

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

_____)	
In the Matter of)	
)	
Global Partners LP,)	
a limited partnership, and)	Docket No. C-
)	
Richard Wiehl,)	
a natural person.)	
_____)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Global Partners LP of certain retail service station and convenience store assets from Respondent Richard Wiehl (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) 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 the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public record for a period of 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 issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Global Partners LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 800 South Street, Suite 500, Waltham, Massachusetts, 02454-9161.
2. Respondent Richard Wiehl is a natural person with his office and principal place of business located at 497 Bic Drive, Milford, Connecticut 06461.
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. Definitions

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement.

- M. Not terminate the operations of the Retail Fuel Business relating to the Retail Fuel Assets;
- N. Preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, site operators, and others having business relationships with the Retail Fuel Business relating to the Retail Fuel Assets;
- O. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Retail Fuel Business relating to the Retail Fuel Assets, including:
 - 1. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - 2. Not transferring any employees from the Retail Fuel Business relating to the Retail Fuel Assets to any of Respondents' assets or businesses that Respondents will not divest.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Locations and related Retail Fuel Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

III. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Retail Fuel Assets to the Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to Business Information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the Business Information.
- B. At the option of the Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Retail Fuel Assets to the Acquirer and (2) allow the Acquirer to operate the acquired Retail Fuel Assets in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Acquisition.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);

2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
3. For a period sufficient to meet the requirements of Section III, which shall be, at the option of the Acquirer, for up to 15 months after the Divestiture Date;

Provided, however, that within 15 days after a request by the Acquirer, Respondents shall file with the Commission a written request to extend the time period for providing Transitional Assistance in order to achieve the purposes of this Order.

- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of any agreement relating to Transitional Assistance.

IV. Employees

IT IS FURTHER ORDERED that:

- A. Until 6 months after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Retail Fuel Assets to evaluate independently and offer employment to any Retail Fuel Employee.
- B. Respondents shall:
 1. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all Retail Fuel Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Retail Fuel Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Retail Fuel Employees;
 3. Remove and not enter into any impediments within the control of Respondents that may deter Retail Fuel Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to an Retail Fuel Employee who receives an offer of employment from the Acquirer; *provided, however,* that nothing in this Order shall be construed to require Respondents to terminate the

employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Retail Fuel Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, responding to investigations, or enforcing actions threatened or brought against the Retail Fuel Assets or any Divestiture Locations, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Section V, Respondents shall limit such disclosure or use (1) only to the extent such information is required, (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A, and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
 - C. Respondents shall enforce the terms of Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Monitor

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint a Person to serve as MonroyeemC. o (nt)-2 (Ap(onr)3a)4 (pp)4 .24 -1.15 Td[R]-3 (e)4 (s)-1 (po
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to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

D. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under the designated Sections of this Order, and files a final report.

E. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the

Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;

2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
 3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
 4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
 5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.
- F. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.
- G. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.
- Respondents:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Section VII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the

materials and information received in connection with the performance of the Divestiture Trustee's duties.

- F. 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 Section VII.
- G. 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.

VIII. Prior Approval

IT IS FURTHERED ORDERED that Respondent Global shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, commission franchise interest, or any other interest, in whole or in part, in any Retail Fuel Business in any Prior Approval Location.

X. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent Global shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and
 - 2. Submit each complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:

2. Each

office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all