Complaint

IN THE MATTER OF

ALIMENTATION COUCHE-TARD INC.
AND
CROSSAMERICA PARTNERS LP

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4635; File No. 171 0184
Complaint, December 15, 2017 – Decision, February 15, 2018

This consent order addresses the $1.62 billion acquisition by Alimentation Couche-Tard Inc. of certain assets of Holiday Companies. The complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in ten local markets in Minnesota and Wisconsin. The consent order requires respondents to divest to a Commission-approved buyer (or buyers) certain retail fuel outlets and related assets in ten local markets in Minnesota and Wisconsin.

Participants

For the *Commission*: *Michael E. Blaisdell* and *Nicholas Bush.*

For the *Respondents*: *Brian Byrne* and *David Gelfand, Cleary Gottlieb Steen & Hamilton LLP; Craig Coleman* and *Richard Duncan, Faegre Baker Daniels LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Alimentation Couche-Tard Inc. has, through its wholly owned subsidiary Oliver Acquisition Corp., entered into an agreement to acquire certain equity interests of Holiday Companies ("Holiday") subsidiaries, that such acquisition, if consummated, would violate 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

that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTS

ACT

1. Respondent Alimentation Couche-Tard Inc. ("ACT") is a corporation organized, existing, and doing business under, and by virtue of, the laws of Quebec, Canada, with its office and principal place of business located at 4204 Industriel Boulevard, Laval, Quebec H7L OE3, Canada. Circle K Stores, Inc. ("Circle K") is a wholly owned subsidiary of ACT.

2. Respondent ACT is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

3. Respondent ACT and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

CAPL

4. Respondent CrossAmerica Partners LP ("CAPL") 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. Circle K indirectly owns all of the membership interests in CrossAmerica GP LLC, CAPL's general partner.

5. Respondent CAPL is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

6. Respondent CAPL and the corporate entities under its control are, and at all times relevant herein have been, engaged in

commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

7. Pursuant to an Equity Interest Purchase Agreement dated July 10, 2017, ACT proposes to acquire, through its wholly owned subsidiary Oliver Acquisition Corp., all of the equity interests of certain Holiday subsidiary companies. ACT proposes to acquire the equity interests of the following Holiday subsidiaries, each of which was a Minnesota corporation at the time the Equity Interest Purchase Agreement was signed: Holiday Stationstores, Inc.; Lyndale Terminal Co.; Erickson Petroleum Corporation; Independent Diversified Transportation, Inc.; and Holiday Diversified Services, Inc.

8. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

9. Relevant product markets in which to analyze the effects of the Acquisition are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. No economic or practical alternative to the retail sale of gasoline or diesel at retail fuel outlets exists.

10. Relevant geographic markets in which to analyze the effects of the Acquisition include ten local markets within the following cities: Aitkin, Hibbing, Minnetonka, Mora, Saint Paul, and Saint Peter in Minnesota, and Hayward, Siren, and Spooner in Wisconsin.

11. The relevant geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting the commuting patterns,

traffic flows, and outlet characteristics unique to each market. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes.

IV. MARKET STRUCTURE

12. The Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from three to two in five local markets, and from four to three in five other local markets. The Acquisition would result in a highly concentrated market in each of these ten markets.

V. BARRIERS TO ENTRY

13. Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

VI. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

a. increasing the likelihood that Respondents ACT and CAPL would unilaterally exercise market power in the relevant markets; and

b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in the relevant markets.

VII. VIOLATIONS CHARGED

15. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

The Equity Interest Purchase Agreement entered into by Holiday and Oliver Acquisition Corp. constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this fifteenth day of December, 2017, issues its Complaint against Respondents.

By the Commission.

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 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 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:

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 to Maintain Assets

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other 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. "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 the laws of the State of Minnesota, with its office and principal place of business located at 4567 American Boulevard West, Minneapolis, Minnesota 55437.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means any Person that acquires any of the Retail Fuel Assets pursuant to the Decision and Order.

F. "Acquisition" means the proposed acquisitions described in the Equity Interest Purchase Agreement

by and among 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 the Decision and 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 result of disclosure in breach of the prohibitions of the Orders; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be included in Respondents' mandatory regulatory filings; (d) the disclosure of which is consented to by an Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement; (f) is disclosed in complying with the Orders; (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 Respondents (or between a Divestiture Trustee) and an Acquirer to divest the Retail Fuel Assets and any ancillary agreements relating to the divestiture of the relevant assets (such as for the provision of Transition Services) that has been approved by the Commission pursuant to the Decision and Order, including all amendments, exhibits, agreements, and schedules thereto.

N. "Divestiture Date" means the date on which Respondents (or the Divestiture Trustee) close on a transaction to divest the Retail Fuel Assets.

O. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph VI. of the Decision and Order.

P. "Fuel Products" means refined petroleum gasoline and diesel products.

Q. "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.

R. "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.

S. "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.

T. "Monitor" means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph IV. of this Order to Maintain Assets.

U. "Orders" means the Decision and Order in this matter and this Order to Maintain Assets.

V. "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.

W. "Products" means any Fuel Products or merchandise products relating to the Retail Fuel Outlet Business(es).

X. "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."

Y. "Retail Fuel Assets" means the assets defined in Paragraph I.BB. of the Decision and Order.

Z. "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 to Maintain Assets and whose job responsibilities primarily relate or related to the Retail Fuel Outlet Business.

AA. "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 to Maintain Assets.

BB. "Transition Services" means technical services, personnel, assistance, training, 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 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.

CC. "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 the Orders.

II.

IT IS FURTHER ORDERED that from the date Respondents execute the Consent Agreement until the Divestiture Date:

A. Respondents shall maintain the viability, marketability, and competitiveness of the Retail Fuel Assets, and shall not cause the wasting or deterioration of any of the Retail Fuel Assets. Respondents shall not cause the Retail Fuel Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Retail Fuel Assets.

B. Respondents shall conduct or cause the business of the Retail Fuel Assets to be conducted in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Retail Fuel Assets in the regular and ordinary course of business, in accordance with past practice.

C. Respondents shall not terminate the operation of any of the Retail Fuel Assets, and shall continue to maintain the Inventory of each of the Retail Fuel Assets at levels and selections in the regular and ordinary course of business, in accordance with past practice.

D. Respondents shall maintain the organization and properties of each of the Retail Fuel Assets, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with 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 when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Retail Fuel Assets, in each case in a manner in accordance with past practice;

6. Maintain the Books and Records of each of the Retail Fuel Assets;

7. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at any Retail Fuel Asset to another location, or that indicates a Retail Fuel Asset will close;

8. Not conduct any "going out of business," "close-out," "liquidation," or similar sales or promotions at or relating to any Retail Fuel Asset;

9. Continue existing pricing or advertising practices, including marketing programs and policies, merchandising programs and policies, and price zones for or applicable to any of the Retail Fuel Assets, other than changes or modifications in the regular and ordinary course of business, in accordance with past practices and business strategy;

10. Provide each of the Retail Fuel Assets with sufficient working capital to operate at least at current rates of operation, to meet all capital calls

with respect to such businesses, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Retail Fuel Assets;

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 to prevent any diminution in sales at each of the Retail Fuel Assets;

13. Make available for use by each of the Retail Fuel Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Retail Fuel Assets;

14. Provide support services to each of the Retail Fuel Assets at least at the level as were being provided to such Retail Fuel Assets by Respondents as of the date the Consent Agreement was signed by Respondents; and

15. Maintain, and not terminate or permit the lapse of, any Governmental Permits necessary for the operation of any Retail Fuel Asset;

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

E. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Retail Fuel Assets 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 to 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 Retail Fuel Assets,

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

1. Receive, access, have access to, or 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 Divestiture Agreement, including providing Transition Services pursuant to a Transition Services Agreement; or

   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-described employees, agents, and representatives do not (1) use, disclose, or 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 Respondents execute the Consent Agreement or (ii) fifteen (15) days after the date this Order to Maintain Assets is issued by the Commission, whichever is earlier, Respondents shall:

1. Implement and maintain a process and procedures pursuant to which Confidential Business Information may be disclosed and used only by Respondents' employees, agents, and representatives who (i) require access to such Confidential Business Information in order to provide Transition Services or as otherwise required by the Divestiture Agreement or permitted by the Orders; (ii) only to the extent such Confidential Business Information is required; and (iii) only after such employees, agents, and representatives have signed an appropriate agreement in writing to maintain the confidentiality of such Confidential Business Information; and

2. Monitor the implementation and enforce the terms of Paragraph III. as to any of Respondents' employees, agents, and representatives, and take

such actions as are necessary to cause each such Person to comply with the terms of Paragraph III., including training of Respondents' employees, and all other corrective actions that Respondents would take for the failure of their employees and other personnel to comply with such restrictions, and to protect their own confidential and proprietary information.

IV.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Anthony P. Bartys to serve as Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Divestiture Agreement, including any Transition Services Agreement approved by the Commission.

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:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the obligations set forth in the Orders, and shall act in a fiduciary capacity for the benefit of the Commission;

2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and

facilities relating to compliance with the Orders or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to the Orders;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other 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 such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.

C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after this Order to Maintain Assets is issued and (ii) at any other time as requested

by the staff of the Commission, concerning Respondent's compliance with the Orders.

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

E. The Monitor's power and duties shall terminate when this Order to Maintain Assets terminates at which time the Monitor's power and duties shall continue pursuant to the Decision and Order, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain

Assets on the same terms and conditions as provided in Paragraph IV.

G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.

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 timing as the 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; 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 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 their expense; and

B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

VIII.

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.

Appendix A

Retail Fuel and Convenience Store Properties To Be Divested

Owner	State	Area	Property Name & Address
ACT	Minnesota	Aitkin	Freedom Valu 13 2nd Street NW Aitkin, Minnesota 56431
ACT	Minnesota	Hibbing	Freedom Valu 1135 E. 37th Street Hibbing, Minnesota 55746
ACT	Minnesota	Minnetonka	Freedom Valu 17516 Highway 7 Minnetonka, Minnesota 55345
ACT	Minnesota	Mora	Freedom Valu 900 Highway 65 S Mora, Minnesota 55051
ACT	Minnesota	St. Paul	Super America 1015 Geneva Avenue N St. Paul, Minnesota 55128

ACT	Minnesota	St. Paul	Freedom Valu 2490 County Road FE St. Paul, Minnesota 55110
Holiday	Minnesota	St. Peter	Holiday 123 Saint Julien Street St. Peter, Minnesota 56082
ACT	Wisconsin	Hayward	Holiday 15771 Highway 63 Hayward, Wisconsin 54843
ACT	Wisconsin	Siren	Holiday 24184 WI State Route 35 Siren, Wisconsin 54872
ACT	Wisconsin	Spooner	Holiday 730 S. River Street Spooner, Wisconsin 54801

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, and having duly considered the comment received from an interested person, and having modified the Decision and Order in certain respects, 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 the laws of the State of Minnesota, with its office and principal place of business located at 4567

American Boulevard West, Minneapolis, Minnesota 55437.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means any Person that acquires any of the Retail Fuel Assets pursuant to this Order.

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 result of disclosure in breach of the prohibitions of this Order; (b) is or was developed independently of, and without reference to, any Confidential Business Information; (c) is necessary to be included in Respondents' mandatory regulatory filings; (d) the disclosure of which is consented to by an Acquirer; (e) is necessary to be exchanged in the course of consummating the Acquisition or transactions pursuant to the Divestiture Agreement; (f) is disclosed in complying with the Order; (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. "Cost" means costs not to exceed the actual cost of labor, goods and material, travel, third party vendors, and other expenditures that are directly incurred by Respondents to provide and fulfill any Transition Services; *provided, however*, that with respect to the transitional supply of Fuel Products, Fuel Products Cost shall be calculated net of any rebates, RIN sharing, or other discounts or allowances and shall not include any mark-up, profit, overhead, minimum volume penalties, or other upward adjustments by Respondents.

M. "Divestiture Agreement" means any agreement between Respondents (or between a Divestiture Trustee) and an Acquirer to divest the Retail Fuel Assets and any ancillary agreements relating to the divestiture of the relevant assets (such as for the provision of Transition Services) that has been approved by the Commission pursuant to this Order, including all amendments, exhibits, agreements, and schedules thereto.

N. "Divestiture Date" means the date on which Respondents (or the Divestiture Trustee) close on a transaction to divest the Retail Fuel Assets.

O. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.

P. "Equipment" means all tangible personal property (other than Inventory(ies)) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlet Business associated with the Retail Fuel Assets at each of the locations specified in Appendix A to this Order, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Retail Fuel Outlet Business associated with the Retail Fuel Assets at each 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 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 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 operate any aspect of a Retail Fuel Outlet Business;

Provided, however, that:

1. Respondents may satisfy the requirement to obtain all Consents from Third Party(ies) by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies) that are acceptable to the Commission, or has otherwise obtained all necessary consents and waivers; and

2. With respect to any Governmental Permits relating to the Retail Fuel Assets that are not transferable, allow the Acquirer to operate the Retail Fuel Assets under Respondents' Governmental Permits pending the Acquirer's receipt of its own Governmental Permits, and provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Permits.

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 Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall cooperate and assist with an Acquirer's due diligence investigation of the Retail Fuel Assets and Retail Fuel Outlet Business, including, but not limited to access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.

