acquirer, Respondents shall provide the Acquirer Transitional Services sufficient to (i) efficiently transfer the Retail Fuel Business to the Acquirer and (ii) allow the Acquirer to operate the acquired Retail Fuel Business and related Retail Fuel Assets in a manner that is equivalent in all material respects to the manner in which Respondents operated the Retail Fuel Assets and Retail Fuel Business prior to the Acquisition.
- C. Respondents shall provide Transitional Services:
1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 3. For a period sufficient to meet the requirements of this Paragraph, which shall be, at the option of each Acquirer, for up to 15 months after the Divestiture Date; *provided, however,* that within 15 days after a request by an Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Services as the Acquirer requests in order to achieve the purposes of this Order.
- D. Respondents shall allow each Acquirer to terminate, in whole or part, any Transitional Services at any time upon commercially reasonable notice and without cost or penalty.

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

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

- A. Until one year after each respective Divestiture Date, Respondents shall cooperate with and assist each Acquirer of Retail Fuel Assets to evaluate independently and offer employment to any Retail Fuel Employee.
- B. Until one year after each respective Divestiture Date, Respondents shall:
1. No later than 10 days after a request from an Acquirer, provide a list of all Retail Fuel Employees and provide Employee Information for each;
 2. No later than 10 days after a request from an Acquirer, provide an opportunity to privately interview any of the Retail Fuel Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Retail Fuel Employees;
 3. Remove any impediments within the control of Respondents that may deter Retail Fuel Employees from accepting employment with an 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 Acquirer, and shall not make any counteroffer to an Retail Fuel Employee who receives an offer of employment from the Acquirer; *provided, however*, that nothing in this Order to Maintain Assets shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 4. Continue to provide Retail Fuel Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Retail Fuel Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Retail Fuel Employees by an Acquirer; and

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6. Not interfere, directly or indirectly, with the hiring or employing by an Acquirer of any Retail Fuel Employee, not offer any incentive to such employees to decline employment with an Acquirer, and not otherwise interfere with the recruitment of any Retail Fuel Employee by an Acquirer.
- C. Respondents shall not, for a period of one year following each Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by an Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Paragraph.

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

- A. Respondents shall not (i) disclose (including as to Respondents' employees) or (ii) use for any reason or purpose, any Confidential Information received or maintained by Respondents; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial, regulatory, or other reporting or legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Fuel Assets or any Retail Fuel Business or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph V.A of this Order to Maintain Assets, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A, and (iii) only after

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such employees or Persons have signed an agreement to maintain the confidentiality of such information.

- C. Respondents shall enforce the terms of this Paragraph V as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph V, including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Additional Obligations

IT IS FURTHER ORDERED Respondents shall:

- A. Obtain, no later than the Divestiture Date and at their sole expense, all Consents from Third Parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to each Acquirer and for each Acquirer to operate any aspect of the relevant Retail Fuel Business;

Provided, however, that:

1. Respondents may satisfy the requirement to obtain all Consents from Third Parties by (i) certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; or (ii) substituting equivalent assets or arrangements as specified in the respective Divestiture Agreement; and
 2. With respect to any Governmental Authorizations relating to the Retail Fuel Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow each Acquirer to operate the Retail Fuel Assets under Respondents' Governmental Authorizations pending the Acquirer's receipt of its own Governmental Authorizations, and Respondents shall provide such assistance as each Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorizations;
- B. Assist each Acquirer to conduct a due diligence investigation of the Retail Fuel Assets and Retail Fuel Business the Acquirer seeks to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the relevant Retail Fuel Business, with such rights of access to be

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exercised in a manner that does not unreasonably interfere with the operations of Respondents.

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

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders.
- 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 10 days after notice by staff of the Commission to Respondents of the identity of any proposed Monitor, the Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. No later than 5 days after the Commission appoints the Monitor, Respondents shall:
 - 1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders as set forth in Paragraph VII.D;
 - 2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in Paragraph VII.D; and
 - 3. Enter into an agreement with the Monitor that is approved by the Commission. If Respondents and the Monitor fail to sign an agreement within the allotted time, the Commission will approve, and Respondents shall agree to consent to, an agreement with terms and provisions typical of Commission monitor agreements and require that the Monitor's fees will be his or her standard and customary fees plus expenses reasonably incurred performing duties as the Monitor.
- D. The Monitor:
 - 1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
 - 2. Shall act in consultation with the Commission or its staff;
 - 3. Shall serve as an independent third party and not as an employee, agent, or fiduciary of Respondents or of the Commission;

