

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

Tops Markets LLC,  
a limited liability company,

Morgan Stanley Capital Partners V U.S.  
Holdco LLC,  
a limited liability company,

and

The Penn Traffic Company,  
a corporation.

File No. 101-0074

AGREEMENT CONTAINING CONSENT ORDERS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Tops Markets LLC (“Tops”), a subsidiary of Morgan Stanley Capital Partners V U.S. Holdco LLC (“Holdco”), of certain assets of The Penn Traffic Company (“Penn Traffic”), hereinafter “Proposed Respondents,” and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Tops is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of New York, with its office and principal place of business located at 6363 Main Street, Williamsville, New York 14221.
2. Proposed Respondent Penn Traffic is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1200 State Fair Boulevard, Syracuse, New York 13221.
3. Proposed Respondent Holdco is a limited liability company organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1585 Broadway, Floor 39, New York, New York 10036.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.
5. Proposed Respondents waive:
  - a. any further procedural steps;
  - b.

9. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
10. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
11. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (b) issue and serve its Order to Maintain Assets, and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.
12. When final, the Decision and Order and the Order to Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to Proposed Respondent Tops by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) including, but not limited to, delivery to an office within the United States of Kevin J. Arquit, Esq.; of Simpson Thacher

service. Each Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agrees that it is bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession



MORGAN STANLEY CAPITAL PARTNERS V  
U.S. HOLDCO LLC

By: \_\_\_\_\_

[insert]

President and

Chief Executive Officer

Morgan Stanley Capital Partners V U.S.

Holdco LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin J. Arquit, Esq.

Aimee Goldstein, Esq.

Simpson Thacher & Bartlett LLP

Counsel for Morgan Stanley Capital Partners V

U.S. Holdco LLC