B. Respondents shall:

1. No later than twenty (20) days before the Divestiture Date (i) identify each Retail Fuel Employee; (ii) allow a Proposed Acquirer to inspect the personnel files and other documentation of each Retail Fuel Employee, to the extent permissible under applicable laws; and (iii) allow a Proposed Acquirer an opportunity to meet with any Retail Fuel Employee outside the presence or

hearing of Respondents, and to make an offer of employment;

2. Remove any contractual impediments that may deter any Retail Fuel Employee from accepting employment with an Acquirer, including, any non-compete or confidentiality provision of an employment contract;

3. Vest all current and accrued benefits under Respondents' retirement plans as of the date of transition of employment with an Acquirer for any Retail Fuel Employee who accepts an offer of employment from an Acquirer; and provide each Retail Fuel Employee with a reasonable financial incentive as necessary to accept an offer of employment with an Acquirer; and

4. Not offer any incentive to any Retail Fuel Employee to decline employment with an Acquirer or otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Retail Fuel Employee by an Acquirer.

C. For a period of one (1) year after Divestiture Date, Respondents shall not solicit or induce any Retail Fuel Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided*, *however*, that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the Retail Fuel Employees; (ii) hire Retail Fuel Employees if employment has been terminated by an Acquirer or who apply for employment with Respondents, so long as such Retail Fuel Employees were not solicited by Respondents in violation of this paragraph; or (iii) hire any Retail Fuel Employees if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that Retail Fuel Employee, or where such an offer has been made and the Retail Fuel Employee has declined the offer.

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information received or maintained by Respondents relating to the Retail Fuel Assets, Retail Fuel Outlet Business, and the post-divestiture Retail Fuel Outlet Business; *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under this Order, the Order to Maintain Assets, or the Divestiture Agreement; or

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Fuel Assets, Retail Fuel Outlet Business or the post-divestiture Retail Fuel Outlet Business, or as required by law.

B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the

terms of this Paragraph IV., including implementation of access and data controls, training of employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

A. At any time after Respondents sign the Consent Agreement, the Commission may appoint David Mock to serve as Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Divestiture Agreement, including any Transition Services Agreement approved by the Commission.

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:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the obligations set forth in this Order and the Order to Maintain Assets, and shall act in a fiduciary capacity for the benefit of the Commission;

2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order and the Order to Maintain Assets or to any other relevant information as the Monitor may

reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order and the Order to Maintain Assets;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other 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 such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after this Order is issued, (ii) no later than ten (10) days after Respondents have completed their obligations as required by Paragraph II. of this Order ("Final Report"), and (iii) at any other

time as requested by the staff of the Commission, concerning Respondents' compliance with this Order and/or the Order to Maintain Assets.

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

E. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph V.C.(ii) of this Order, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same

terms and conditions as provided in this Paragraph V.

G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent

shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, 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 relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trustee agreement described herein to accomplish the divestiture, which shall be subject

to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such

acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further*, *however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other

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 such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;

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.

VII.

IT IS FURTHERED ORDERED that:

A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission ("Notification") in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Prior Notice Outlet.

B. With respect to the Notification:

1. The prior notification required by this Paragraph VII. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the Respondents and not of any other party to the transaction.

2. Respondents shall include a description of the proposed acquisition and provide:

a. A map showing all retail fuel outlets by ownership (*e.g.*, OPIS Corporate Brand) within

five (5) driving miles of the relevant Prior Notice Outlet;

b. For each retail fuel outlet owned by Respondents within five (5) driving miles of the relevant Prior Notice Outlet, a list of the retail fuel outlets that Respondents monitored at any time within the preceding twelve (12) month period (to the extent such information is available); and

c. Respondents' pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph VII.B.2.(b) of this Order.

3. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.

4. Early termination of the waiting periods in this Paragraph VII. may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VIII.

IT IS FURTHERED ORDERED that:

A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondents shall comply with all terms of the Divestiture Agreement. Any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order. In the event of a conflict between the terms of this Order and a Divestiture Agreement, or any ambiguity in the language used in a Divestiture Agreement, the terms of this Order shall govern to resolve such conflict or ambiguity.

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.

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 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, which copying services shall be provided by the Respondents at their expense; and

B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on February 15, 2028.

By the Commission.

Public Appendix A

Retail Fuel and Convenience Store Properties To Be Divested

Owner	State	Area	Property Name & Address
ACT	Minnesota	Aitkin	Freedom Valu 13 2nd Street NW Aitkin, Minnesota 56431
ACT	Minnesota	Hibbing	Freedom Valu 1135 E. 37th Street Hibbing, Minnesota 55746

ACT	Minnesota	Minnetonka	Freedom Valu 17516 Highway 7 Minnetonka, Minnesota 55345
ACT	Minnesota	Mora	Freedom Valu 900 Highway 65 S Mora, Minnesota 55051
ACT	Minnesota	St. Paul	Super America 1015 Geneva Avenue N St. Paul, Minnesota 55128
ACT	Minnesota	St. Paul	Freedom Valu 2490 County Road FE St. Paul, Minnesota 55110
Holiday	Minnesota	St. Peter	Holiday 123 Saint Julien Street St. Peter, Minnesota 56082
ACT	Wisconsin	Hayward	Holiday 15771 Highway 63 Hayward, Wisconsin 54843
ACT	Wisconsin	Siren	Holiday 24184 WI State Route 35 Siren, Wisconsin 54872
ACT	Wisconsin	Spooner	Holiday 730 S. River Street Spooner, Wisconsin 54801

Non-Public Appendix B

Prior Notice Outlets

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Alimentation Couche-Tard Inc. ("ACT") and CrossAmerica Partners LP ("CAPL") (collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from ACT's proposed acquisition of Holiday Companies ("Holiday").

Under the terms of the proposed Consent Agreement, ACT and CAPL must divest to a Commission-approved buyer (or buyers) certain CAPL and Holiday retail fuel outlets and related assets in ten local markets in Minnesota and Wisconsin. ACT and CAPL must complete the divestiture no later than 120 days after the closing of ACT's acquisition of Holiday. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Commission-approved buyer acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission

will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent ACT, a publicly traded company headquartered in Laval, Quebec, Canada, operates convenience stores and retail fuel outlets throughout the United States and the world. ACT is the parent of wholly owned subsidiary Circle K Stores Inc. ("Circle K"). ACT's current U.S. network consists of approximately 7,200 stores located in 42 states. Over 5,000 locations are company-operated, making ACT the largest convenience store operator in terms of company-owned stores and the second-largest chain overall in the country. ACT convenience store locations operate primarily under the Circle K, Kangaroo Express, and Corner Store banners, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent CAPL, a publicly traded master limited partnership headquartered in Allentown, Pennsylvania, markets fuel at wholesale, and owns and operates convenience stores and retail fuel outlets. ACT, via Circle K, acquired CST Brands, Inc. in June 2017, which gave Circle K operational control and management of CAPL. CAPL supplies fuel to nearly 1,200 sites across 29 states.

III. The Proposed Acquisition

On July 10, 2017, ACT, through its wholly owned subsidiary Oliver Acquisition Corp., entered into an agreement to acquire certain Holiday equity interests, including Holiday's retail fuel outlets (the "Transaction"). The Transaction would cement ACT's position as one of the largest operators of retail fuel outlets in the United States.

The Commission's Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the Transaction agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially

lessening competition for the retail sale of gasoline and the retail sale of diesel in ten local markets in Minnesota and Wisconsin.

IV. The Retail Sales of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable – vehicles that run on gasoline cannot run on diesel and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Transaction include ten local markets within the following cities: Aitkin, Hibbing, Minnetonka, Mora, Saint Paul, and Saint Peter in Minnesota, and Hayward, Siren, and Spooner in Wisconsin.

The geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting the commuting patterns, traffic flows, and outlet characteristics unique to each market. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel may be similar to the corresponding geographic markets for retail gasoline as many diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Transaction would substantially increase the market concentration in each of the ten local markets, resulting in highly concentrated markets. In five local markets, the Transaction would reduce the number of competitively constraining independent market participants from three to two. In the remaining five local markets, the Transaction would reduce the

number of competitively constraining independent market participants from four to three.

The Transaction would substantially lessen competition for the retail sale of gasoline and the retail sale of diesel in these local markets. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. The combined entity would be able to raise prices unilaterally in markets where ACT and Holiday are close competitors. Absent the Transaction, ACT and Holiday would continue to compete head to head in these local markets.

Moreover, the Transaction would increase the likelihood of coordination in local markets where only two or three competitively constraining independent market participants would remain. Two aspects of the retail fuel industry make it vulnerable to coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors to observe each other's fuel prices without difficulty. Second, retail fuel outlets regularly track their competitors' fuel prices and change their own prices in response. These repeated interactions give retail fuel outlets familiarity with how their competitors price and how their competitors respond to their own prices.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Proposed Consent Agreement

The proposed Consent Agreement would remedy the Acquisition's likely anticompetitive effects by requiring ACT and CAPL to divest certain CAPL and Holiday retail fuel outlets and related assets in ten local markets.

The proposed Consent Agreement requires that the divestiture occur no later than 120 days after ACT consummates the

Acquisition. This Agreement protects the Commission's ability to obtain complete and effective relief given the small number of outlets to be divested. Further, based on Commission staff's investigation, the Commission believes that ACT can identify an acceptable buyer (or buyers) within 120 days.

The proposed Consent Agreement further requires ACT and CAPL to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the Commission approves a buyer (or buyers) and the divestiture is complete. For up to twelve months following the divestiture, ACT and CAPL must make available transitional services, as needed, to assist the buyer of each divestiture asset.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires ACT and CAPL to provide the Commission notice before acquiring designated outlets in the ten local areas for ten years. The prior notice provision is necessary because acquisitions of the designated outlets likely raise competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date the Respondents' complete divestiture of the outlet. During this period, and until such time as the buyer (or buyers) no longer requires transitional assistance, the Order to Maintain Assets authorizes the Commission to appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF

RED VENTURES HOLDCO, LP
AND
BANKRATE, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4627; File No. 171 0196
Complaint, November 2, 2017 – Decision, March 1, 2018

This consent order addresses the $1.24 billion acquisition by Red Ventures Holdco, LP of certain assets of Bankrate, Inc. The complaint alleges that such transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by significantly reducing competition in the market for third-party paid referral services for senior living facilities. Under the order, Red Ventures will divest Caring.com, a subsidiary of Bankrate.

Participants

For the *Commission*: *Stuart Hirschfeld, Joe Lipinsky, Connor Shively,* and *Maxine Stansell.*

For the *Respondents*: *Peter Guryan, Simpson Thacher & Bartlett; Damian Didden, Wachtell, Lipton, Rosen & Katz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Red Ventures Holdco, LP ("Red Ventures") has entered into a transaction with Respondent Bankrate, Inc. ("Bankrate"), that such transaction, if consummated, would violate 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 that a proceeding in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

I. RESPONDENTS

Red Ventures

1. Respondent Red Ventures is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of North Carolina, with its principal place of business located at 1101 Red Ventures Drive, Fort Mill, SC 29707.

2. Two private equity shareholders, General Atlantic, LLC and Silver Lake Partners, LP, own approximately 34% of Respondent Red Ventures. These shareholders each have one board seat and approval rights over two other board members of the seven person board of directors for Red Ventures GP, LLC, which is the management company that controls Respondent Red Ventures. These two shareholders must also approve certain significant capital expenditures by Red Ventures.

3. Respondent Red Ventures is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. Red Ventures' two private equity shareholders operate the following relevant domains: APlaceforMom.com, SeniorAdvisor.com, Caregivers.com, NursingHomes.com, OurParents.com, and SeniorLiving.net, which generate revenue by providing customer leads for senior living facilities.

4. Respondent Red Ventures and the corporate entities under its control are, and at all times relevant herein have been engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. §44.

Bankrate

5. Respondent Bankrate is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its principal place of business located at 1675 Broadway, 22nd Floor, New York, NY 10019.

6. Respondent Bankrate is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. In connection with providing leads for senior living facilities, Bankrate operates the following relevant domains: Caring.com and SeniorHomes.com.

7. Respondent Bankrate and the corporate entities under its control are, and at all times relevant herein have been engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. §44.

II. THE PROPOSED MERGER

8. Respondent Red Ventures and affiliated companies under its control entered into a merger agreement ("Merger Agreement") with Respondent Bankrate, dated July 2, 2017, pursuant to which Baton Merger Corp., a newly created indirect wholly owned subsidiary of Red Ventures, will merge with and into Bankrate, with Bankrate surviving the merger (the "Merger"). On July 2, 2017, the Merger's total estimated dollar value was $1.4 billion.

9. The Merger is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.

III. THE RELEVANT MARKET

10. A relevant product market in which to analyze the effects of the Merger is third-party paid referral services for senior living facilities. Senior living facilities provide a range of specialized long-term residential living options tailored to the needs of senior consumers. Referral services companies generate and collect customer leads for senior living facilities. Many small referral services generate leads through marketing and networking efforts similar to those used by real estate agents. Larger referral services are internet-based; they attract consumers to their websites through both paid search advertising and search engine optimization, which includes, among other things, creating compelling free content to help the websites appear higher in search engine result pages. The referral services companies

provide leads of qualified consumers to the senior living facilities. The senior living facilities' sales staff then contacts the consumers and seeks to consummate sales. When a consumer moves into a senior living facility, the senior living facility pays the referral services company a referral fee, typically based on a percentage of the first month's rent and care.

11. The relevant geographic market in which to analyze the effects of the Merger is the United States. Although the individual looking to move into a senior living facility has highly localized interests, large third-party paid referral services companies, like those controlled by the Respondents, compete on a nationwide basis to generate, collect, and refer qualified leads to senior living facilities located throughout the United States.

12. If there were a 5-10 percent post-merger price increase, senior living facilities likely would not switch to other lead sources in sufficient numbers to make the post-merger price increase unprofitable.