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4. Shall serve at the expense of Respondents, without bond or other security;
 5. May employ, at the cost and 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;
 6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement;
 7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 5 days should they arise;
 8. Shall report in writing to the Commission concerning Respondents' compliance with this Order: (i) 30 days after appointment and every 30 days thereafter until Respondents have completed all obligations required by Paragraphs II and IV of this Order; (ii) when Respondents have completed the obligations required by Paragraphs II and IV of this Order; and (iii) at any other time requested by the staff of the Commission; and
 9. Shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of the Decision and Order, or until such other time as may be determined by the Commission or its staff.
- E. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the Monitor to monitor Respondents' compliance with its obligations under the Orders; and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to the Orders.
- F. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, and expenses (including attorneys' fees and out of pocket costs) that arise out of, or are connected with any claim concerning the Monitor's performance of the Monitor's duties under the Orders, whether or not such claim results in liability, *except*, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct.

For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VII.D of this Order to Maintain Assets.

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- G. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, *provided, however*, that such agreement does not restrict the Monitor from providing any information to the Commission.
- H. Respondent shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including written reports submitted pursuant to Paragraph VII.D.8, or any Person with whom the Monitor communicates in the performance of his/her duties.
- I. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and subject to all obligations of this Paragraph VII:
1. The Commission shall select the substitute Monitor, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor, Respondents have not opposed, in writing, including the reasons for opposing the selection of the substitute Monitor within 10 days after such notice; and
 2. No later than 5 days after the Commission appoints a substitute Monitor, Respondents shall enter into an agreement with the substitute Monitor that (i) contains substantially the same terms as the agreement with the Monitor first appointed and referenced in Paragraph VII.A, above; or (ii) is approved by the Commission and confers on the substitute Monitor the rights, powers, and authority of a Monitor under the Orders.
- J. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VIII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and
 2. Submit each complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after each Divestiture Date.

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- B. Each Respondent shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit compliance reports 30 days after this Order to Maintain Assets is issued and every 30 days thereafter until this Order to Maintain Assets terminates, and additional compliance reports as the Commission or its staff may request.
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory statements that the Respondents have complied with its obligations under the Orders are insufficient. Respondents shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that Respondents have complied or will comply with each paragraph of the Orders.
 3. Respondents shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents’ obligations under the Orders and provide copies of these documents to Commission staff upon request.
 4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter becomes final, 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 each Respondent pursuant the Decision and Order.

Provided further, however, that Respondent Empire’s reporting obligations under this Paragraph VIII shall cease once it has completed its obligations under Paragraphs II and IV of the Decision and Order.

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IX. Change in Respondents

IT IS FURTHER ORDERED that Respondents Arko, GPM Southeast, and GPM Petroleum shall each notify the Commission at least 30 days prior to:

- A. Its proposed dissolution (i.e. the dissolution of Arko Holdings Ltd., GPM Southeast, LLC, or GPM Petroleum, LLC);
- B. Its proposed acquisition, merger or consolidation (i.e. the acquisition, merger or consolidation of Arko Holdings Ltd., GPM Southeast, LLC, or GPM Petroleum, LLC); or
- C. Any other change in Respondents Arko, GPM Southeast, or GPM Petroleum, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

X. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent 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, the Respondents related to compliance with this Order to Maintain Assets, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Retail Fuel Business locations as viable, marketable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (2) ensure that Respondents obtain no Confidential Information relating to the Retail Fuel Business, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestitures and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

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XII. Term

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

- A. Three business 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
- B. With respect to each Retail Fuel Business required to be divested pursuant to Paragraph II of the Decision and Order, the day after the Divestiture Date of the respective Retail Fuel Assets;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate 3 business days after the Decision and Order becomes final;

Provided further, however, that if the Commission, pursuant to Paragraph II of the Decision and Order, requires Respondents to rescind any of the divestitures in that Paragraph, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioners Slaughter and Wilson not participating.

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition by GPM Southeast, LLC, and GPM Petroleum, LLC, indirectly controlled by Arko Holdings Ltd., of certain assets of Empire Petroleum Partners, LLC (each a "Respondent" and collectively "Respondents"). The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as

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alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Arko Holdings Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Israel with its executive offices and principal place of business located at 3 Hanechushet Street, Building B, 3rd Floor, Tel-Aviv 6971068, Israel, with its United States office for purposes of service of process by the Commission located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
2. Respondent GPM Southeast, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
3. Respondent GPM Petroleum, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.
4. Respondent Empire Petroleum Partners, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 8350 North Central Expressway, M2185, Dallas, Texas 75206.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I. Definitions**

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

- A. "Arko" means Arko Holdings Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries,

