

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission (“Commission”) has accepted an Agreement Containing Consent Order (“Consent Agreement”) from ARKO Corp., GPM Investments, LLC, GPM Southeast, LLC, and GPM Petroleum, LLC (collectively “Respondents”). The Consent Agreement is designed to remedy the anticompetitive effects that resulted from GPM’s acquisition of retail fuel assets from Corrigan Oil Company (“Corrigan”).

Pursuant to an Asset Purchase Agreement dated March 8, 2021, GPM Petroleum, LLC, and GPM Southeast, LLC, which are directly controlled by GPM Investments, LLC (collectively “GPM”) and indirectly controlled by ARKO Corp., acquired 60 branded Express Stop retail fuel locations in Michigan and Ohio from Corrigan (the “Acquisition”). GPM consummated the Acquisition in May 2021 for total consideration of approximately \$94 million. As part of the Asset Purchase Agreement, Corrigan agreed not to compete for a period of time and within a spelocal markets in Michigan, and for the retail sale of diesel fuel in one of those same local markets. The Commission’s Complaint also alleges that the noncompete agreements violated 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, by unreasonably lessening potential competition for the retail sale of gasoline and diesel fuel within the noncompete territories.

Under the terms of the Decision and Order (“Order”) contained in the Consent Agreement, Respondents are required to rescind parts of an Asset Purchase Agreement with Corrigan and release back to Corrigan retail fuel assets in the five local markets in Michigan. Respondents must transfer these assets back to Corrigan no later than the Closing Date listed in the Reacquisition Agreement of June 28, 2022. In addition, the Order resolves concerns raised by the noncompete agreements in the parties’ Asset Purchase Agreement.

The Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. The Commission issued the accompanying Order as final prior to seeking public comment, as provided in Section 2.34(c) of the Commission’s Rules. This will allow the Commission to enforce the Order if there are any violations of its provisions during the public comment period. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement

The transfer of assets must be completed no later than the Closing Date listed in the Reacquisition Agreement of June 28, 2022. The Order further requires Respondents to maintain the economic viability, marketability, and competitiveness of each retail fuel business until Corrigan reacquires the five retail fuel locations.

The Order also requires Respondents to obtain prior approval from the Commission before acquiring retail fuel assets within a 3-mile driving distance of any of the returned locations for 10 years. The prior approval provision is necessary because the purchase of a retail fuel business near any of the five retail fuel locations would likely raise the same competitive concerns as the Acquisition and may not be reportable be rf(a)4 (p.(lik))-n0Td()Tjw ()0(il f)5 (u)2 (e)6 4 Twen