IV. MARKET STRUCTURE

13. Respondent Red Ventures' two large private equity shareholders jointly own A Place for Mom.com ("APFM"), which is the largest third-party paid referral service for senior living facilities.

14. Respondent Bankrate's Caring.com is generally recognized as the second largest third-party paid referral service for senior living facilities and its website claims to have the largest volume of traffic for individuals seeking information and support for placement of seniors into senior living facilities.

15. Caring.com is APFM's closest competitor. In addition to being the two largest third-party paid referral services for senior living facility operators, the two companies have similar business models. They both are internet-based referral services providers that compete to attract consumers via websites with national reach. They enter into contracts with senior housing operators both locally and nationally. Due to the popularity of its website, Caring.com represents one of APFM's most serious competitive

threats. Besides APFM and Caring.com, there are numerous small third-party paid referral services for senior living facility operators, each with a negligible share of the relevant market.

V. BARRIERS TO ENTRY

16. There are substantial barriers to entering the third-party paid referral service for senior living facilities market. Network and scale effects on both the acquisition of potential leads and the supply of qualified leads to senior living facilities are significant. Achieving minimal viable scale means that entry into the relevant market would not be timely, likely, or sufficient in scope to deter or counteract the anticompetitive effects of the Merger.

VI. EFFECTS OF THE MERGER

17. The effects of the Merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 by:

a. increasing the likelihood that Respondent Red Ventures would unilaterally exercise market power in the relevant market; and

b. increasing the likelihood of or facilitating coordinated interaction between APFM and Caring.com in the relevant market.

VII. VIOLATIONS CHARGED

18. The Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Merger Agreement entered into by Respondents Red Ventures and Bankrate constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this second day of November, 2017, issues its complaint against Respondents.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Baton Merger Corp. ("Baton"), a wholly-owned subsidiary of Red Ventures Holdco, L.P., ("Red Ventures"), and Bankrate, Inc. ("Bankrate"), collectively "Respondents," and 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 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 determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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 the following Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

1. Respondent Red Ventures Holdco, LP, is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its headquarters and principal place of business located at 1423 Red Ventures Drive, Fort Mill, SC 29707.

2. Respondent Bankrate, Inc., 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 1675 Broadway, 22nd Floor, New York, NY 10019.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

A. "Red Ventures" means Red Ventures Holdco, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Red Ventures

Holdco, L.P., including, but not limited to, Baton Merger Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Red Ventures includes Bankrate, after the Merger Date.

B. "Bankrate" means Bankrate, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Bankrate, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Red Ventures and Bankrate, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Caring.com Held Separate Business" means Caring.com, the Caring.com Assets, the Caring.com Business, and the Caring.com Held Separate Employees.

F. "Caring.com Held Separate Employees" means the Caring.com Employees, including the Caring.com Key Employees.

G. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of the final Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of the final Decision and Order by the Commission.

H. "Hold Separate Period" means the time period beginning as of the date on which Respondents sign

the Consent Agreement in this matter, and shall terminate pursuant to the provisions of Paragraph IX. of this Hold Separate Order.

I. "Monitor" means any monitor appointed pursuant to Paragraph V. of this Hold Separate Order or Paragraph V. of the Decision and Order.

J. "Orders" means the Decision and Order and this Hold Separate Order.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

A. Respondents shall take such actions as necessary to maintain the full economic viability, marketability, and competitiveness of the Caring.com Held Separate Business, and shall prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of the Caring.com Held Separate Business, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair the Caring.com Held Separate Business or any assets related thereto.

B. Until Respondents have fully divested the Caring.com Assets, Respondents shall:

1. Keep and hold the Caring.com Held Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order and shall vest the Caring.com Held Separate Business with all rights, powers, and authority necessary to conduct its business; and

2. Not exercise direction or control over, or influence directly or indirectly, the Caring.com Held Separate Business or any of its operations, or the

Monitor, except to the extent that Respondents must exercise direction and control over the Caring.com Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws.

C. Respondents shall maintain the operations of the Caring.com Held Separate Business in the regular and ordinary course of business and in accordance with their past practice (including regular repair and maintenance of the assets of such business) and shall use their best efforts to preserve the existing relationships with the following: customers; suppliers; vendors and distributors; employees; and others having business relationships with the Caring.com Held Separate Business. Respondents' responsibilities pursuant to this Paragraph II.C. shall include, but are not limited to, the following:

1. Respondents shall provide the Caring.com Held Separate Business with sufficient capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Caring.com Held Separate Business;

2. Respondents shall continue, at least at their scheduled pace, any additional expenditures for the Caring.com Held Separate Business authorized prior to or as of July 2, 2017, including, but not limited to, all research, development, manufacture, distribution, marketing, and sales expenditures;

3. Respondents shall provide such resources as may be necessary to respond to competition against the Caring.com Held Separate Business and/or prevent any diminution of sales related to Senior Care Paid Referral Services prior to or as of July 2, 2017;

4. Respondents shall provide such resources as may be necessary to maintain the competitive strength and positioning of Caring.com at major customer accounts;

5. Respondents shall make available for use by the Caring.com Held Separate Business funds sufficient to perform all routine maintenance of the Caring.com Held Separate Business;

6. Respondents shall provide the Caring.com Held Separate Business with such funds necessary to maintain the viability, marketability, and competitiveness of the Caring.com Held Separate Business;

7. Respondents shall provide the same or equivalent support services to the Caring.com Held Separate Business as were being provided to this business by Respondent Bankrate prior to or as of July 2, 2017; and

8. Respondents shall cooperate with the Monitor in the performance of his or her obligations under Paragraph V. of this Hold Separate Order;

provided, *however*, that: (i) Respondents' personnel providing services to the Caring.com Held Separate Business must maintain all Caring.com Confidential Business Information on a confidential basis, and except as expressly permitted by the Orders, shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise transmitting such information to or with any person whose employment involves Respondents' retained businesses, other than the Caring.com Held Separate Business; and (ii) such personnel shall also execute appropriate confidentiality agreements prohibiting the disclosure of any Caring.com Confidential Business Information in accordance with Paragraph IV.D. of this Hold Separate Order.

D. The purpose of this Hold Separate Order is to (1) maintain and preserve the Caring.com Held Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestiture required by the Decision and Order is achieved; (2) assure that no Caring.com Confidential Business Information is exchanged between Respondents and the Caring.com Held Separate Business except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall cooperate with, and take no action to interfere with, or impede the ability of: (1) the Monitor, (2) any Caring.com Held Separate Employee, or (3) any of Respondents' employees providing support services to the Caring.com Held Separate Business, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order.

B. Respondents shall cooperate with and assist the proposed Acquirer of the Caring.com Held Separate Business to evaluate independently and retain the Caring.com Employees, such cooperation to include at least the following:

1. Not later than forty-five (45) days before the Divestiture Date, Respondents shall, to the extent permitted by applicable law: (i) provide the proposed Acquirer a list of all Caring.com Held Separate Employees, identifying which Persons are Caring.com Key Employees; and (ii) provide Employee Information for each Person on the list;

2. Not later than thirty (30) days before the Divestiture Date, Respondents shall provide the proposed Acquirer with:

    a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Caring.com Employee;

    b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and

    c. to make offers of employment to any Caring.com Employee;

3. Respondents shall: (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Caring.com Employee; (ii) not offer any incentive to any Caring.com Employee to decline employment with a proposed Acquirer; (iii) not make any counteroffer to any Caring.com Employee who receives a written offer of employment from a proposed Acquirer; and (iv) remove any impediments within the control of Respondents that may deter any Caring.com Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer;

provided, *however*, that nothing in this Hold Separate Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

C. Respondents shall provide reasonable financial incentives:

1. to the Caring.com Held Separate Employees including the continuation of all employee benefits offered by Respondents (*i.e.*, regularly schedule or merit raises and bonuses, and regularly scheduled vesting of all pension benefits) during the Hold Separate Period, to encourage such employees to continue in his/her position with the Caring.com Business until the Divestiture Date; and

2. to the Caring.com Key Employees as needed to facilitate the employment of such employees by the proposed Acquirer.

IV.

IT IS FURTHER ORDERED that:

A. During the Hold Separate Period, Respondents shall not:

1. Possess or control any APFM Confidential Business Information; or

2. Request, solicit, seek, receive, obtain, or otherwise have access to, directly or indirectly, any APFM Confidential Business Information from any Person(s), including the Firewalled Entities; or

3. Provide any services to or have any business dealings with the Firewalled Entities as related to APFM.

B. During the Hold Separate Period, Respondents shall not, except as expressly permitted by or as necessary to comply with this Hold Separate Order:

1. Provide, disclose, share, convey, discuss, exchange, circulate, or otherwise grant access to,

directly or indirectly, any Caring.com Confidential Business Information, including information related to the divestiture of the Caring.com Held Separate Business, to or with any Person(s), including the Firewalled Individuals; or

2. Use, directly or indirectly, the Caring.com Confidential Business Information for any purpose.

C. As of the date Respondents sign the Consent Agreement, Respondents shall: (1) take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, Caring.com Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such Confidential Business Information pursuant to the terms of this Order; and (2) with the advice and assistance of the Monitor, develop and implement procedures and requirements with respect to such Confidential Business Information to ensure that:

1. The Caring.com Held Separate Business does not provide, disclose, or otherwise make available any Caring.com Confidential Business Information to the Firewalled Entities, and is in compliance with the requirements of the Orders;

2. Employees of Respondents' retained businesses, including the Firewalled Individuals, do not request, solicit, seek, receive, obtain, use or otherwise have access to, directly or indirectly, any Caring.com Confidential Business Information from the Caring.com Held Separate Business;

provided, however, employees of Respondents' retained businesses are not in violation of this Paragraph if: (1) they provide or are involved in the provision of Transition Services under the (i) Hold Separate Order or the Decision and Order, or (ii) any Remedial Agreement; or (2) are complying with financial reporting requirements or environmental,

health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Caring.com Held Separate Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Caring.com Held Separate Business, or as required by law;

3. The Firewalled Individuals are:

   a. In compliance with the requirements of the Orders;

   b. Prohibited from, directly or indirectly, influencing or attempting to influence or participate in any vote of Respondents' Board pertaining to the Caring.com Held Separate Business; and

   c. Prohibited from participating in any discussions or communications with Respondents and the Firewalled Entities about the Caring.com Held Separate Business.

D. As part of the procedures and requirements described in Paragraph IV.C. of this Hold Separate Order, Respondents shall:

1. Within ten (10) days of the date Respondents sign the Consent Agreement, require all Respondents' employees who have access to Caring.com Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided, however,* for Respondents' employees with access to Caring.com Confidential Business Information who have clerical positions but no operational or commercial responsibilities, Respondents may send an appropriate notification regarding the prohibitions and confidentiality

requirements of this Order by email with return receipt requested or other similar transmission, and shall keep a file of such return receipts for one (1) year;

2. Require and enforce compliance with appropriate remedial action in the event of non-compliant access, use, or disclosure of Caring.com Confidential Business Information in violation of this Order;

3. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's requirements.

V.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Hold Separate Order and the Remedial Agreements. The Commission hereby appoints Richard A. Shermer as the Monitor and approves the Monitor Agreement between R. Shermer & Company and Respondents.

B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to the Orders, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

C. The Monitor shall serve until the later of (1) twelve (12) months after the Divestiture Date or (2) the

termination of all Respondents' obligations under all Remedial Agreements; *provided, however,* the Commission may extend or modify this period as may be necessary to accomplish the purposes of the Orders.

D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture, hold separate and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:

   a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements;

   b. Monitoring any Transition Services Agreements; and

   c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowed in the Orders;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreements;

4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V., the term "Monitor" shall include

all persons retained by the Monitor pursuant to Paragraph V.D.5 of this Hold Separate Order;

7. Respondents shall report to the Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders and the Remedial Agreements;

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and as otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents' of their obligations under the Orders and the Remedial Agreements;

9. Respondents may require the Monitor and each of the Monitor's consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.

G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Hold Separate Order, the Decision and Order, and the Remedial Agreements in a manner consistent with the purposes of this Order.

H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders and the Remedial Agreements.

I. A Monitor appointed pursuant to this Hold Separate Order may be, but need not be, the same Person(s) appointed, pursuant to the relevant provisions of the Decision and Order, as either the Monitor or the Divestiture Trustee.

VI.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order 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 Hold Separate Order. 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 the Hold Separate Order.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least (30) days prior to:

A. Any proposed dissolution of such Respondent;

B. Any proposed acquisition, merger, or consolidation of such Respondent; or

C. Any other change in such Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Hold Separate 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 Hold Separate 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 and 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 this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

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.

IX.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

A. Three (3) business 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 the Caring.com Assets as required by the Decision and Order.

By the Commission.

NON-PUBLIC APPENDIX A

[Monitor Agreement]

[Redacted From the Public Record Version, But Incorporated By Reference]

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Baton Merger Corp. ("Baton"), a wholly-owned subsidiary of Red Ventures Holdco, L.P., ("Red Ventures"), and Bankrate, Inc. ("Bankrate"), collectively "Respondents," and 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 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 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 its Complaint and an Order to Hold Separate and 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 issues the following Decision and Order ("Order"):

1. Respondent Red Ventures Holdco, LP, is a limited partnership organized, existing, and doing business

under and by virtue of the laws of the State of North Carolina, with its headquarters and principal place of business located at 1423 Red Ventures Drive, Fort Mill, SC 29707.