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divisions, groups, and affiliates controlled by Arko Holdings Ltd., including GPM Southeast and GPM Petroleum, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “GPM Southeast” means GPM Southeast, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Southeast, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “GPM Petroleum” means GPM Petroleum, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Petroleum, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Empire” means Empire Petroleum Partners, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Empire Petroleum Partners, LLC and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means
 - 1. Good Oil;
 - 2. Groves Fuel;
 - 3. Javed;
 - 4. Marathon Flint;
 - 5. Skyway;
 - 6. SM Gas; or
 - 7. Any other Person that acquires Retail Fuel Assets pursuant to this Order.
- G. “Acquisition” means the proposed acquisition described in the agreement entitled “Asset Purchase Agreement by and between GPM Southeast, LLC and GPM Petroleum, LLC, as Purchaser, and Empire Petroleum Partners, LLC and the Entities Listed on Schedule I hereto, as Seller, dated as of December 17, 2019.”
- H. “Acquisition Date” means the date the Acquisition is consummated.

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- I. “Arlington Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 4600 S. Collins Street, Arlington, Texas 76018, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- J. “Business Information” means books, records, data, and information, wherever located and however stored, used in or related to the Retail Fuel Assets or Retail Fuel Business, including documents, written information, graphic materials, and data and information in electronic format, along with the knowledge of employees, contractors, and representatives. Business Information includes books, records, information, know how, and data relating to sales, marketing, logistics, products and SKUs, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, and all other information relating to the Retail Fuel Business or Retail Fuel Assets. For clarity, Business Information includes Respondent’s right and control over information and material provided to any other Person.
- K. “Confidential Information” means all Business Information not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.
- L. “Consents” means all approvals, consents, ratifications, waivers, or other authorizations from any Person, including a landlord, that are necessary to effect the complete transfer of the Retail Fuel Assets or the Retail Fuel Business to each Acquirer.
- M. “Contracts” means all agreements, contracts, leases, license agreements, consensual obligations, promises or undertakings (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- N. “Direct Cost” means the cost of labor, materials, travel, and other expenditures directly incurred to provide Transitional Services. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- O. “Divestiture Agreement” means:
 - 1. Good Oil Divestiture Agreement;
 - 2. Groves Fuel Divestiture Agreement;
 - 3. Javed Divestiture Agreement;
 - 4. Marathon Flint Divestiture Agreement;

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5. Skyway Divestiture Agreement;
 6. SM Gas Divestiture Agreement; or
 7. Any other agreement between Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer for the purchase of any of the Retail Fuel Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- P. “Divestiture Date” means, as to the divestiture of a Retail Fuel Business, the date on which Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) consummate the divestiture of that Retail Fuel Business as required by Paragraph II of this Order.
- Q. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph IX of this Order.
- R. “Edmore Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 218 E. Main Street, Edmore, Michigan 48829, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- S. “Employee Information” means for each Retail Fuel Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The employee’s base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent’s last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

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- T. “Equipment” means all tangible personal property (other than Inventories) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlet Business, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Retail Fuel Outlet Business, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part, to the extent such warranty is transferrable, and all maintenance records and other related documents.
- U. “Fuel Products” means refined petroleum gasoline and diesel products.
- V. “Good Oil” means Good Oil Company, Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1201 N. US 35, Winamac, Indiana 46996.
- W. “Good Oil Divestiture Agreement” means the Agreement by and among Empire Petroleum Partners, LLC, Woody’s Food Stores, Inc., and Good Oil Company, Inc., dated as of May 19, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix II.
- X. “Governmental Authorization” means any consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- Y. “Groves Fuel” means Groves Fuel Management LLC, a limited liability company organized, existing, and doing business under, and by virtue of the laws of the State of Texas, with its office and principal place of business located at 6207 Glendora Avenue, Dallas, Texas, 75230.
- Z. “Groves Fuel Divestiture Agreement” means the Purchase and Sale Agreement by and between Groves Fuel Management LLC and EPP-Texas Acquisition, LLC, dated as of May 28, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix III.

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- AA. “Hastings Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 1335 N. Broadway, Hastings, Michigan 49058, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- BB. “Intellectual Property” means intellectual property of any kind, including, but not limited to, (i) commercial names, assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (ii) patents, patent applications and inventions and discoveries that may be patentable; (iii) registered and unregistered copyrights in both published works and unpublished works; (iv) rights in mask works; (v) know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (vi) and rights in internet web sites and internet domain names.
- CC. “Inventories” means all inventories of every kind and nature for retail sale associated with the Retail Fuel Assets, including: (1) all Fuel Products, kerosene, and other petroleum-based motor fuels stored in bulk and held for sale to the public; and (2) all usable, non-damaged and non-out-of-date products and items held for sale to the public, including, without limitation, all food-related items requiring further processing, packaging, or preparation and ingredients from which prepared foods are made to be sold.
- DD. “Javed” means Nadeem Javed, an individual.
- EE. “Javed Divestiture Agreement” means the Purchase and Sale Agreement by and between Nadeem Javed, an individual and EPP-Besche Acquisition, LLC, dated as of May 15, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix IV.
- FF. “Knox Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 1 North Heaton Street, Knox, Indiana 46534, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- GG. “Kokomo Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 2413 W. Sycamore Street, Kokomo, Indiana 46901, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- HH. “Marathon Flint” means Marathon Flint Oil Company, a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1919 South Dort Highway, Flint, Michigan 48503.

