

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosb
Edith Ramirez
Julie Brill

In the Matter of)
)

PILOT CORPORATION,)
a corporation,)

PROPELLER CORP.,)
a corporation,)

and)

FLYING J IN C.,)
a corporation.)
_____)

Docket No. C-4293

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Pilot Corporation ("Pilot") and Propeller Corp. ("Propeller"), of certain Flying

constitute an admission by Respondents that the laws have been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the

Travel Centers LLC and CTP Holdings LLC), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

convey assets or rights related to the Travel Center Businesses Assets to another party pursuant to this Order

- L. "Confidential Business Information" means all information owned by or in the possession or control of a Respondent that is not in the public domain and that is directly related to the operation and management of a Travel Center Business including, but not limited to, information related to the cost, supply, sales, sales support, distribution and marketing of diesel fuel to long-haul fleets; *provided, however, this provision shall not include informa*

2. any agreement that receives the prior approval of the Commission between Respondents (or a Divestiture Trustee) and an Acquirer for access and use of the CH Fuel Card System for a period of three (3) years from the Closing Date, and any attachments, amendments, exhibits, and schedules related thereto.

CC. "Third Party(ies)" means any non-governmental Person other than Respondents or the Acquirer.

DD. "Trademark(s)" means all proprietary names or designations, trademarks, service marks,

5. all inventories including, but not limited to,

LL. "Wendy's Restaurants" means the six (6) fast food service facilities affiliated with the Travel Centers Businesses operating under the Wendy's brand name.

II.

IT IS FURTHER ORDERED THAT :

A. Not later than one (1) day after the Acquisition Date, Respondents Pilot and Propeller shall divest the Travel Centers Businesses Assets, absolutely and in good faith, to Love's pursuant to, and in accordance with, the Travel Centers Businesses Divestiture Agreement (which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Love's or to reduce any obligations of Respondents under such agreement), and such agreement, if it becomes a Remedial Agreement related to the Travel Centers Businesses Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents Pilot and Propeller have divested the Travel Centers Businesses Assets to Love's prior to the date the Order becomes final, and if at the time the Commission determines to make this Order final, the Commission notifies Respondents that Love's is not an acceptable purchaser of the Travel Centers Businesses Assets, then Respondents shall immediately rescind the transaction with Love's, in whole or in part, a

Respondents may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

C. At the Acquirer's option and upon reasonable notice, Respondents shall provide the Acquirer non-discriminatory access and use of the TCH Fuel Card System for a period of up to three (3) years pursuant to a TCH Merchant Agreement.

D. Respondents shall, within ten (10) days of the date this Order becomes final, develop and implement a TCH Firewall Protocol whereby:

1. Respondents' employees affiliated with the TCH Fuel Card System are prohibited from providing TCH Customer Confidential Business Information to either the TCH Executive Board or to Respondents' employees not affiliated with the TCH Fuel Card System; and

2. Respondent Pilot shall appoint an internal compliance officer who will be responsible for assuring that the TCH Firewall Protocols are complied with and who will report to the Commission pursuant to the reporting obligations pursuant to Paragraph M.D or as requested by Commission staff.

E. For a period of one (1) year, Respondent Pilot shall manage and operate the Wendy's Restaurants pursuant to a Wendy's Operating Agreement.

F. At the Acquirer's option, and upon reasonable notice and request, Respondent Pilot shall provide, for a period no longer than six (6) months after the Closing Date, a no greater than Direct Cost, assistance from knowledgeable employees of Respondent Pilot in the transfer of the Travel Centers Business from Respondents to the Acquirer in a time.6800 0.0000 TD (on)Tj .000

- b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 - 3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if one is appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Travel Centers Businesses Assets that contain Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
 - 4. not use, directly or indirectly, any such Confidential Business Information related to the operation or management of the Travel Centers Businesses other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any Remedial Agreement related to the Travel Centers Businesses Assets; or
 - c. applicable law; and
 - 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or other Persons specifically authorized by such Acquirer to receive such information.
- L. Until Respondents Pit and Propeller complete the divestiture required by Paragraph I.A,
- 1. Respondents shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the Travel Centers Businesses;
 - b. minimize any risk of loss of competitive potential for such business;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Travel Centers Businesses;
 - d. ensure the assets required to be divested are transferred and delivered to the Acquirer in a manner without disruption, delay or impairment of the Travel Centers Businesses; and

2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Travel Centers Businesses.

M. The purpose of the divestiture of the Travel Centers Businesses Assets and related obligations imposed on the Respondents by this Order is:

1. to ensure the continued use of such assets in the distribution, sale, and marketing of over-the-road diesel fuels for long-haul fleets within the Geographic Territory; and
2. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner

III .

IT IS FURTHER ORDERED THAT :

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets (collectively, "Orders"), and the Remedial Agreements.
- B. The Commission shall select the Interim 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 Interim Monitor within ten (10) days after notice by the staff of the Commission of Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authority, and responsibilities of the Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with: the divestiture and asset maintenance obligations of the Orders; the restrictions on the use, conveyance provision, or disclosure of the identified

Confidential Business information under the Order; and, the related requirements of the Order. The Interim Monitor shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner

Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.

8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as: (1) an Interim Monitor pursuant to Paragraph II of the Order to Maintain Assets; or (2) a Divestiture Trustee pursuant to Paragraph V of this Order.

IV.

expeditiously and at no minimum price. The investment shall be made in the manner and to an Acquirer as required by thi

- C. any other change in a Response including, but not limited to, assignment and creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order

14. PilotStore No. 364, operating under the Pilot tradename, located at 750 N. Carl Malone Boulevard, Gayson, KY.
15. Pilot Store No. 383, operating under the Pilot trade name, located at 210 Paton Street, Houston, Texas.
16. Pilot Store No. 450, operating under the Pilot trade name, located at 730 Highway 80 East, Jackson, Mississippi.
17. PilotStore No. 292, operating under the Pilot tradename, located at 130 West Trinity Lane, Nashville, Tennessee.
18. Flying J Store No. 0500124, operating under the Flying J trade name, located at 9650 S. 20 Street, Oak Creek, Wisconsin.
19. PilotStore No. 291, operating under the Pilot tradename, located at 23845 Rogers Clark Boulevard, RutheGlen, Virginia.
20. PilotStore No. 194, operating under the Pilot tradename, located at 25 N. Redwood Road, Salt Lake City Utah.
21. Pilot Store No. 139, operating under the Pilot trade name, located at 29025 West Plaza Drive, Santa Nella, California.
22. PilotStore No. 349, operating under the Pilot tradename, located at 5301 North Cliff Avenue, Sioux Falls, South Dakota.
23. Flying J Store No. 0500060, operating under the Flying J trade name, located at 1501 33 Avenue East, Taoma, Washington.
24. Flying J Store No. 0520019, operating under the Flying J trade name, located at 400 NW Frontage Road, Troutdale, Oregon.
25. PilotStore No. 272, operating under the Pilot tradename, located at 800 Main Luther King Drive, West Memphis, Arkansas.
26. Pilot Store No. 397, operating under the Pilot trade name, located at 5115 North 300 East, Whiteland, Indiana.

NON-PUBLIC APPENDIX II.

TRAVEL CENTERS BUSINESSES DIVESTITURE AGREEMENT

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

NON-PUBLIC APPENDIX III.

TCH MERCHANT AGREEMENT

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

NON-PUBLIC APPENDIX IV.

WENDY'S OPERATING AGREEMENT

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