2. Respondent Bankrate, Inc., 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 1675 Broadway, 22nd Floor, New York, NY 10019.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of 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, and all other definitions used in the Hold Separate Order, shall apply:

A. "Red Ventures" means Red Ventures Holdco, L.P., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Red Ventures Holdco, L.P., including, but not limited to, Baton Merger Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Red Ventures includes Bankrate, after the Acquisition.

B. "Bankrate" means Bankrate, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, including, but not limited to, Caring.com, partnerships, divisions, groups, and affiliates in each case controlled by Bankrate, Inc., and the respective

directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Red Ventures and Bankrate, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means the Person approved by the Commission to acquire the Caring.com Assets pursuant to this Decision and Order.

F. "Acquisition" means the proposed merger of Baton Merger Corp., a wholly-owned subsidiary of Respondent Red Ventures, and Respondent Bankrate as described in the Agreement and Plan of Merger by and among Red Ventures Holdco, LP, Baton Merger Corp., and Bankrate, Inc., dated July 2, 2017, and any amendments, exhibits, or schedules attached thereto.

G. "Acquisition Date" means the date on which the Acquisition closes.

H. "APEX" means APEX Super Parent, L.P., a limited partnership 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 Park Avenue Plaza, 55 East 42nd Street, 33rd Floor, New York, NY 10055.

I. "APFM" means A Place For Mom, Inc., a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Washington, with its headquarters and principal place of business located at 701 5th Avenue, Suite 3200, Seattle, WA 98104.

J. "APFM Confidential Business Information" means all Confidential Business Information relating to APFM.

K. "Board" means any board of directors or board of managers of a specified entity.

L. "Business Records" means all originals and all copies of any operating, financial or other information, documents, data, 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, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

M. "Caring.com" means Caring, Inc., 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 2600 South El Camino Real, Suite 300, San Mateo, CA 94403.

N. "Caring.com Assets" means all of Respondents' rights, title, and interests in and to all of Caring.com's tangible and intangible assets and property of any kind, wherever located, used for or related to Caring.com or the Caring.com Business, and all improvements or additions thereto, including, but not limited to:

1. The Caring.com Corporate and Technical Facility;

2. All Tangible Personal Property;

3. All Caring.com Contracts;

4. All Intellectual Property relating to Caring.com;

5. All intangible rights and property, including goodwill, going concern value, and telephone and email address and listings;

6. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to Caring.com, and all pending applications therefor or renewals thereof;

7. All Business Records relating to Caring.com; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Caring.com Assets to be divested and Respondents' other products or businesses, and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Caring.com Assets to be divested; or (b) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information, then Respondents may keep such records and provide copies with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, Respondents shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

O. "Caring.com Business" means the business of Caring.com related to the provision of paid referral services for senior living facilities, and all other operations and businesses related to Caring.com or the Caring.com Assets, including, but not limited to, any online website providing, among other things: (1) original editorial content related to senior care; (2) any comprehensive online senior living community directory(ies) for the United States; (3) any local directory(ies) covering other senior caregiving services; and (4) access to support and advice from Caring.com Family Advisors.

P. "Caring.com Confidential Business Information" means all Confidential Business Information relating to Caring.com, the Caring.com Assets, and the Caring.com Business.

Q. "Caring.com Contracts" means all agreements and contracts with customers (including, but not limited to, Senior Care Paid Referral Services Contracts), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related to the Caring.com Business.

R. "Caring.com Corporate and Technical Facility" means the facility located at 2600 South El Camino Real, Suite 300, San Mateo, CA 94403, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondents, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the Caring.com Business.

S. "Caring.com Family Advisor" means any Caring.com Employee who provides individualized support and information to potential clients and their families regarding potential entry into a senior care facility or other senior caregiving services.

T. "Caring.com Employee(s)" means any Person employed by Caring.com on a full-time, part-time, or contract basis as of, and at any time after July 2, 2017: (1) at the Caring.com Corporate and Technical Facility; (2) as a Caring.com Family Advisor, information technology specialist, or sales and/or marketing support staff; or (3) otherwise identified by agreement between Respondents and an Acquirer and made a part of a Remedial Agreement.

U. "Caring.com Key Employee(s)" means those Caring.com Employees who are identified in Non-Public Confidential Appendix B attached to this Order.

V. "Confidential Business Information" means any information that is not in the public domain. The term "Confidential Business Information":

1. Includes, but is not limited to, all operating, financial or other documents, information, data, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, papers, instruments, and all other materials, whether located, stored, or maintained in paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: bid proposals and all related documents, data, and materials, including initial bid terms, final bid terms, documents that support cost and rate structures underlying the bids; term sheets, responses to requests for proposals or other solicitation for bids; customer files and records; customer contracts; customer lists; customer

service and support materials; customer approvals and related information; price lists; credit records and information; correspondence; referral sources; vendor and supplier agreements; vendor and supplier files and lists; advertising, promotional and marketing materials, including website content; sales materials; marketing methods, research and developments data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; cost information; expansion and other plans and projects; proprietary design and engineering standards; operating guides and manuals; employee personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind; and

2. Excludes the following:

   a. Information that is protected by attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; or

   b. Information that Respondents demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:

      i. was or becomes generally available to the public other than as a result of disclosure by Respondents;

      ii. is necessary to be included by Respondents' mandatory regulatory filings; *provided, however,* that Respondents shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

iii. was available, or becomes available, to the public other than as a result of disclosure by Respondents;

iv. is information the disclosure of which is consented to by the Acquirer;

v. is necessary to be exchanged in the course of consummating the Acquisition or the transaction under any Remedial Agreement;

vi. is disclosed in complying with this Order;

vii. is information 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 Government Entities; or

viii. is disclosed obtaining legal advice.

W. "Consents" means all consents, approvals, permissions, waivers, ratifications, or other authorizations that are necessary to effect the complete transfer and divestiture of the Caring.com Assets to an Acquirer and for the Acquirer to operate any aspect of the Caring.com Business.

X. "Copyrights" means all rights to all original works of authorship of any kind owned or created by or for or related to Caring.com, the Caring.com Assets, or the Caring.com Business, and any registrations and applications for registrations thereof, and all copyrightable works, registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith, including, but not limited to, all such rights with respect to promotional materials and educational materials; market research data,

market intelligence reports, and statistical programs (if any) used for marketing and sales research; customer information, promotional, and marketing materials; sales forecasting models; records, including customer lists, sales forces call activity reports, vendor lists, sales data, reimbursement data, and speaker lists.

Y. "Direct Cost" means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.

Z. "Director" means an individual who is elected, or appointed by, or who is an agent or representative of, a specified Person to serve on a Board of a specified entity.

AA. "Divestiture Date" means the date on which Respondents (or a Divestiture Trustee) closes on the divestiture of the Caring.com Assets as required by Paragraph II. (or Paragraph VI.) of this Order.

BB. "Domain Names" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration.

CC. "Employee Information" means, for each Caring.com Employee, a profile prepared by Respondents summarizing the employment history of each employee including, but not limited to, the following information:

1. Name, job title or position, date of hire and effective service date;

2. A specific description of the employee's responsibilities;

3. The base salary or current wages;

4. The most recent bonus paid, aggregate annual compensation for Caring.com Business's last fiscal year and current target or guaranteed bonus, if any;

5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and

7. Copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employee.

DD. "Firewalled Entity(ies)" means APEX, Silver Lake and General Atlantic individually and collectively, and includes the Firewalled Individuals.

EE. "Firewalled Individuals" means the following:

1. All Persons appointed by, approved by, or who otherwise represent Silver Lake as Director on any Board of Respondents; and

2. All Persons appointed by, approved by, or who otherwise represent General Atlantic as Director on any Board of Respondents.

FF. "General Atlantic" means General Atlantic LLC, a limited liability 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 55 East 52nd Street, Park Avenue Plaza, 33rd Floor, New York, NY 10055.

GG. "Geographic Territory" means the United States.

HH. "Government Entities" means any Federal, state, local or non-U.S. government, or any court, legislature,

government agency, or government commission, or any judicial or regulatory authority of any government.

II. "Hold Separate Order" means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Consent Agreement.

JJ. "Hold Separate Period" means the time period beginning as of the date on which Respondents sign the Consent Agreement in this matter, and shall terminate pursuant to the provisions of Paragraph IX. of the Hold Separate Order.

KK. "Intellectual Property" means, and includes without limitation, all:

1. Patents;

2. Copyrights;

3. Trademarks, trade dress, logos, slogans, service marks, Websites and Domain Names, together with all translations, adaptions, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;

4. Marketing Materials;

5. Computer software (including source code, executable code, data, databases, and related documentation);

6. Plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the right to use Patents, know-how, and other intellectual property relating to such plans);

7. Trade secrets, technology, know-how, and confidential or proprietary information (including ideas, research and developments, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information), whether patented, patentable, or otherwise;

8. Licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by Caring.com; and

9. Any other intellectual property used prior to the Divestiture Date in connection with Caring.com or the Caring.com Business; and

10. All rights to obtain and file for Patents, Copyrights, Trademarks, and registrations thereof and to bring suit against a third party for the past, present, or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing.

LL. "Marketing Materials" means all materials used in the marketing or sale of services or products by Caring.com or the Caring.com Business as of the Divestiture Date, including, without limitation, all advertising and display materials, promotional and marketing materials, training materials, educational materials, speaker lists, product data, mailing lists, sales materials, marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs used for marketing and sales research), customer information, sales forecasting models, Website content, and other materials related to the marketing or sale of services or products by Caring.com or the Caring.com Business.

MM. "Monitor" means any monitor appointed pursuant to Paragraph V. of this Order or Paragraph V of the Hold Separate Order.

NN. "Monitor Agreement" means the Monitor Agreement between Respondents and R. Shermer & Company. The Monitor Agreement is attached as Appendix A to this Order.

OO. "Patents" means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

PP. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents.

QQ. "Remedial Agreement(s)" means any agreement between Respondents and the Acquirer (or between a Divestiture Trustee and the Acquirer) that have been approved by the Commission to accomplish the requirements of this Order, including any divestiture or assets purchase agreement(s) related to the Caring.com Assets, any Transition Services Agreement(s), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.

RR. "Senior Care Paid Referral Service Contracts" means contracts with senior care facilities or other senior caregiving service providers for paid referrals to potential clients seeking entry into a senior care facility or senior caregiving services.

SS. "Silver Lake" means Silver Lake Partners LP, a limited partnership 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 2775 Sand Hill Road, Suite 100, Menlo Park, CA 94025.

TT. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by the Caring.com Business, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

UU. "Trademarks" means all proprietary names or designations, registered and unregistered trademarks, service marks, trade names, brand names, commercial names, "doing business as" (d/b/a) names, logos, and slogans, together with all translations, adaptions, derivations, and combinations thereof, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), all common law rights, and all goodwill symbolized thereby and associated therewith.

VV. "Transition Services" means any transitional services required by the Acquirer for the operation of the Caring.com Business including, but not limited to administrative assistance (including, but not limited to, accounting, and information transitioning services), technical assistance, and supply agreements.

WW. "Transition Services Agreement(s)" means any agreement entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

XX. "Website and Domain Names" means the content of the Website(s) located at the Domain Names, the Domain Names, and all Copyrights in such Website(s), to the extent owned by Respondents.

II.

IT IS FURTHER ORDERED that:

A. No later than six (6) months after the Acquisition Date, Respondents shall divest the Caring.com Assets, absolutely and in good faith and at no minimum price, to the Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

B. At the Acquirer's option, and subject to the prior approval of the Commission, Respondents shall provide, at no greater than Direct Cost, Transition Services from knowledgeable employees of Respondents to assist the Acquirer in the transfer of the Caring.com Assets from Respondents to the Acquirer in a timely and orderly manner pursuant to a Transition Services Agreement. The Transition Services Agreement:

1. Shall be for a period of one (1) year following the Divestiture Date, with an opportunity to extend for up to one (1) year at the option of the Acquirer;

2. May be terminated at any time by the Acquirer without cost or penalty to the Acquirer upon commercially reasonable notice to Respondents; and

3. Must include provisions that:

   a. comply with the requirements and prohibitions of Paragraph IV. of this Order to ensure that Caring.com Confidential Business Information remains confidential; and

b. require Respondents, with the concurrence of the Acquirer, to certify in writing to the Commission as to the completion of all Transition Services provided by the Respondents to the Acquirer pursuant to any Transition Services Agreement approved by the Commission.

C. Prior to the Divestiture Date:

1. Respondents shall secure at their sole expense:

a. Consents from all Persons that relate to or are necessary to divest the Caring.com Assets to the Acquirer and for the Acquirer to operate any tangible or intangible assets of the Caring.com Business in a manner that will achieve the purposes of this Order; and

b. Consents from all Persons necessary for the assignment or transfer to the Acquirer of all the Caring.com Contracts;

provided, however, Respondents shall not be required to secure the consent of any Governmental Agency relating to any permit, license, or right that Respondents have no legal right to divest or transfer to the Acquirer; and

provided further, however, the failure of Respondents or the Acquirer to obtain any Consents that relate to or are necessary to divest the Caring.com Assets shall not extend the date by which Respondents must divest the Caring.com Assets.

2. Respondents shall use best efforts to assist the Acquirer to obtain the transfer from Respondents or issuance to the Acquirer of any permit, license, asset, or right that Respondents have no legal right to divest or transfer to the Acquirer.

D. Within ten (10) days of the Divestiture Date, Respondents shall submit to the Acquirer, at Respondents' expense, all Business Records of the Caring.com Assets, in good faith, and in a manner that ensures their completeness and accuracy and that fully preserves their usefulness; *provided, however,* pending complete delivery of all such Business Records of the Caring.com Assets to the Acquirer, Respondents shall provide the Acquirer, and the Monitor with access to all such Business Records of the Caring.com Assets and employees who possess or able to locate such information for the purposes of identifying the books, records, and files directly related to the Caring.com Assets and facilitating the delivery in a manner consistent with this Order.