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- II. “Marathon Flint Divestiture Agreement” means the Assignment and Assumption of Gasoline Marketing/Consignment Agreement and Consignment Agreement by and between Marathon Flint Oil Company and Empire Petroleum Partners, LLC and Quik-Way Retail Associates II, Ltd. dated as of May 18, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix V.
- JJ. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- KK. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- LL. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- MM. “Prior Notice Location” means any physical location that is a Prior Notice Location as defined in Appendix I of this Order.
- NN. “Retail Fuel Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to any Retail Fuel Business, including:
1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 2. All Equipment, including any Equipment removed from the location of the Retail Fuel Businesses since the date of the announcement of the Acquisition and not replaced;
 3. All Inventories;
 4. All accounts receivable;
 5. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
 6. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
 7. All Business Information; and

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8. All intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings;

Provided, however, that the Retail Fuel Assets need not include the Retained Assets.

OO. “Retail Fuel Business” means the Arlington Business, Edmore Business, Hastings Business, Knox Business, Kokomo Business, South Bend Business, or Stevensville Business.

PP. “Retail Fuel Employee” means any full-time, part-time, or contract individual employed by Respondents, as applicable, at each Retail Fuel Business, as of December 17, 2019.

QQ. “Retained Assets” means:

1. Corporate or regional offices;
2. Trade names and trademarks that Respondents use primarily for businesses other than the Retail Fuel Businesses to be divested;
3. Third Party brand or trademark licenses relating to Fuel Products, unless requested by the Acquirer;
4. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);
5. Enterprise software that Respondents use primarily to manage and account for businesses other than the relevant businesses to be divested;
6. The portion of any Business Information that contains information about any business other than the businesses to be divested, and from which Confidential Business Information has been redacted;
7. Inventory that an Acquirer agrees not to purchase or that cannot be transferred by law in the applicable jurisdiction;
8. The Subway franchise operated as part of the South Bend Business; and
9. The following equipment, unless requested by an Acquirer (and to the extent transferrable): equipment belonging to vendors or leased from third parties; automated teller machines; Western Union equipment; credit card processing equipment; back office computers (including monitors, printers and scanners); proprietary equipment; APC backups; UPS or PDI

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handhelds; routers, power strips, Cisco switches; and TNS, Cybera, Echo Sat and Net Express devices.

- RR. “Skyway” means Skyway Fuels Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1131 Redbud Drive, La Porte, Indiana 46350.
- SS. “Skyway Divestiture Agreement” means the Purchase Agreement by and between Next Door Operations, LLC and Skyway Fuels Inc., dated as of May 19, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix VI.
- TT. “SM Gas” means SM Gas Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 15482 Bryanton Court, Granger, Indiana 46530.
- UU. “SM Gas Divestiture Agreement” means the Purchase Agreement by and between Village Pantry, LLC and SM Gas Inc., dated as of May 7, 2020, and all amendments, exhibits, attachments, agreements (including agreements to provide Transitional Assistance), and schedules thereto, attached to this Order as Non-Public Appendix VII.
- VV. “South Bend Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 26499 US Highway 20, South Bend, Indiana 46628, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- WW. “Stevensville Business” means all business activities conducted by Respondents prior to the Acquisition Date at the location at 101 Duke Street, Stevensville, Maryland 21666, including the (i) sale of Fuel Products and (ii) the operation of any associated convenience store and related business and service.
- XX. “Third Party” means any Person other than the Respondents or an Acquirer.
- YY. “Transitional Services” means technical services, personnel, assistance, training, the supply of products, and other logistical, administrative, and other transitional support as required by an Acquirer to facilitate the transfer of the Retail Fuel Assets 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

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transitional purposes, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

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

- A. No later than 20 days after the Acquisition Date, Respondents shall divest the Retail Fuel Assets, absolutely and in good faith, as set forth below:
1. Respondents shall divest the Retail Fuel Assets relating to the Arlington Business to Groves Fuel in accordance with the Groves Fuel Divestiture Agreement;
 2. Respondents shall divest the Retail Fuel Assets relating to the Edmore Business and Hastings Business to Marathon Flint in accordance with the Marathon Flint Divestiture Agreement;
 3. Respondents shall divest the Retail Fuel Assets relating to the Knox Business to Skyway in accordance with the Skyway Divestiture Agreement;
 4. Respondents shall divest the Retail Fuel Assets relating to the Kokomo Business to Good Oil in accordance with the Good Oil Divestiture Agreement;
 5. Respondents shall divest the Retail Fuel Assets relating to the South Bend Business to SM Gas in accordance with the SM Gas Divestiture Agreement; and
 6. Respondents shall divest the Retail Fuel Assets relating to the Stevensville Business to Javed in accordance with the Javed Divestiture Agreement.

