

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney**

<b>In the Matter of</b>	)	
	)	
<b>Alimentation Couche-Tard Inc.,</b>	)	<b>Docket No. C-</b>
<b>a corporation; and</b>	)	
	)	
<b>CrossAmerica Partners LP,</b>	)	
<b>a limited partnership.</b>	)	
	)	

**DECISION AND ORDER  
[Public Record Version]**

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 Oliver Acquisition Corp.) of certain equity interests of Holiday Companies subsidiaries, and ACT and its affiliate CrossAmerica Partners LP (together, “Respondents”) having been furnished thereafter with a copy of a draft of the 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 Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, 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 such Complaint, or that the facts as alleged in such Complaint, other than 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 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, and having thereupon issued and served its Complaint and Order to Maintain Assets, and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

1. Respondent Alimentation Couche-Tard Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office 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 Secretary, Circle K Stores Inc., 1130 W. Warner Road, Tempe, Arizona 85284.
2. Respondent CrossAmerica Partners LP is a limited partnership 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 515 Hamilton Street, Suite 200 Allentown, Pennsylvania 18101.
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.

## **ORDER**

### **I.**

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

- A. “ACT” means Alimentation Couche-Tard Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by ACT (including Circle K Stores Inc., Oliver Acquisition Corp., and CrossAmerica Partners LP), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “CAPL” means CrossAmerica Partners LP, its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates, in each case controlled by CAPL, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Holiday” means Holiday Companies, a corporation organized, existing, and doing business under, and by virtue of th

- F. “Acquisition” means the proposed acquisitions described in the Equity Interest Purchase Agreement by and between Holiday Companies and Oliver Acquisition Corp., dated as of July 10, 2017.
- G. “Acquisition Date” means the date the Acquisition is consummated.
- H. “Books and Records” means all originals and all copies of any operating, financial, environmental, governmental compliance, regulatory, or other information, documents, data, databases, printouts, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, relating to the Retail Fuel Assets, including, but not limited to, real estate files; environmental reports; environmental liability claims and reimbursement data, information, and materials; underground storage tank (UST) system registrations and reports; registrations, licenses, and permits (to the extent transferable); regulatory compliance records, data, and files; applications, filings, submissions, communications, and correspondence with Governmental Entities; inventory data, records, and information; purchase order information and records; supplier, vendor, and procurement files, lists, and related data and information; credit records and information; account information; marketing analyses and research data; service and warranty records; warranties and guarantees; equipment logs, operating guides and manuals; employee lists and contracts, salary and benefits information, and personnel files and records (to the extent permitted by law); financial statements and records; accounting records and documents; telephone numbers and fax numbers; and all other documents, information, and files of any kind that are necessary for an Acquirer to operate the Retail Fuel Outlet Business(es) in a manner consistent with the purposes of this Order.
- I. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and to the extent that it is related to or used in connection with the Retail Fuel Assets or the conduct of the Retail Fuel Outlet Business(es). The term “Confidential Business Information” excludes the following:
1. Information that is contained in documents, books, or records of Respondents that is provided to an Acquirer that is unrelated to the Retail Fuel Assets or that is exclusively related to the Respondents’ retained businesses; and
  2. Information that (a) is or becomes generally available to the public other than as a

Order; (g) the disclosure of which is necessary to allow Respondents to comply

of the locations specified in Appendix A to this Order, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, to the extent such warranty is transferrable, and all maintenance records and other documents relating thereto.

- Q. “Fuel Products” means refined petroleum gasoline and diesel products.
- R. “Governmental Entity” means any federal, state, local, or non-U.S. government, or any court, legislature, governmental agency or commission, or any judicial or regulatory authority of any government.
- S. “Governmental Permit(s)” means all Consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any Governmental Entity(ies) necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to an Acquirer and for such Acquirer to operate any aspect of a Retail Fuel Outlet Business.
- T. “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.
- U. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph V. of this Order or Paragraph IV. of the Order to Maintain Assets.
- V. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- W. “Person” means any individual, or any partnership, joint venture, firm, corporation, limited liability company, limited liability partnership, joint stock company, association, trust, unincorporated organization, or other business entity.
- X. “Prior Notice Outlet” means (i) the Retail Fuel Assets and (ii) any existing retail fuel facility (including any successors) identified in Non-Public Appendix B.
- Y. “Products” means any Fuel Products or merchandise products relating to the Retail Fuel Outlet Business(es).
- Z. “Proposed Acquirer” means any proposed acquirer of any of the Retail Fuel Assets that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order.

- AA. “Respondents’ Brands” means all of Respondents’ trademarks, trade dress, logos, service marks, trade names, brand names, and all associated intellectual property rights, including rights to the names “Circle K,” “Freedom Valu,” and “Holiday.”
- BB. “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, relating to, used in, or reserved for use in, the Retail Fuel Outlet Business, including, but not limited to:
1. All real property interests (including fee simple interests and real property leases and leasehold interests), including all easements and rights-of-way, together with all buildings and other structures, facilities, appurtenances, and improvements located thereon or affixed thereto (including all attached machinery, fixtures, and heating, plumbing, electrical, lighting, ventilating and air-conditioning equipment), whether owned, leased, or otherwise held;
  2. All Equipment, including any Equipment removed from any location of the Retail Fuel Outlet Business since the date of the announcement of the Acquisition and not replaced;
  3. All Inventories;
  4. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto, to the extent transferable, and at the Acquirer’s option;
  5. All Governmental Permits, and all pending applications therefor or renewals thereof, to the extent transferable;
  6. All intangible rights and property, including intellectual property, owned or licensed (as licensor or licensee) by Respondents (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings; and
  7. Books and Records; *provided, however*, that in cases in which Books and Records included in the Retail Fuel Assets contain information: (a) that relates both to the Retail Fuel Assets and to other, retained businesses of Respondents 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 an 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;