E. Until Respondents (or the Divestiture Trustee) complete the divestiture and other obligations to transfer the Caring.com Assets as required by this Order, Respondents shall take all actions as are necessary to:

1. Maintain the full economic viability and marketability of the Caring.com Assets and the Caring.com Business;

2. Minimize any risk of loss of competitive potential for the Caring.com Assets;

3. Prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Caring.com Business; and

4. Not sell, transfer, encumber, or otherwise impair the Caring.com Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of Caring.com, the Caring.com Assets, or the Caring.com Business.

F. The purpose of this Paragraph II. is to ensure the continued use of the Caring.com Assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents, minimize the loss of competitive potential for the Caring.com Business, minimize the risk of disclosure or unauthorized use of Caring.com Confidential Business Information; to prevent the destruction, removal, wasting, deterioration, or impairment of the Caring.com Business, except for ordinary wear and tear; and to remedy the potential lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall cooperate with and assist the proposed Acquirer of the Caring.com Assets to evaluate independently and retain the Caring.com Employees, such cooperation to include at least the following:

1. Not later than forty-five (45) days before the Divestiture Date, Respondents shall, to the extent permitted by applicable law: (i) provide the proposed Acquirer a list of all Caring.com Employees, identifying which Persons are Caring.com Key Employees; and (ii) provide Employee Information for each Person on the list;

2. Not later than thirty (30) days before the Divestiture Date, Respondents shall provide the proposed Acquirer with:

   a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Caring.com Employee;

b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and

c. to make offers of employment to any Caring.com Employee;

3. Respondents shall: (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Caring.com Employee; (ii) not offer any incentive to any Caring.com Employee to decline employment with a proposed Acquirer; (iii) not make any counteroffer to any Caring.com Employee who receives a written offer of employment from a proposed Acquirer; and (iv) remove any impediments within the control of Respondents that may deter any Caring.com Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed 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.

B. Respondents shall provide reasonable financial incentives:

1. to the Caring.com Employees including the continuation of all employee benefits offered by Respondents (*i.e.*, regularly schedule or merit raises and bonuses, and regularly scheduled vesting of all pension benefits) during the Hold Separate Period, to encourage such employees to continue in his/her position with the Caring.com Business until the Divestiture Date; and

2. to the Caring.com Key Employees as needed to facilitate the employment of such employees by the proposed Acquirer.

C. For a period of two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Caring.com Employee employed by the Acquirer or any Person employed by the Acquirer whose job responsibilities predominantly relate to the Caring.com Business, to terminate his or her employment relationship with the Acquirer;

provided, however, Respondents may: (1) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Caring.com Employee; and (2) hire employees of the Caring.com Business who apply for employment with Respondents, so long as such individuals were not solicited by Respondents in violation of this paragraph;

provided further, however, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any employee of the Caring.com Business if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by the Acquirer.

IV.

IT IS FURTHER ORDERED that:

A. Beginning on the date the Hold Separate Order is issued until six (6) months after the Divestiture Date, Respondents shall not:

1. Possess or control any APFM Confidential Business Information;

2. Request, solicit, seek, receive, obtain, or otherwise have access to, directly or indirectly, any APFM Confidential Business Information from any Person(s), including the Firewalled Entities; or

3. Provide any services to or have any business dealings with the Firewalled Entities as related to APFM.

B. Respondents shall not, except as expressly permitted by or as necessary to comply with the Hold Separate Order or this Order:

1. Provide, disclose, share, convey, discuss, exchange, circulate, or otherwise grant access to, directly or indirectly, any Caring.com Confidential Business Information, including information related to the divestiture of the Caring.com Assets, to or with any Person(s), including the Firewalled Individuals; or

2. Use, directly or indirectly, the Caring.com Confidential Business Information for any purpose.

C. As of the date Respondents sign the Consent Agreement, Respondents shall: (1) take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, Caring.com Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such Confidential Business Information pursuant to the terms of this Order; and (2) with the advice and assistance of the Monitor, develop and implement procedures and requirements with respect to such Confidential Business Information to ensure that:

1. Caring.com or the Caring.com Business does not provide, disclose, or otherwise make available any

Caring.com Confidential Business Information to the Firewalled Entities, and are in compliance with the requirements of this Order;

2. Employees of Respondents' retained businesses, including the Firewalled Individuals, do not request, solicit, seek, receive, obtain, use or otherwise have access to, directly or indirectly, any Caring.com Confidential Business Information from the Caring.com Business;

provided, however, employees of Respondents' retained businesses are not in violation of this Paragraph if: (1) they provide or are involved in the provision of Transition Services under the (i) Hold Separate Order or this Order, or (ii) any Remedial Agreement; or (2) are complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Caring.com Assets or the Caring.com Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against Caring.com or the Caring.com Business, or as required by law;

3. The Firewalled Individuals are:

   a. In compliance with the requirements of this Order;

   b. Prohibited from, directly or indirectly, influencing or attempting to influence or participate in any vote of Respondents' Board pertaining to Caring.com or the Caring.com Business; and

   c. Prohibited from participating in any discussions or communications with Respondents and the Firewalled Entities about Caring.com or the Caring.com Business.

D. As part of the procedures and requirements described in Paragraph IV.C. of this Order, Respondents shall:

1. Within ten (10) days of the date Respondents sign the Consent Agreement, require all Respondents' employees who have access to Caring.com Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided*, *however*, for Respondents' employees with access to Caring.com Confidential Business Information who have clerical positions but no operational or commercial responsibilities, Respondents may send an appropriate notification regarding the prohibitions and confidentiality requirements of this Order by email with return receipt requested or other similar transmission, and shall keep a file of such return receipts for one (1) year;

2. Require and enforce compliance with appropriate remedial action in the event of non-compliant access, use, or disclosure of Caring.com Confidential Business Information in violation of this Order; immediately report any event to the Monitor, if one has been appointed, and to the Commission or its staff; and include detailed information about any event and any remedial action taken by Respondents in Respondents' compliance reports to the Commission; and

3. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's requirements.

V.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Hold Separate Order and the Remedial Agreements. The Commission hereby appoints Richard A. Shermer as the Monitor and approves the Monitor Agreement between R. Shermer & Company and Respondents.

B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.

C. The Monitor shall serve until the later of (1) twelve (12) months after the Divestiture Date or (2) the termination of all Respondents' obligations under all Remedial Agreements; *provided, however,* the Commission may extend or modify this period as may be necessary to accomplish the purposes of this Order and the Hold Separate Order.

D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture, hold separate and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the

Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission, including, but not limited to:

a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order, the Hold Separate Order, and the Remedial Agreements;

b. Monitoring any Transition Services Agreements; and

c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowed in this Order and in the Hold Separate Order;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order, the Hold Separate Order, and the Remedial Agreements;

4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Hold Separate Order, and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Hold Separate Order, and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;

6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.D.6, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.D.5 of this Order;

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order, the Hold Separate Order, and the Remedial Agreements;

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order, the Hold Separate Order, and the Remedial Agreements;

9. Respondents may require the Monitor and each of the Monitor's consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.

G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject

to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Order, the Hold Separate Order, and the Remedial Agreements in a manner consistent with the purposes of this Order.

H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order, the Hold Separate Order, and the Remedial Agreements.

I. A Monitor appointed pursuant to this Order may be, but need not be, the same Person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VI.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Caring.com Assets and otherwise fully complied with the obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Caring.com Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions of this Order.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant

assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, 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 relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transition Services agreements;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; *provided, however,* that the Commission may extend the divestiture period only two (2) times;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further*, *however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the

Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other 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 such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture;

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; and

10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission 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 this Paragraph VI.

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 divestiture required by this Order.

VII.

IT IS FURTHER ORDERED that:

A. The Remedial Agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondents under such agreement.

B. The Remedial Agreements shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all provisions of the Remedial Agreements, and any breach by Respondents of any term of such agreement shall constitute a violation of this Order. If any term of the Remedial Agreements varies from the terms of this Order

("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order. Any failure by the Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.

D. Respondents shall not modify or amend any of the terms of any Remedial 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). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VIII.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:

1. Within thirty (30) days after the date this Order becomes final;

2. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Caring.com Business to an Acquirer;

3. Every three (3) months thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render Transition Services to the Acquirer; and

4. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, setting forth in detail the manner and form in which they have complied and are complying with this Order.

C. At such other times as the Commission may request, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Remedial Agreement.

IX.

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

A. Any proposed dissolution of Respondents;

B. Any proposed acquisition, merger, or consolidation of 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 the Order.

X.

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 and 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 this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

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.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on March 1, 2028.

By the Commission.

Decision and Order

PUBLIC APPENDIX A

Redacted Monitor Agreement

MONITOR AGREEMENT

This Monitor Agreement (this "Agreement"), entered into this 20th day of October, 2017, by and among R. Shermer & Company ("Shermer" or the "Monitor") and Red Ventures Holdco, LP ("Red Ventures") (Shermer and Red Ventures together, the "Parties") provides as follows:

WHEREAS the Federal Trade Commission (the "Commission"), in the Matter of Red Ventures Holdco/Bankrate, File No. 171-0196, has accepted or will shortly accept for public comment an Agreement Containing Consent Orders incorporating a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Orders"), which, among other things, requires Red Ventures to divest Caring.com and certain related assets (the "Caring.com Assets"), as defined in the Orders, and contemplates the appointment of a Monitor to monitor Red Ventures' compliance with its obligations under the Orders;

WHEREAS, the Commission is expected to accept the Agreement Containing Consent Orders and appoint Monitor pursuant to the Orders to monitor Red Ventures' compliance with the terms of the Orders, and Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Red Ventures shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Red Ventures, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Red Ventures or Monitor under the Orders, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Orders, including but not limited to monitoring Red Ventures' compliance with the divestiture, asset maintenance obligations, and other related requirements of the Orders.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Red Ventures' person-

nel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to Red Ventures' compliance with the obligations of Red Ventures under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Red Ventures shall cooperate with any reasonable request of Monitor. Monitor shall give Red Ventures reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Red Ventures' operations. At the request of the Monitor, Red Ventures shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Red Ventures who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

1.3 Compliance Reports. Red Ventures shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) business days after the date on which Red Ventures files such report with the Commission.

1.4 Confidentiality. Monitor shall:

(a) maintain the confidentiality of all confidential information provided to the Monitor by Red Ventures, the acquirer of the Caring.com Assets, any supplier or customer of Red Ventures, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to (i) persons employed by or working with Monitor pursuant to the Orders or (ii) persons employed at the Commission;

(b) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which Red Ventures will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(c) act in a fiduciary capacity for the benefit of the Commission;

(d) maintain a record and inform the Commission of all third parties (other than representatives of the Commission) to whom Confidential Information has been disclosed;

(e) for a period of five (5) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information relating thereto; and

(f) upon the termination of the Monitor's duties under this Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and elec-

tronic materials (including materials that Red Ventures provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Red Ventures to return or destroy materials that Red Ventures provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with Red Ventures' request. Notwithstanding the foregoing, the Monitor shall not be required to return or destroy confidential information contained in an archived computer back-up system for its disaster recovery and/or security purposes, and it may retain a copy of confidential information, subject to the terms of this Agreement, in accordance with its internal record retention procedures for legal or regulatory purposes. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor for ten (10) years after termination of this Agreement. For the avoidance of doubt, the expiration of the ten year period following the termination of this Agreement shall not abrogate the duties under this Section 1.4 which prevent the Monitor's disclosure of any Confidential Information.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, Red Ventures, or any director, officer, employee, agent, consultant or affiliate of the Monitor or Red Ventures, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of Red Ventures, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Orders. Prior to engaging any such parties and prior to commissioning additional work to be performed by a party who has already been so engaged, Monitor shall notify Red Ventures of its intention to do so, and provide an estimate of the anticipated costs.

2.2 Monitor Compensation. Red Ventures shall pay Monitor in accordance with the fee schedule and procedure attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the acquirer of the Caring.com Assets, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time.

(a) In addition, Red Ventures shall pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to the first paragraph in Article II.

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Workspace and Access. To the extent available, Red Ventures will provide the Monitor with temporary workspace and access to office equipment at sites the Monitor is required to visit in order to fulfill its obligations under this Agreement. Monitor Agrees to comply with Red Ventures' safety and security regulations, instructions and procedures while at Red Ventures' sites.

2.4 Monitor's Indemnification; Limitation on Liability. Red Ventures shall indemnify and hold harmless Monitor and its employees and agents against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other 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 such losses, claims, damages, liabilities, or expenses result from Monitor's gross negligence or willful misconduct. Monitor shall not be liable hereunder for any amount in excess of the fees paid to it, except in the event of Monitor's gross negligence, willful misconduct or fraud. Monitor shall not be liable hereunder for any incidental, consequential, special or punitive damages, regardless of whether it has been informed of the possibility thereof.

2.5 Disputes. In the event of a disagreement or dispute between Red Ventures and Monitor concerning Red Ventures' obligations under the Orders, and, in the event that such disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

2.6 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of its duties under this Agreement, Monitor shall promptly inform Red Ventures and the Commission of any such conflict or potential conflict.