Provided, however, if that in cases in which Business Information included in the Retail Fuel Assets contain information: (a) that relates both to the Retail Fuel Assets and to other, retained businesses of a Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Retail Fuel Assets, 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 the 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.

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- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. An Acquirer is not an acceptable purchaser of the relevant Retail Fuel Assets, then Respondents shall immediately rescind the divestiture to that Acquirer, and shall divest the relevant Retail Fuel Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to one or more Persons that receive the prior approval of the Commission; or
 2. The manner in which the Respondents divested the relevant Retail Fuel Assets to an Acquirer is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to modify the manner in which Respondents divested the relevant Retail Fuel Assets as the Commission may determine is necessary to satisfy the requirements of this Order.
- C. Respondents shall:
1. Obtain, no later than the Divestiture Date and at their sole expense, all Consents from Third Parties and all Governmental Authorizations that are necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to each Acquirer and for each Acquirer to operate any aspect of the relevant Retail Fuel Business;
- Provided, however, that:*
- a. Respondents may satisfy the requirement to obtain all Consents from Third Parties by (i) certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; or (ii) substituting equivalent assets or arrangements as specified in the respective Divestiture Agreement; and
 - b. With respect to any Governmental Authorizations relating to the Retail Fuel Assets that are not transferable, Respondents shall, to the extent permitted under applicable law, allow each Acquirer to operate the Retail Fuel Assets under Respondents' Governmental Authorizations pending the Acquirer's receipt of its own Governmental Authorizations, and Respondents shall provide such assistance as each Acquirer may reasonably request in connection with its efforts to obtain such Governmental Authorizations;
2. Assist each Acquirer to conduct a due diligence investigation of the Retail Fuel Assets and Retail Fuel Business the Acquirer seeks to purchase,

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

III. Divestiture Agreements**IT IS FURTHER ORDERED** that:

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

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

- A. Until Respondents have transferred all Business Information included in the Retail Fuel Assets to the relevant Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the relevant Acquirer with access to that Business Information (wherever located and however stored) and to employees who possess the Business Information.
- B. At the option of an Acquirer, Respondents shall provide the Acquirer Transitional Services sufficient to (i) efficiently transfer the Retail Fuel Business to the Acquirer and (ii) allow the Acquirer to operate the acquired Retail Fuel Business and related Retail Fuel Assets in a manner that is equivalent in all material respects to the manner in which Respondents operated the Retail Fuel Assets and Retail Fuel Business prior to the Acquisition.

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- C. Respondents shall provide Transitional Services:
1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 3. For a period sufficient to meet the requirements of this Paragraph, which shall be, at the option of each Acquirer, for up to 15 months after the Divestiture Date; *provided, however*, that within 15 days after a request by an Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Services as the Acquirer requests in order to achieve the purposes of this Order.
- D. Respondents shall allow each Acquirer to terminate, in whole or part, any Transitional Services at any time upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Services due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of any agreement relating to Transitional Services.

V. Asset Maintenance

IT IS FURTHER ORDERED that until Respondents fully transfer each Retail Fuel Business and related Retail Fuel Assets to an Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that each Retail Fuel Business and related Retail Fuel Assets are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Retail Fuel Business and related Retail Fuel Assets, minimize the risk of any loss of their competitive potential, and prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear).
- B. Not sell, transfer, encumber, or otherwise impair the Retail Fuel Business and related Retail Fuel Assets (other than in the manner prescribed in this Order and the Order to Maintain Assets) or take any action that lessens their full economic viability, marketability, or competitiveness; and
- C. Not terminate the operations of the Retail Fuel Business and related Retail Fuel Assets, and shall conduct or cause to be conducted the operations of the Retail

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Fuel Business and related Retail Fuel Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Retail Fuel Business and related Retail Fuel Assets; and

- D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Retail Fuel Business and related Retail Fuel Assets.

