

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of

Alimentation Couche-Tard Inc.,
a corporation;

and

CST Brands, Inc.,
a corporation.

Docket No. G4618

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Alimentation Couche-Tard Inc. ("ACT"), through its wholly-owned subsidiary, Circle K Stores Inc., of Respondent CST Brands, Inc. ("CST;") and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

1. Respondent ACT is a corporation organized, existing, and doing business under and by virtue of the laws of Canada, with its headquarters and principal place of business located at 4204 Industriel Blvd, Laval, Quebec H7L 0E3, Canada, and its United States address for service of process and of the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretariat, Cycle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.
2. Respondent CST is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 19500 Bulverde Road, San Antonio, Texas 78259.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

I.

- C. "CST" means CST Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates (including, but not limited to, CrossAmerica Partners, LP), in each case

II.

4. Not transfer inventory from any

14. Provide support services to each of the Assets To Be Divested at least at the level as were being provided to such Assets To Be Divested by Respondents as of the date the Consent Agreement was signed by Respondents;
15. Maintain, and not terminate or permit the lapse of, Governmental Permits necessary for the operation of any Asset To Be Divested;

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

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

III.

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

- A. Respondents shall not, and shall assure that their employees, agents, and representatives shall not
 1. Receive, access, have access to, use, directly or indirectly, any Confidential Business Information, other than as is necessary to:
 - a. Comply with the requirements of the Orders;
 - b. Perform their obligations to the Acquirer under the terms of any Remedial Agreement including providing Transition Services pursuant to a Transition Services Agreement;
 - c. Comply with financial reporting requirements, defend legal claims as otherwise required by applicable law;

3. Use, disclose, or convey directly or indirectly, any Confidential Business Information that is related to the Fuel Products supply, marketing, promotional activities, or sales of the Assets To Be Divested or of the Acquirer to employees, agents, and representatives with responsibilities relating to the Fuel Products supply, marketing, promotional activities, or sales of Respondent's retained businesses
- B. Respondents shall institute appropriate procedures and requirements to ensure that the abovedescribed employees, agents, and representatives do not (1) use, disclose, convey, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets, or (2) solicit, access, or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose
 - C. As part of the procedures and requirements that Respondents are required to implement to comply with Paragraphs III. A. and B., not later than (i) thirty (30) days after the date of entry of this Order, and

IV.

- G. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreement, including for as long as Respon

VII .

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

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

VII I.

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

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondents (or a Divestiture Trustee) complete the divestiture of all of the Assets To Be Divested, as described in and required by the Decision and Order, however, that if the Commission, pursuant to Paragraph 11 of the Decision and Order, requires the Respondents to escrow any or all of the divestitures contemplated by any Divestiture Agreement

APPENDIX A
MONITOR AGREEMENT