ARTICLE III

3.1 Termination. This Agreement shall terminate the earlier of: (a) the expiration or termination of the Orders; (b) Red Ventures' receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Red Ventures and to the Commission, upon resignation of the Monitor; or (d) when the Monitor completes its Final Report pursuant to the Decision and Order; provided, however, that the Commission may require that Red Ventures extend this Agree-

ment as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, Red Ventures shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of the State of New York, including all matters of construction, validity and performance. The Orders shall govern this Agreement and any provisions herein which conflict or are inconsistent with the Orders may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require Red Ventures to disclose any material or information that is subject to a legally recognized privilege or that Red Ventures is prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by Red Ventures or Monitor without the consent of Red Ventures and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR	**Respondent**
R. Shermer & Company	Red Ventures Holdco, LP
Richard Shermer President	Ric Elias CEO

MONITOR	Respondent
R. Shermer & Company	Red Ventures Holdco, LP
Richard Shermer President	Ric Elias CEO

Analysis to Aid Public Comment

NON-PUBLIC APPENDIX B

Caring.com Key Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") with Red Ventures Holdco, LP ("Red Ventures") and Bankrate, Inc. ("Bankrate"). The Consent Agreement is intended to remedy the anticompetitive effects that likely would result from Red Ventures' proposed acquisition of Bankrate (the "Transaction"). Under the Consent Agreement, Red Ventures will divest Caring.com, a subsidiary of Bankrate.

The Transaction, if consummated, would result in the likely lessening of competition between the two leading providers of third-party paid referral services for senior living facilities. Senior living facility operators use a variety of methods to find residents, including in-house marketing efforts, unpaid referrals from doctors or other professionals working with the elderly, and third-party paid referral services. The evidence shows that third-party paid referral services for senior living facilities represents a relevant product market, and that A Place for Mom ("APFM") and Caring.com are the two largest third-party paid referral services for senior living facilities and each other's closest competitors. General Atlantic, LLC ("General Atlantic") and Silver Lake Partners, LP ("Silver Lake") jointly own all of

APFM, own approximately 34 percent of Red Ventures, and have significant control over certain Red Ventures decisions.

The Proposed Order preserves competition between APFM and Caring.com by accepting a Consent Agreement under which Red Ventures will divest Caring.com.

II. The Parties

A. Red Ventures

Red Ventures is a marketing company providing proprietary internet content and customer leads in a variety of industries. Two of its largest shareholders are private equity firms General Atlantic and Silver Lake Partners. They control two of the seven positions on the board of Red Ventures GP, LLC, the entity that manages Red Ventures, and they have approval rights for two other positions. They also must approve significant capital expenditures by Red Ventures. General Atlantic and Silver Lake jointly own APFM, which is the largest third-party paid referral service company for senior living facilities.

B. Bankrate

Bankrate is a marketing company providing proprietary internet content and customer leads for providers in a variety of industries. In connection with the market for providing leads for senior living facilities, Bankrate owns and operates Caring.com, the second largest third-party referral service company for senior living facilities after APFM.

III. The Proposed Transaction

Pursuant to an agreement executed on July 2, 2017, Red Ventures agreed to acquire 100 percent of Bankrate.

IV. The Relevant Market

The Commission's Complaint alleges that the relevant product market within which to analyze the Transaction is third-party paid referral services for senior living facility operators.

Senior living facilities provide a range of specialized long-term residential living options tailored to the needs of senior consumers. Referral services companies generate and collect customer leads for senior living facilities. While many small referral services companies generate leads through marketing and networking efforts similar to those used by real estate agents, APFM and Caring.com use the internet to generate and collect leads. They attract these leads to their websites through both paid search advertising and search engine optimization, which includes, among other things, creating compelling free content to help the websites appear higher in search engine result pages.

Once the referral services companies qualify the leads, they provide the customer leads to the senior living facilities operators. The senior living facilities' sales staff then contacts the leads and seeks to consummate sales. When a consumer moves into a senior living facility, the senior living facility operator pays the referral services company a referral fee, typically based on a percentage of the first month's rent and care.

The Commission's Complaint alleges that the relevant geographic market in which to analyze the effects of the Merger is the United States. Although each senior's search for a senior living facility is highly localized, APFM and Caring.com operate, compete and contract with senior living facility operators on a national basis.

V. Market Structure

The Commission's Complaint alleges that Caring.com is APFM's closest competitor, they are the two largest third-party paid referral services companies for seniors, and they have similar business models. APFM and Caring.com are internet-based referral services providers that compete to attract consumers via websites with national reach, and they enter into contracts with senior living facility operators both locally and nationally. Other than APFM and Caring.com, there is a fringe of small regional and local companies that act as third-party paid referral services companies.

VI. Effects of the Transaction

The Commission's Complaint alleges that the Transaction, if consummated, may substantially lessen present and future competition between APFM and Caring.com by increasing the likelihood that Red Ventures would unilaterally exercise market power and increasing the likelihood of coordinated interaction between APFM and Caring.com.

General Atlantic and Silver Lake have the ability to influence or control the management of Caring.com. They are both active investors with board representation on, and other substantial rights over, Red Ventures. General Atlantic and Silver Lake's ownership of APFM may create incentives for them to exercise influence or control over Red Ventures in a manner that could substantially reduce competition between APFM and Caring.com.

VII. Entry Conditions

Entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Transaction. The primary barrier to entry is the network and scale needed to acquire and convert qualified leads into actual move-ins at senior living facilities. This requires the ability not only to compete effectively in search engine optimization and marketing, but also to establish contracts with hundreds of senior living facilities nationwide, and have the necessary infrastructure, including experienced senior advisors, to convert leads into paying referrals.

VIII. The Agreement Containing Consent Order

The Proposed Order resolves the anticompetitive concerns raised by the Transaction by eliminating the only overlap between Red Ventures/Bankrate and APFM. The Proposed Order restores current and potential competition by accepting a divestiture of the Caring.com business. Caring.com was independent before it was acquired by Bankrate.com in 2014, and it continues to operate semi-autonomously. The Proposed Order gives the Commission the right to approve a buyer, and prevents General Atlantic and Silver Lake from being involved in the divestiture process.

The Proposed Order allows the Commission to appoint a monitor to ensure compliance with the terms of the Proposed Order, including the provision of transition services to an acquirer and firewalls related to Caring.com's confidential business information. The Proposed Order also prevents Red Ventures from possessing or seeking any confidential business information from APFM or providing any services to APFM for six months after the divestiture of Caring.com. The Commission may appoint a trustee if Red Ventures has not divested Caring.com and its related assets within the prescribed time-period.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

THE J.M. SMUCKER COMPANY
AND
CONAGRA BRANDS, INC.

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. 9381; File No. 171 0182
Complaint, March 5, 2018 – Decision, March 8, 2018

This case addresses the $285 million acquisition by The J.M. Smucker Company of certain assets of Conagra Brands, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by significantly reducing competition in the markets for canola and vegetable oils sold in the United States. The Order dismisses the Complaint, on the grounds that the Respondents have terminated their Asset Purchase Agreement, and have withdrawn the Hart-Scott-Rodino Notification and Report Forms that they filed for the proposed acquisition.

Participants

For the *Commission*: *Elizabeth Arens, Charles Dickinson, Jamie France, Christopher Harris, Michael Mikawa, David Owyang, Anthony Saunders,* and *Robert Zuver.*

For the *Respondents*: *Ilene Gotts* and *Lori Sherman, Wachtell, Lipton, Rosen & Katz LLP; Douglas Matthews, Vorys, Sater, Seymour and Pease LLP; Kathryn M. Fenton, Jones Day LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents The J.M. Smucker Company ("Smucker") and Conagra Brands, Inc. ("Conagra") have executed an asset purchase agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission

that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Crisco, which is owned by Smucker, and Wesson, which is owned by Conagra, are by far the two dominant brands of canola and vegetable oils sold in the United States. Pursuant to an Asset Purchase Agreement, Smucker plans to acquire the Wesson brand, including intellectual property, inventory, and some manufacturing equipment, from Conagra for $285 million (the "Acquisition"), paying nearly [redacted] more than any other bidder offered. Smucker is not acquiring the Memphis, Tennessee plant where Conagra produces Wesson products today or hiring any Conagra employees.

2. Respondents' own documents show that the effect of the Acquisition "may be substantially to lessen competition, or to tend to create a monopoly" in violation of the Clayton Act, and harm U.S. consumers. In a document submitted with Smucker's Hart-Scott-Rodino filing, which means that it was created by or for corporate officers or directors to evaluate the Acquisition, Smucker stated that a "strategic rationale" for the Acquisition is that it "[t]akes [a] competitor [Wesson] out of the marketplace and allows us to more effectively manage pricing/trade." This statement clearly acknowledges that Smucker would have the power and incentive to increase prices on Crisco and Wesson products post-acquisition. Put simply, by "taking out" Wesson as a competitor, Smucker would be able to eliminate the price discounts that each Respondent has been forced to offer as a result of their vigorous head-to-head competition. Year after year, Respondents have internally complained about each other's use of price discounts as "irresponsible" and "irrational". In Smucker's view, this price competition is a "race to the bottom" that "unnecessarily tak[es] dollars out of the category." Retailers and consumers have and continue to benefit from the discounts that

head-to-head competition between Crisco and Wesson has generated.

3. Smucker's documents go further, including a model showing that the company recognizes that raising prices on both Wesson and Crisco products would be profitable even though price increases would decrease the brands' overall sales volume. In fact, Smucker admits that it will increase prices: "Once we close the deal, our plan would be to execute a price increase on Wesson consistent with our latest Crisco pricing action." These quintessential anticompetitive effects are rarely so clearly touted by merging parties as intended consequences of a merger or acquisition.

4. Conagra also recognizes that the Acquisition will enable Smucker to increase prices, ultimately harming U.S. consumers. Ordinary course documents make clear that the presence of an independent Wesson constrains Crisco's prices today. In trying to persuade a retailer to resume carrying Wesson products, Conagra's broker stated:

> [P]art of Wesson's reason-to-be is that we keep Crisco 'honest'. Without another National Brand, [Crisco] play[s] off the fact that they will be highest priced Cooking Oil and will appeal to the Consumer looking for a National Brand and willing to pay a little more for it. The drawback is that they don't have to get 'ultra' aggressive with their pricing to meet that objective.

5. Respondents sell their Crisco and Wesson products to retailers—including grocery stores (such as Giant), mass merchants (such as Target), club stores (such as BJ's Wholesale Club), and convenience stores—who, in turn sell to consumers, the end customers. Crisco and Wesson each have a national price list that they provide to all retailers. Crisco and Wesson incentivize retailers to purchase their products by offering trade funds (sometimes called "promotional funds"), which serve as a discount off of the list price and lower the prices that retailers pay to procure Crisco and Wesson products. The amount of trade funds is determined in individual negotiations between Crisco or

Wesson and each retailer. Crisco and Wesson set their list prices and the amount of trade funds offered to specific retailers with the goal of setting the on-the-shelf price that retailers charge to consumers.

6. Over the last several years, Smucker and Conagra each attempted to raise its list prices on canola and vegetable oils, expecting the other brand to follow its lead. But each attempt to increase prices has been undermined when the other brand did not follow and also raise its list prices. Instead, the other brand took advantage of its now comparatively lower prices to win sales and market share away from its competitor—in other words, choosing to compete vigorously. Without Wesson following Crisco's lead, and vice versa, each brand has had to "invest[] back" by offering additional discounts to retailers in an attempt to regain lost sales and customers resulting from its price increase attempt.

7. This dynamic played out most recently in early 2017, when Smucker announced a list price increase on Crisco products of approximately 12.5%. Conagra declined to follow the price increase for its Wesson products—indeed, it still has not done so, [redacted]. As a result, Wesson's sales of canola and vegetable oils increased and Crisco's decreased. To combat the decline, Smucker was forced to provide additional trade funds to retailers—that is, to lower its prices on Crisco.

8. On May 26, 2017, a few months after Wesson upset the Crisco list price increase, Smucker agreed to acquire Wesson for a premium of nearly [redacted] more than any other bidder. With control of both Crisco and Wesson, Smucker can stop Wesson's "irresponsible" pricing strategy and ensure that a price increase on one brand will never be disrupted by the other brand again, resulting in retailers and their end consumers paying higher prices.

9. Ordinary course documents show that Respondents have competed vigorously for many years, resulting in lower prices on Respondents' Crisco and Wesson canola and vegetable oils paid by retailers across the United States and U.S. consumers. The Acquisition, if consummated, would eliminate this vigorous head-to-head competition between Crisco and Wesson, leading to

higher prices on canola and vegetable oils for retailers and their U.S. customers, the end consumer.

II.

BACKGROUND

A.

Jurisdiction

10. Respondents, and each of their relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

11. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

B.

Respondents

12. Respondent Smucker is a publicly traded corporation organized under the laws of Ohio with headquarters in Orrville, Ohio. Smucker manufactures and sells a diversified portfolio of branded food products, including baking mixes, cooking oils, coffee, peanut butter, and jellies. Smucker's Crisco brand includes canola oil, vegetable oil, corn oil, peanut oil, shortening, and cooking sprays. Crisco produces all its cooking oil and shortening products at its plant in Cincinnati, Ohio. Smucker purchases crude oil from the commodities market, refines it, and then packages it in the bottles found on retailers' store shelves. In calendar year 2016, retail sales of Crisco products totaled approximately $379 million, including approximately $225 million from sales of Crisco canola and vegetable oils.