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

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

- A. Until one year after each respective Divestiture Date, Respondents shall cooperate with and assist each Acquirer of Retail Fuel Assets to evaluate independently and offer employment to any Retail Fuel Employee.
- B. Until one year after each respective Divestiture Date, Respondents shall:
1. No later than 10 days after a request from an Acquirer, provide a list of all Retail Fuel Employees and provide Employee Information for each;
 2. No later than 10 days after a request from an Acquirer, provide an opportunity to privately interview any of the Retail Fuel Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Retail Fuel Employees;
 3. Remove any impediments within the control of Respondents that may deter Retail Fuel Employees from accepting employment with an 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 Acquirer, and shall not make any counteroffer to an Retail Fuel Employee who receives an offer of employment from the Acquirer; *provided, however,* that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

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4. Continue to provide Retail Fuel Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Retail Fuel Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Retail Fuel Employees by an Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by an Acquirer of any Retail Fuel Employee, not offer any incentive to such employees to decline employment with an Acquirer, and not otherwise interfere with the recruitment of any Retail Fuel Employee by an Acquirer.
- C. Respondents shall not, for a period of one year following each Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by an Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Paragraph.

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

- A. Respondents shall not (i) disclose (including to Respondents' employees) or (ii) use for any reason or purpose, any Confidential Information received or maintained by Respondents; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Fuel Assets or any Retail Fuel

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Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.

- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph VII.A of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A, and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph VII and take necessary actions to ensure that their employees and other Persons comply with the terms of this Paragraph VII, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor**IT IS FURTHER ORDERED** that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Divestiture Agreements.
- 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 10 days after notice by 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. No later than 5 days after the Commission appoints the Monitor, Respondents shall:
 - 1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets as set forth in Paragraph VIII.D;
 - 2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in Paragraph VIII.D; and

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3. Enter into an agreement with the Monitor that is approved by the Commission. If Respondents and the Monitor fail to sign an agreement within the allotted time, the Commission will approve, and Respondents agree to consent to, an agreement with terms and provisions typical of Commission monitor agreements and require that the Monitor's fees will be his or her standard and customary fees plus expenses reasonably incurred performing duties as the Monitor.

D. The Monitor:

1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in this Order and the Order to Maintain Assets;
2. Shall act in consultation with the Commission or its staff;
3. Shall serve as an independent third party and not as an employee, agent, or fiduciary of Respondents or of the Commission;
4. Shall serve at the expense of Respondents, without bond or other security;
5. May employ, at the cost and 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;
6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement;
7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 5 days should they arise;
8. Shall report in writing to the Commission concerning Respondents' compliance with this Order: (i) 30 days after appointment and every 30 days thereafter until Respondents have completed all obligations required by Paragraphs II and IV of this Order; (ii) when Respondents have completed the obligations required by Paragraphs II and IV of this Order; and (iii) at any other time requested by the staff of the Commission; and
9. Shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of this Order, or until such other time as may be determined by the Commission or its staff.

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- E. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the Monitor to monitor Respondents' compliance with its obligations under this Order; and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to this Order.
- F. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, and expenses (including attorneys' fees and out of pocket costs) that arise out of, or are connected with any claim concerning the Monitor's performance of the Monitor's duties under this Order, whether or not such claim results in liability, *except*, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct.

For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.D of this Order.

- G. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, *provided, however*, that such agreement does not restrict the Monitor from providing any information to the Commission.
- H. Respondent shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including written reports submitted pursuant to Paragraph VIII.D.8, or any Person with whom the Monitor communicates in the performance of his/her duties.
- I. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and subject to all obligations of this Paragraph VIII:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor, Respondents have not opposed, in writing, including the reasons for opposing the selection of the substitute Monitor within 10 days after such notice; and
 - 2. No later than 5 days after the Commission appoints a substitute Monitor, Respondents shall enter into an agreement with the substitute Monitor that (i) contains substantially the same terms as the agreement with the Monitor first appointed and referenced in Paragraph VIII.A, above; or (ii)

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is approved by the Commission and confers on the substitute Monitor the rights, powers, and authority of a Monitor under this Order.

- J. 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 this Order.

IX. Divestiture Trustee**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the relevant Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, 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 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.
- D. Within ten days after appointment of a 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 divestiture or other action required by the Order.

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- E. 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. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;
 2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. 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. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IX in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture 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, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from

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among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of 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 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 the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the 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 that are required to be divested by this Order;
6. 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph IX.E.6, the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph IX.E.5. of this Order;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Retail Fuel Assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. 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

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agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph IX.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Notice**IT IS FURTHERED ORDERED** that:

- A. For a period of ten years from the date this Order is issued, Respondents Arko, GPM Southeast, and GPM Petroleum shall not, without providing advance written notification to the Commission ("Notification"):
 - 1. Acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the sale of gasoline or diesel Fuel Products at a Prior Notice Location, or
 - 2. Enter into any contract with any concern, corporate or non-corporate, engaged in the sale of gasoline or diesel Fuel Products at a Prior Notice Location in which Respondents will control the retail price of such products.
- B. With respect to the Notification:
 - 1. The Notification required by this Paragraph X 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, 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,

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Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents Arko, GPM Southeast, and GPM Petroleum and not of any other party to the transaction.