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

- CC. “Retail Fuel Employee” means any full-time, part-time, or contract individual employed by CAPL or Holiday, as applicable, at their respective locations identified in Appendix A of this Order, as of July 10, 2017, or by Respondents at the time of the divestiture required by Paragraph II. of this Order and whose job responsibilities primarily relate or related to the Retail Fuel Outlet Business.
- DD. “Retail Fuel Location” means: (1) any facility engaged in the retail sale, promotion, marketing, and provision of Fuel Products and other fuels, automotive services, and related services; and (2) any property site where construction of a retail facility to be engaged in the retail sale, promotion, marketing, and provision of Fuel Products and other fuels, automotive services, and related services is planned or underway.
- EE. “Retail Fuel Outlet Business” means all business activities conducted by CAPL or Holiday, as applicable, prior to the Acquisition Date at or relating to each of CAPL’s or Holiday’s respective locations identified in Appendix A of this Order, including, but not limited to: (1) the retail sale, promotion, marketing, and provision of Fuel Products, and other fuels, automotive products, and related services; and (2) the operation of associated convenience stores and related businesses and services, including, but not limited to the retail sale, promotion, marketing and provision of food and grocery products (including dairy and bakery items, snacks, gum, and candy), foodservice and quick-serve restaurant items, beverages (including alcoholic beverages), tobacco products, general merchandise, ATM services, gaming and lottery tickets and services, money order services, car wash services, and all other businesses and services associated with the business operated or to be operated at each location identified in Appendix A of this Order.
- FF. “Retained Assets” means:
1. Respondents’ Brands, except with respect to any purchased Inventories (including private label inventory);
  2. Tangible assets that are not located at any site of the Retail Fuel Outlet Business (unless included in the Retail Fuel Assets pursuant to Paragraph I.BB.2.); and
  3. Intellectual property; *provided, however,* that the Retained Assets shall not include software that cannot readily be purchased or licensed from sources other than Respondents or that has been materially modified (other than through user preference settings).
- GG. “Third Party(ies)” means any Person other than the Respondents or an Acquirer.
- HH. “Transition Services” means technical services, personnel, assistance, training, the supply of Products, and other logistical, administrative, and other transitional support as required by an

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

- II. "Transition Services Agreement(s)" means any agreements that receive the prior approval of the Commission between Respondents and an Acquirer to provide, at the option of the Acquirer, Transition Services (or training for an Acquirer to provide services for itself), necessary to transfer the Retail Fuel Assets to the Acquirer and to operate the Retail Fuel Outlet Businesses in a manner consistent with the purposes of this Order.

## II.

**IT IS FURTHER ORDERED** that:

- A. No later than 120 days from the date this Order is issued, Respondents shall divest the Retail Fuel Assets, absolutely and in good faith, at no minimum price, as an on-going business, to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- B. No later than the Divestiture Date of the Retail Fuel Assets, Respondents shall obtain, at their sole expense, all Consents from Third Parties and all Governmental Permits that are necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to the Acquirer and for the Acquirer to opev]TJ -010 0 Td w 10.5 0 Th

C. Respondents shall:

1. At the option of the Acquirer, and pursuant to a Transition Services Agreement and in a manner that receives the prior approval of the Commission, provide Transition Services to the Acquirer for a period of twelve (12) months from the Divestiture Date;
2. Provide the Transition Services at a price not to exceed Cost and of a quality and quantity sufficient for the Acquirer to operate the Retail Fuel Outlet Business(es) in substantially the same manner as CAPL or Holiday, as applicable, at their respective locations identified in Appendix A of this Order, prior to the Acquisition Date (including the ability to develop new services and products and increase sales of current services and products);

*Provided, however,* that Respondents shall give priority to the Acquirer's requirements for Transition Services over Respondents' own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transition Services;

*Provided further* that (i) Acquirer may terminate any Transition Services at any time upon commercially reasonable notice to the Respondents and without cost or penalty to the Acquirer and (ii) at Acquirer's request, Respondents shall file with the Commission any request for prior approval to extend the term of any Transition Services needed to achieve the purposes of this Order, so long as the total duration of any Transition Services does not exceed eighteen (18) months (including the initial twelve (12) month term); and

*Provided further* that Respondents shall not seek to limit the damages (such as indirect, special, and consequential damages) that Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to Transition Services.

- D. At the Acquirer's option, Respondents shall grant a worldwide, royalty-free, fully paid-up license to the Acquirer to use any of Respondents' Brands as are applicable to the Retail Fuel Assets as part of any Transition Services Agreement that Respondents may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s).
- E. The purpose of the divestiture of the Retail Fuel Assets is to ensure the continued use of the assets in the same businesses 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 -0.002 Tw 4.597 y



**IV.**

**IT IS FURTHER ORDERED**

- B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:

D. The Commission may require the Monitor and each of the Monitor's consultants,





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 sixty (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 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 VI.
- 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.

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notification need not be made to the United States Department of Justice, and

- B. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

**IX.**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
  - 1. Thirty (30) days from the date this Order is issued and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraph II. of this Order; and
  - 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission or its staff may request.
- B. With respect to the divestiture required by Paragraph II.A. of this Order, Respondents shall include in its compliance reports (i) the status of the divestiture and transfer of any of the Retail Fuel Assets; (ii) a description of all substantive contacts with a proposed acquirer; and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondents have completed such divestiture and the date the divestiture was accomplished.

**X.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of the Respondents;
- B. Any proposed acquisition, merger, or consolidation of the Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

**XI.**

**Public**