13. Respondent Conagra is a publicly traded corporation organized under the laws of Delaware with headquarters in Chicago, Illinois. Conagra manufactures and sells a broad

portfolio of food products to retail, foodservice, and industrial customers. Conagra's Wesson brand of cooking oils includes canola oil, vegetable oil, and corn oil. Conagra produces all Wesson products at its plant in Memphis, Tennessee. Conagra both refines crude oil that it purchases on the commodities market and buys refined oil from large agri-businesses. Conagra then packages refined oil in the bottles sold to retailers. In calendar year 2016, retail sales of Wesson products totaled approximately $198 million, including approximately $185 million from sales of Wesson canola and vegetable oils.

C.

The Acquisition

14. On May 26, 2017, Smucker and Conagra signed an Asset Purchase Agreement pursuant to which Smucker will acquire assets relating to the Wesson brand, including intellectual property, inventories, and packaging equipment, for approximately $285 million. The Acquisition does not include the refining and bottling plant in Memphis, where Conagra currently produces all Wesson oils. Smucker eventually plans to manufacture all Wesson and Crisco products at its plant in Cincinnati although it will not do so for up to one year after the Acquisition closes, with Conagra continuing to manufacture Wesson on Smucker's behalf.

III.

BACKGROUND

15. Smucker and Conagra each produce and sell canola oil and vegetable oil; Smucker under its Crisco brand and Conagra under its Wesson brand. The basic ingredient used to produce canola oil is rapeseeds and for vegetable oil it is soybeans. Large agri-businesses grow and crush rapeseeds and soybeans to produce crude canola and vegetable oils, respectively. Some suppliers of canola and vegetable oils, including Respondents, purchase crude oil from these agri-businesses and refine, bleach, and deodorize it to make the finished oil that is packaged and labeled. Other suppliers of canola and vegetable oils purchase

refined oil from agri-businesses and merely package and label it at their own facilities. Both Respondents refine crude oil and purchase some refined oil to produce their canola and vegetable oils.

16. Respondents do not sell their products directly to end consumers. Instead, both Respondents sell their branded canola and vegetable oils to retailers, including grocery stores (such as Giant), mass merchants (such as Target), club stores (such as BJ's Wholesale Club), and convenience stores. Retailers purchase canola and vegetable oils at wholesale from suppliers such as Smucker and Conagra and sell them at retail to their in-store customers, the end consumers.

17. Each Respondent establishes the prices paid by retailers for canola and vegetable oils in two stages. First, each Respondent publishes a list price that generally applies to all retailers. Second, each Respondent negotiates trade funding (sometimes called "promotional funds") individually with each retailer. Trade funding acts as a discount off the list price. Retailers frequently play Respondents against each other to induce them to offer more trade funds during these negotiations. Retailers then apply a markup and set the shelf price paid by end consumers. Retailers, often in consultation with Respondents, commonly use trade funding in ways designed to encourage sales of Respondents' products, including reduced everyday shelf prices, temporary reductions in shelf prices, promotional prices (e.g., buy-one-get-one-free), features in promotional and advertising materials, prominent shelf space, and placement on in-store displays (e.g., "endcap" displays at the end of a grocery aisle). Some retailers take a consistent, "every-day-low-price" ("EDLP") approach to pricing, while other retailers (called "hi-lo" retailers) vary prices through in-store promotions, coupons, and other vehicles.

18. Depending on the retailer (e.g., grocery stores, mass merchants, club stores), different retailers procure different sizes of canola and vegetable oils to offer to their end consumers. Grocery stores and mass merchants generally offer canola and vegetable oils in a wide variety of sizes, including 16-, 32-, 48-, 96-, and 128-ounce (i.e., one-gallon) bottles. The highest selling,

and therefore most important, sizes of canola and vegetable oils for grocery stores are 48- and 128-ounce bottles. Club stores, including Costco, Sam's Club, and BJ's Wholesale, tend to carry larger package sizes such as 160-ounce (i.e., five-quart) bottles.

19. In addition to buying canola and vegetable oils from the national brands, retailers also frequently sell canola and vegetable oils under their own label. Most retailers that have "private label" canola and vegetable oils typically price it at a lower retail price than the national brands, usually 10-20% below the brand price. Retailers generally contract with a third-party oil producer, such as Cargill or Stratas, to manufacture their private label oils. The process by which retailers supply themselves with private label canola and vegetable oils is separate, and different, from the way retailers buy and sell branded canola and vegetable oils.

20. The private label supply process generally differs from the branded supply process. It does not involve negotiations over trade funds, but instead begins with a request-for-proposal in which the retailer sets forth its requirements in terms of oil type, degree of refinement, package size, and terms of delivery and payment. Private label suppliers submit bids and the retailer selects the winner, generally choosing the lowest-cost option. The price that the retailer pays for private label oil is closely tied to the cost of the input product (for example, crude canola oil) on the commodities market. The prices retailers pay their private label suppliers tend to be substantially lower than the price they pay for national-brand oils, despite the fact that private label suppliers do not offer trade funds. The winning private label supplier that the retailer selects produces and bottles the oil with the retailer's label, and ships it to the retailer.

21. Smucker and Conagra do not participate in or bid to supply private label to retailers. While one of the rationales for the Acquisition is to fill excess capacity at Smucker's Cincinnati plant by buying the Wesson brand and its corresponding volume, Smucker has elected not to increase its capacity utilization through a less anticompetitive alternative. For example, Smucker could supply private label oils to retailers or produce private label oils for a private label supplier that lacks sufficient capacity itself, which Smucker recently did for Cargill.

22. Other than retailers, there are two other major groups of customers to which suppliers of canola and vegetable oils sell their products: foodservice customers and industrial customers. Food service customers include restaurants, distributors that resell to restaurants, and other institutional entities that use canola and vegetable oils as an input into food they cook and serve to their customers. Industrial customers include food manufacturing companies and others that use canola and vegetable oils as an input into their packaged food products.

23. Sales of canola and vegetable oils to foodservice and industrial customers differ in at least two ways from sales to retailers. First, foodservice and industrial customers buy canola and vegetable oils in much larger package sizes than retailers. A 35-pound "jug-in-a-box" is a popular size in foodservice and industrial channels. Second, foodservice and industrial customers also buy different types of canola and vegetable oils, many of which are formulated specifically for the demands of large-scale commercial cooking and which are not even available to retail customers. Respondent Smucker sells canola and vegetable oils only to retailers, though it licenses the Crisco brand to a third party for sales to foodservice customers. Respondent Conagra supplies canola and vegetable oils to retailers, foodservice customers, and industrial customers.

24. Canola and vegetable oils fall into the category of cooking oils. The cooking oils category is made up of several subcategories: base oils, olive oil, and specialty oils. Base oils, which include canola oil, vegetable oil, corn oil, and peanut oil, generally are produced by crushing the seeds of different types of plants. Vegetable oil and canola oil are, by far, the two best-selling types of base oils sold to retailers in the United States. Vegetable oil alone accounts for around half of all retail base oil sales, while canola oil accounts for roughly one-quarter of sales. Olive oil is made from olives, which are pressed rather than crushed. Because of its means of production, the cost of inputs, and the cost of freight (most olive oil originates in Europe), olive oil generally is much more expensive than base oils. Specialty oils are oils with niche uses such as coconut oil, avocado oil, grapeseed oil, sunflower oil, and other flavored oils. Specialty oils also tend to be much more expensive than base oils.

IV.

RELEVANT MARKET

25. The relevant market in which to evaluate the effects of the Acquisition is no broader than the sale of canola and vegetable oils ("CV oils") to retailers in the United States.

A.

Relevant Product Market

26. The sale of CV oils to retailers is a relevant product market.

27. Canola and vegetable oils have similar physical properties and are suitable for similar uses. They have relatively high smoke points (i.e., the temperature at which an oil burns). Both oils appear light in color and are odorless and flavorless. Because of these properties, canola and vegetable oils are suitable for—and consumers use them for—a wide range of cooking applications, including baking, frying, and sautéing, as well as using them in marinades and vinaigrettes.

28. Canola and vegetable oils are typically the least expensive cooking oil types, sitting at the bottom of the price spectrum among all cooking oils. Canola and vegetable oils are similarly priced and are often included in the same promotions and advertisements. Each Respondent's list price for canola oil is similar to its list price for vegetable oil. Retailers also generally price canola oil and vegetable oil similarly. Respondents and retailers promote canola and vegetable oils at the same time, often discounting them at the same time and including both in the same promotions and advertisements.

29. Even if canola and vegetable oils are not sufficiently interchangeable to compose a single relevant market, the sale of CV oils to retailers can be analyzed as a cluster market. The competitive conditions for the sale of canola oil to retailers and the sale of vegetable oil to retailers are similar. The set of

competitors and their market shares for the sale of each oil to retailers are similar, as are the customers to which they are sold.

30. Retailers could not switch their purchases of CV oils to other oils, or non-oil cooking agents, in sufficient numbers to render unprofitable a small but significant non-transitory increase in price ("SSNIP") on CV oils.

31. The sale of branded CV oils to retailers is also a relevant product market. Retailers would not switch their purchases of branded CV oils to other products in sufficient numbers to render unprofitable a SSNIP on branded CV oils. Differences in the prices that retailers pay to procure branded and private label CV oils reflect their perception of meaningful product differentiation between branded and private label CV oils. Differences in shelf prices for branded and private label CV oils reflect end consumers' perception of meaningful product differentiation between branded and private label CV oils. End consumers who buy branded CV oils generally pay a significantly higher price for a branded CV oil than for a private label CV oil.

Other Products Are Not Substitutes for CV Oils

32. Retailers and end consumers do not view other base oils—in particular, corn oil and peanut oil—as substitutes for CV oils. Consumers who buy CV oils perceive other base oils to be of lower quality than CV oils, as imparting distinctive flavors to food, as appropriate for only limited applications, such as deep frying, or possessing a combination of all three of these characteristics. These oils also typically have higher prices than CV oils because they have higher ingredient and refining costs. For example, corn oil is typically at least 10% more expensive than canola and vegetable oils, and peanut oil is typically twice as expensive as canola and vegetable oils. For these reasons, retailers could not switch their purchases of CV oils to other base oils in response to a SSNIP on CV oils.

33. Retailers and end consumers do not view olive oil as a substitute for CV oils. Extra virgin olive oil ("EVOO"), the most common type, has a dark green color and a strong, distinctive flavor. It also has a relatively low smoke point. These features

render EVOO unsuitable for many of the most common oil applications, including baking and deep frying. There are other types of olive oil that are highly refined and share some physical properties with CV oils, but retailers and end consumers do not consider them as substitutes for CV oils. All types of olive oil are much more expensive than CV oils (on average, three to four times the price of CV oils). For these reasons, retailers could not switch their purchases of CV oils to olive oil in response to a SSNIP on CV oils.

34. Specialty oils such as coconut oil, avocado oil, grapeseed oil, sunflower oil, and other flavored oils, are not substitutes for CV oils in the eyes of retailers or end consumers. These oils often are heavily flavored and used for specific cooking applications and recipes. They also tend to be priced at a substantial premium—even higher than olive oil. For these reasons, retailers could not switch their purchases of CV oils to specialty oils in response to a SSNIP on CV oils.

35. Non-oil cooking agents, such as pan sprays, shortening, and lard, are not substitutes for CV oils in the eyes of retailers and end consumers. These products are very limited in application. Pan sprays, for example, are suitable only for greasing pans and light sautéing, and consumers generally view shortening as unsuitable for uses other than baking or (in the southern United States) frying. Retailers could not switch their purchases of CV oils to non-oil cooking agents in response to a SSNIP on CV oils.

B.

Relevant Geographic Market

36. The relevant geographic market is no broader than the United States.

37. Smucker and Conagra each produce and package all of their CV oils at a single facility. They each have a national distribution network to transport their CV oils to retailers.

38. Smucker and Conagra, as well as other suppliers of branded CV oils, have list prices for their CV oils that apply nationally.

39. Many large retailers have locations across multiple regions of the United States.

40. Smucker and Conagra negotiate trade funds separately for each retail customer. The relevant market may be evaluated as a cluster of retailers for which competitive conditions for suppliers of CV oils are sufficiently similar.

41. There are no major non-United States-based suppliers of CV oils in the United States. A foreign supplier would need to establish a distribution and sales network in the United States to be a significant competitor in the U.S. market.

V.

MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

42. Smucker and Conagra, through their Crisco and Wesson brands, are the two largest suppliers of branded CV oils to retailers in the United States.

43. Other branded suppliers of CV oils, including Mazola, LouAna, 1-2-3, and Spectrum, are significantly smaller than Respondents and have limited competitive significance.

44. Mazola focuses on corn oil and has limited competitive significance in CV oils outside of the western and southwestern United States, Florida, and parts of New York.

45. LouAna focuses on peanut oil and has limited competitive significance outside of the southeastern United States and small parts of the northeastern United States.

46. Typically, retailers also offer private label CV oils on their shelves. At most, suppliers of branded CV oils compete for the business of a retailer against that one retailer's private label (i.e.,

Walmart could not use Kroger's private label as leverage to get more trade funds and better pricing from either Crisco or Wesson). From the perspective of a retailer buying CV oils, private label is one competitor to branded oils. Respondents also treat private label as a single competitor in the ordinary course of business.

47. Combined, Crisco and Wesson would account for at least 35% of the market for the sale of CV oils to retailers in the United States. Based on ordinary course documents, Crisco has approximately [redacted] share of sales of CV oils, while Wesson has approximately [redacted].

48. In a market for the sale of branded CV oils to retailers in the United States, Crisco and Wesson, combined, would account for at least 70% of the market, with Crisco accounting for more than [redacted] and Wesson accounting for more than [redacted].

49. The 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (the "Merger Guidelines") and courts typically measure concentration using the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

50. The Acquisition would result in a post-acquisition HHI exceeding 4,000, with an increase of more than 700, in a market for the sale of CV oils to retailers in the United States.