2. Include a description of the proposed acquisition and provide:
 - a. A map showing all retail fuel outlets by ownership (*e.g.*, OPIS Corporate Brand) within five driving miles of the relevant Prior Notice Location;
 - b. For each retail fuel outlet owned by Respondent Arko, GPM Southeast, or GPM Petroleum that is located within five driving miles of the relevant Prior Notice Location, a list of the retail fuel outlets that Respondent Arko, GPM Southeast, or GPM Petroleum monitored at any time within the preceding 12 month period (to the extent such information is available); and
 - c. Respondents Arko, GPM Southeast, and GPM Petroleum's pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph X.B.2(b) of this Order.
3. Provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). Further, if, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents Arko, GPM Southeast, and GPM Petroleum shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.
4. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this 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.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and

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2. Submit each complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after each Divestiture Date.
- B. Each Respondent shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit interim compliance reports 30 days after this Order is issued and every 30 days thereafter until Respondents have fully complied with the provisions of Paragraphs II and IV of this Order; annual compliance reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that the Respondents have complied with its obligations under this Order are insufficient. Respondents shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that Respondents have complied or will comply with each paragraph of the Order.
 3. Respondents shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents’ obligations under the Order and provide copies of these documents to Commission staff upon request.
 4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that Respondent Empire’s reporting obligations under this Paragraph XI shall cease once it has completed its obligations under Paragraphs II and IV of this Order.

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XII. Change in Respondents

IT IS FURTHER ORDERED that Respondents Arko, GPM Southeast, and GPM Petroleum shall each notify the Commission at least 30 days prior to:

- A. Its proposed dissolution (i.e. the dissolution of Arko Holdings Ltd., GPM Southeast, LLC, or GPM Petroleum, LLC);
- B. Its proposed acquisition, merger or consolidation (i.e. the acquisition, merger or consolidation of Arko Holdings Ltd., GPM Southeast, LLC, or GPM Petroleum, LLC); or
- C. Any other change in Respondents Arko, GPM Southeast, and GPM Petroleum, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

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 and 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the 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 the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XIV. Purpose

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

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate October 5, 2030.

By the Commission, Commissioners Slaughter and Wilson not participating.

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Appendix I**Prior Notice Locations**

State	Area	Prior Notice Location
Indiana	Knox	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 910 S. Heaton Street, Knox, Indiana.
Indiana	Kokomo	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 3636 W. Sycamore Street, Kokomo, Indiana.
Indiana	South Bend	Any location within 5 miles driving distance (using the shortest route calculated by Google maps) of 26395 State Road 2, South Bend, Indiana.
Maryland	Stevensville	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 100 Main Street, Stevensville, Maryland, or 201 Romancoke Street, Stevensville, Maryland.
Michigan	Edmore	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 1102 E. Main Street, Edmore, Michigan.
Michigan	Hastings	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 313 N. Broadway, Hastings, Michigan.
Texas	Arlington	Any location within 3 miles driving distance (using the shortest route calculated by Google maps) of 4601 S. Collins Street, Arlington, Texas.

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Appendix II

Good Oil Divestiture Agreement

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

Appendix III

Groves Fuel Divestiture Agreement

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

Appendix IV

Javed Divestiture Agreement

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

Appendix V

Marathon Flint Divestiture Agreement

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

Analysis to Aid Public Comment

Appendix VI**Skyway Divestiture Agreement****[Redacted From the Public Record Version, But Incorporated By Reference]****Appendix VII****SM Gas Divestiture Agreement****[Redacted From the Public Record Version, But Incorporated By Reference]****ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT****Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Arko Holdings Ltd. (“Arko”), GPM Southeast, LLC, and GPM Petroleum, LLC (collectively with Arko, “GPM”) and Empire Petroleum Partners, LLC (“Empire,” and collectively “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from GPM’s proposed acquisition of retail fuel assets from Empire.

Under the terms of the proposed Consent Agreement, Respondents must divest certain retail fuel assets in seven local markets in Indiana, Michigan, Maryland, and Texas. Respondents must complete the divestiture within 20 days after the closing of the acquisition. 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 up-front buyers acquire the divested assets.

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 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.

