

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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In the Matter of)	
)	
Alimentation Couche-Tard Inc.,)	Docket No. C-4635
a corporation; and)	
)	
CrossAmerica Partners LP,)	
a limited partnership.)	
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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 Oliver Acquisition Corp.) of certain equity interests of Holiday Companies subsidiaries, and ACT's affiliate CrossAmerica Partners LP (together, "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 Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft 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 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 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, makes the following jurisdictional findings, and issues this Order to Maintain Assets

ers; (g) the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Governmental entities; or (h) is disclosed in obtaining legal advice.

- J. "Consent" means any approval, consent, ratification, waiver, or other authorization.
- K. "Contract(s)" means all agreements, contracts, licenses, leases (including, but not limited to, ground leases and subleases), consensual obligations, binding commitments, promises and undertakings (whether written or oral and whether express or implied), whether or not legally binding.
- L. "Decision and Order" means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- M. "Divestiture Agreement" means any agreement between Respondent (or between a Divestiture Trustee) and an Acquirer to divest the Retail Fuel Assets and any ancillary

S. "Inventories" means all inventories

BB. "Transition Services" means technical services, personnel, assistance, ~~the~~ ^{the} supply of Products and other logistical, administrative, and other transitional support as required by an Acquirer and approved by the Commission to facilitate the transfer of the Retail Fuel Assets from the Respondents to an Acquirer, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, ~~accounts r~~ ^{accounts r} ceivable, accounts payable, employee benefits, payroll, pensions, human resources, in-

each of the Retail Fuel Assets. Among other actions as may be necessary to comply with these obligations, Respondents shall, without limitation:

1. Maintain all operations at each of the Retail Fuel Assets in the regular and ordinary course of business, in accordance with past practice, including maintaining customary hours of operation and departments
2. Use best efforts to retain employees at each of the Retail Fuel Assets when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice, and not transfer any employees from any of the Retail Fuel Assets
3. Provide each employee of the Retail Fuel Assets with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Retail Fuel Assets
4. Not transfer inventory from any Retail Fuel Asset other than in the regular and ordinary course of business in accordance with past practice;
5. Make all payments required to be paid under any Contract

11. Continue at least at their scheduled pace, any additional expenditures for each of the Retail Fuel Assets authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
12. Provide such resources as may be necessary to respond to competition and prevent any diminution in sales at each of the Retail Fuel Assets;
13. Make available for use by each of the Retail Fuel Assets-4(r)-1(es)-5(; 9(l 659 Td [(t)-d)-5

III.

IT IS FURTHER ORDERED that, pending divestiture of the Retail Fuel Assets

A. Respondents shall not, and shall assure that employees, agents, and representatives shall not

1. Receive, access, have access to, use, directly or indirectly, any Confidential Business Information, other than as necessary to:

a. Comply with the requirements of the Orders

b. Perform their obligations to the Acquirer under the terms of any Divestiture Agreement, including providing Transition Services pursuant to a Transition Services Agreement

c. Comply with financial reporting requirements, defend legal claims, or as otherwise required by applicable law; and

2. Disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed).

B. Respondents shall institute appropriate procedures and requirements to ensure that the above (nc)4(i)-2(a) appoints shall in 20(or)3(uo-4(t)Tces)-5(AobMCID 8)9 0 Td [(, or)-7(a)4e (i)

2. Monitor the implementation and enforce the terms of Paragraph III. as to any of Respondents' employees, agents, and representatives, and take such actions necessary to cause each such Person to comply with the terms of Paragraph III.,

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

V.

IT IS FURTHER ORDERED that within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets; provided, however, that after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with and submitted to the Commission on the same ~~time~~ ^{timing} as reports required to be submitted by the Respondents pursuant to the Decision and Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order to Maintain Assets.

VI.

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;
- 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 the Orders.

VII.

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 upon five (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 to Maintain Assets which copying services shall be provided by the Respondents at ~~expense~~ ^{expense}; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

VII I.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate

- 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;
- B. The day after Respondents complete the divestiture required by Paragraph II.A. of the Decision and Order provided, however, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate the day after the Decision and Order becomes final; or
- C. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED December 15, 2017