Analysis to Aid Public Comment

The Respondents

Respondent Arko is a publicly traded company headquartered in Tel Aviv, Israel. Arko, through its subsidiaries GPM Southeast, LLC, and GPM Petroleum, LLC, supplies wholesale fuel to or operates approximately 1,400 retail fuel and convenience stores in twenty-two states across the South, Mid-Atlantic, and Midwest. In 2019, GPM ranked as the sixth largest operator of retail fuel and convenience stores in the United States.

Respondent Empire is a privately held Delaware limited liability company headquartered in Dallas, Texas. Empire also distributes fuel on a wholesale basis and operates retail fuel and convenience stores in 30 states and Washington, D.C. With respect to wholesale fuel distribution, Empire is a “super jobber,” a company that supplies over one billion gallons of fuel each year. Empire has supply relationships with all major oil companies, and distributes both branded and unbranded fuel. Empire supplies fuel to 1,555 retail sites, and operates 76 retail fuel and convenience stores itself.

The Proposed Acquisition

On December 17, 2019, GPM entered into an agreement to acquire certain retail and wholesale fuel assets from Empire and related entities (the “Acquisition”). With the Complaint, the Commission alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the Acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the retail sale of gasoline in seven local markets in Indiana, Michigan, Maryland, and Texas, and by substantially lessening competition for the retail sale of diesel fuel in three local markets in Indiana, Michigan, and Texas.

The Retail Sale of Gasoline and Diesel Fuel

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

The Commission alleges that the relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of gasoline are seven local markets in and around the following cities: Knox, Indiana; Kokomo, Indiana; South Bend, Indiana; Stevensville, Maryland; Edmore, Michigan; Hastings, Michigan; and Arlington, Texas. The relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of diesel fuel are three local markets in and around the following cities: South Bend, Indiana; Edmore, Michigan; and Arlington, Texas.

Analysis to Aid Public Comment

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

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

Moreover, the Acquisition would enhance the incentives for interdependent behavior in local markets where only two or three competitively constraining independent market participants would remain. Two aspects of the retail fuel industry make it vulnerable to such 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 changing prices affect fuel sales.

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.

The Proposed Consent Agreement

The proposed Consent Agreement would remedy the Acquisition's likely anticompetitive effects by requiring Respondents to divest certain retail fuel assets to an independent competitor in each local market. Each buyer of divestiture assets is an experienced operator or supplier of retail fuel sites, and will be a new entrant into the local market.

The proposed Consent Agreement requires that the divestiture be completed no later than 20 days after Respondents consummate the Acquisition. The proposed Consent Agreement further requires Respondents to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture is complete. For up to 15 months following the divestiture, Respondents must provide transitional services, as needed, to assist the buyers with the divestiture assets.

Analysis to Aid Public Comment

In addition to requiring outlet divestitures, the proposed Consent Agreement requires Respondents to provide the Commission notice before acquiring retail fuel assets within a fixed distance of any GPM outlet in a market involving a divestiture for ten years. The prior notice provision is necessary because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Acquisition, and may fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date Respondents complete the divestiture. The Commission may appoint an independent third party as a Monitor to oversee Respondents' compliance with the requirements of the proposed Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and 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

**PEABODY ENERGY CORPORATION,
AND
ARCH COAL, 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. 9391; File No. 191 0154

Complaint, February 25, 2020 – Decision, October 16, 2020

This case addresses a proposed joint venture between Peabody Energy Corporation and Arch Coal, Inc. that will own and operate the two most productive coal mines in the Southern Powder River Basin (“SPRB”) in Wyoming. The complaint alleges that the joint venture would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for coal from the SPRB in the United States. Respondents informed Complaint Counsel that they terminated their proposed acquisition and that Peabody had withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for this proposed acquisition and has no intent to refile. Complaint Counsel and Respondents Peabody Energy Corporation and Arch Coal, Inc. jointly moved to dismiss the complaint. The order dismisses the Complaint as moot.

Participants

For the *Commission*: Taylor Alexander, Jeanine Balbach, Alicia Bums-Wright, Steven Dahm, Amy Dobrzynski, Eric Elmore, Michael Franchak, Josh Goodman, Sean Hughto, Stephen Santulli, Robert Tovsky, and Cecelia Waldeck.

For the *Respondents*: Gorav Jindal, Corey Roush, and Haidee Schwartz, Akin Gump; Steve Weissman and Michael Perry, Baker Botts.

COMPLAINT

1. Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Peabody Energy Corporation (“Peabody”) and Arch Coal, Inc. (“Arch”) have executed an joint venture agreement (the “Joint Venture”) in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. NATURE OF THE CASE

1. If consummated, the Joint Venture would combine the coal mining operations and the sales operations of Respondents’ coal mines located in the Southern Powder River Basin