51. The Acquisition would result in a post-acquisition HHI exceeding 6,000, with an increase of approximately 3,000, in a market for the sale of branded CV oils to retailers in the United States.

52. The Acquisition would result in market shares and concentration levels beyond what is necessary to establish a presumption of competitive harm.

53. Evidence showing that the Acquisition would substantially lessen competition and result in significant anticompetitive effects bolsters the presumption of competitive harm.

54. The Acquisition is presumptively illegal under relevant case law.

VI.

ANTICOMPETITIVE EFFECTS

55. The Acquisition would eliminate substantial direct competition between Crisco and Wesson, resulting in increased prices for retailers and end consumers. In fact, that is Smucker's intent and rationale for the Acquisition.

The Acquisition Would Eliminate Vigorous Competition and Result in Higher Prices for Retailers and End Consumers

56. The Acquisition would end the pro-consumer and pro-competitive environment that exists today and has allowed retailers to pit Crisco and Wesson against each other to get lower prices. With all pricing, strategy, and competition brought under one roof and one management, Crisco would be able to "take out" Wesson and its pricing strategies that have undermined Crisco's attempts to increase prices. Thus, after the Acquisition closes, Smucker would have the power and incentive to increase prices on Crisco and Wesson CV oils. In fact, Smucker's analysis of the Acquisition and its go-forward plans for Wesson and Crisco show that Smucker recognizes that it will have the power to profitably increase prices.

57. Respondents have internally complained about the other brand's competitive behavior that has led to lower prices and the need to provide more trade funding to stay competitive with each other:

a. In [redacted], Smucker's Region Sales Manager for [redacted] described a Wesson advertisement for [redacted] gallons of canola, vegetable, and corn oil as "downright irresponsible trade spending by our friends

at Con Agra." [redacted], Smucker's Director of [redacted], responded, "that's clearly irresponsible trade spending," and stated, "if you feel some of the recent Wesson tactics are going to materially impact your fiscal year projections, we'll want to talk about it sooner than later. Again, we're hopeful that our tactical spending and innovation will help offset any of Wesson's targeted tactics."

b. In [redacted], Smucker described Wesson's $[redacted] and $[redacted] retail price points for [redacted] bottles as "plain irresponsible" because Smucker would prefer avoiding having to offer additional trade funds to compete with Wesson.

c. In August 2016, Conagra's recaps from a meeting about the Wesson brand included: "Crisco is running deeper price points at major retailers (i.e. [redacted]); Crisco's pricing strategy is irrational; Crisco did not follow [Wesson's list] price increase; [and] Tom is asking to grow share having lost volume [by] pulling out trade [funding]."

58. Crisco believes that price competition with Wesson amounts to a "race to the bottom" and results in low retail prices for end consumers that "unnecessarily tak[e] dollars out of the category."

59. Over the last several years, Conagra and Smucker have each increased list prices on their CV oils. In each instance, whenever one increased its list prices on CV oils, the other opted against following the increase, forcing the price-increasing brand, in effect, to walk back much of its list price increase by offering more trade funding to retailers.

60. In spring 2016, Conagra announced a list price increase on Wesson, but after the new list prices became effective, "Wesson lost more volume than expected" because "Crisco decreased price as Wesson increased, creating significant [price] gaps on [the] shelf." As a result of the Wesson list price increase, "[s]ome retailers responded by awarding Wesson promotion events to

Crisco." To reverse the sales decline, Conagra offered more trade funding to key retailers, including, among others, [redacted]. For example, Conagra approved additional trade funding, so that [redacted] could reduce retail prices on one-gallon bottles by $0.70, "Wesson is 10.69 versus Crisco's 9.99; I've attached a [planning scenario] to see what it would take to get to 9.99 for parity." Following its 2016 list price increase and the resulting loss in sales to Crisco, Wesson internal documents state that Wesson's profit-maximizing price is to [redacted].

61. Similarly, Smucker was forced to increase the amount of trade funding it offered to retailers when Conagra did not follow the Crisco list price increase Smucker announced in January 2017. [redacted], Smucker's Director of [redacted] for Crisco, anticipated this action, "if Wesson doesn't move [on list prices] or it's not to the extent that Crisco moved, we will be in a position to execute our [redacted] promotions."

62. If the Acquisition is consummated, Crisco and Wesson will no longer undermine each other's attempts to raise prices. Indeed, Smucker seeks to acquire Wesson precisely because it believes that the Acquisition will allow it to increase list prices, and reduce trade fund spending, on both Crisco's and Wesson's CV oils.

63. Smucker decided to acquire Wesson—for which it paid $285 million, beating the second-place bidder by nearly [redacted]—after determining that the Acquisition would allow it to profitably raise prices on both Crisco and Wesson oils.

64. One of Smucker's four "strategic rationales" for the Acquisition is that it "[t]akes [a] competitor out of the marketplace and allows [Smucker] to more effectively manage pricing/trade." Smucker's [redacted] President of [redacted] admitted that this particular rationale referred to "remov[ing] Conagra from the oil business."

65. In another document analyzing the Acquisition, Smucker listed "[i]nherent trade synergies [from] removing non-productive 'head-to-head' spending" as one of the Acquisition's "benefits," showing that Smucker expected it would save money because Crisco and Wesson would no longer be "beating each other up" on price.

66. In March 2017, Smucker executives created a financial model to show the effects of a 6% post-acquisition list price increase on Wesson, followed by a 7% increase on Crisco. That model also included Smucker reducing Wesson trade funding. [redacted], Vice President of [redacted], concluded that these price hikes would result in a massive *reduction* in Crisco's and Wesson's annual sales volume, as measured in pounds, but an *increase* in gross profits of nearly [redacted] million per year.

67. Smucker considered this modeling in its post-acquisition planning for Wesson and Crisco. Knowing that the two list price increases would be profitable, [redacted] told the [redacted], "[o]nce we close the deal, our plan would be to execute a price increase on Wesson consistent with our latest pricing action." Additionally, while planning the capital expenditures that Smucker would make to enable the production of Wesson oil at the Cincinnati plant, [redacted] told the [redacted] that there was no need to spend money on certain equipment to increase processing capacity because the planned price increases "could cause a volume loss on Wesson of approx. [redacted], or [redacted] lbs" in the first year, and "a volume decline on both brands of approx. another [redacted] lbs" in the second year. Smucker's analysis and post-acquisition plans reflect Smucker's understanding that it will have the power and incentive to increase prices on Wesson and Crisco as a result of the Acquisition.

68. Smucker's strategy of pursuing higher prices and lower output is not new. In September 2016, [redacted] recalled that Smucker stopped trying to get [redacted] to include Crisco instead of [redacted] private label in [redacted] display because "it required significant investment spending to secure the space." Instead of competing with private label,

[redacted] remarked, "We're better off making money and selling less units[.]"

Crisco and Wesson Are Close Competitors on Price

69. The Acquisition would eliminate close price competition between Crisco and Wesson. Respondents' close price competition is reflected by their continuous monitoring of each other's everyday retail prices, promotional prices, and list prices for CV oils. The following are but a few recent examples of Respondents' continuous monitoring of each other's everyday retail and promotional prices:

a. In August 2016, Smucker's distributor reported that "Wesson has given [redacted] deals through the end of the year on 48 oz and they are below $[redacted] unit every day. . . . [I]f they are [redacted] $[redacted], we will not get any ads at [redacted] with our current program even with the additional ad pull that we have been giving them (which puts us at $[redacted] unit)." As this news was reported up the chain at Smucker, Smucker employees commented, "[w]e continue to see the hard court press from Wesson in [redacted]" and "Wesson is putting some serious pressure on us."

b. In September 2016, Conagra reported that there was a 20 million "CSU [Conagra Sales Unit]" decline at [redacted], noting "Crisco investing to lower everyday price to $2.69. Wesson 48oz. up +$0.20 vs. [Year Ago] driving wider gap to Crisco."

c. On December 13, 2016, Smucker saw that Wesson had invested in everyday pricing at [redacted] "to reduce their everyday pricing on [redacted] and [redacted] oz. items to be in-line with our current Crisco pricing (i.e. $[redacted] on [redacted], $[redacted] on [redacted] oz.)." Upon seeing Wesson's new pricing, Smucker immediately delayed by several weeks the list price increase it had planned to

announce the next day, so that it could "evaluate the scope of Wesson's investment (is it beyond [redacted]?), and ultimately, understand the volume implications if Wesson doesn't follow our [list price] increase."

d. In May 2017, a Conagra spreadsheet prepared for the employees who would be assuming responsibility for the oil and sprays business instructed, for all Wesson customers, "Let teams know to keep you in the loop on what they hear about any competitors but Crisco most of all – June/July/Aug are holiday planning months and we should know quickly if we are competitive or getting beat."

70. Conagra's current pricing strategy for Wesson demonstrates the closeness of Respondents' price competition. [redacted]

71. Respondents also closely track each other's list prices. Unlike retail prices, list prices are not publicly available and change infrequently. Nevertheless, Respondents' ordinary course documents show that they monitor each other's list prices because doing so provides important competitive information about the other's cost structure and (by comparing the list price to the shelf price) the amount of trade funding offered to retailers. Respondents adjust their own pricing strategy in response. For example:

a. In July 2016, Smucker learned that Wesson had recently increased its list prices, which a Smucker analyst conveyed to Smucker's [redacted]: "Wesson Pricing Action [redacted][:] List Price increased to same level

as before Price Decline ([redacted]) which Crisco never followed."

b. Conagra obtained a copy of Smucker's January 2017 list price increase on Crisco within days of the announcement to customers. When Conagra's broker for Wesson recirculated this information a month later, the broker wrote, "Attached is a Crisco Oil price list with new pricing; definitely compare to your Wesson Lists and see where we fall!" and "[l]everage where we can."

Head-to-Head Competition Between Crisco and Wesson Leads to Increased Trade Funding, and, Thereby, Lower Prices, Offered to Retailers

72. Vigorous head-to-head competition between Respondents has led to increased trade funding offered to retailers. The following examples show that Respondents have provided additional trade funding to retailers as a competitive response to one another:

a. Conagra approved an additional $[redacted] in trade funding for [redacted] in July 2016 "to help [Wesson] through the Holiday season considering our price to Crisco will be ~$1.50 higher."

b. In October 2016, Conagra's team handling the [redacted] account submitted a request for $[redacted] in trade funding, noting that "Crisco rarely sits at retail at full list/white tag [price] so [Conagra's] [redacted] team prepared the incremental plan based on the best situation after Holiday and current Crisco promotions." [redacted], Conagra's Manager of Customer Strategy Planning, approved the requested trade funding and stated, "[w]e are making these select changes as part of a strategic decision to become more competitive with competing brands."

c. In a February 2017 email discussing buy-one-get-one ("BOGO") promotions at [redacted] for [redacted]-ounce canola and vegetable oils, Smucker recognized that "[t]hese BOGO's have traditionally been in the plan for several years at [redacted]. There is [a] significant impact on Share/[equivalent units]/Trade if we walked away from these events. In addition [redacted] would immediately ask Wesson to support the BOGO ad if we pulled out."

d. In May 2017, Conagra approved [redacted] in additional trade funding for [redacted] with the understanding that "[Wesson] just secured being the sole branded oil at [redacted] and [redacted] will be kicking out Crisco."

73. Retailers, as Respondents' customers, benefit directly from the increased trade funding that Respondents' vigorous head-to-head competition generates, which results in lower prices, increased advertisement and promotional funding, and corresponding increases in sales. Increased trade funding also benefits end consumers because those funds often are used to reduce everyday shelf prices, offer deeper and more frequent promotional discounts, and build more in-store displays and provide more advertisements—with the latter making the shopping experience more convenient and increasing product and price awareness.

Retailers Use Trade Funds To Lower Everyday Shelf Prices

74. Head-to-head competition between Respondents has led to lower everyday shelf prices on CV oils. The following examples from Respondents' ordinary course documents are just some of the many instances in which competition with one another has led to lower everyday shelf prices:

a. In fall 2016, Conagra "[a]sked teams for plans that meet two objectives: [redacted] Conagra approved the plans and increased trade funding to achieve these objectives at five key

retailers. The following table is reproduced from an internal ordinary course Conagra document and shows the amount by which Wesson's retail price would decrease as a result of this initiative:

Summary of Changes ([redacted])		
Customer	**From**	**To**
[redacted]	Gallon: $7.74	Gallon: $6.98
[redacted]	Gallon: 1wk @ $4.99	Gallon: 2wks @ $5.99
[redacted]	Gallon: $10.39	Gallon: $9.99
[redacted]	48oz.: $4.19	48oz.: $3.99
[redacted]	48oz.: $2.79	48oz.: $2.50

b. In a March 2017 email, [redacted], Smucker's Director of National Accounts for [redacted], reported, "[a]t the same time we announced the [list price increase], Wesson had come back in and increased their investments with [redacted] to gain a [price] Lead position. The projected impact was a [redacted] [equivalent unit] volume loss or [redacted]% of base oil business." To maintain its price lead position, Smucker effectively refunded [redacted] of its Crisco list price at [redacted] "We are spending back [redacted] of [the list price increase] on [redacted] oz. and Gallons."

c. In August 2017, Smucker reduced a "[redacted]" $1 retail price gap to Wesson on [redacted]-ounce and [redacted]-sized bottles at [redacted] by providing [redacted] with $[redacted] in trade funds. Smucker noted that this investment in retail pricing would "eliminate the gap and get our baselines back to healthy."

75. Retailers often use increased trade funding that results from head-to-head competition between Respondents to reduce their everyday shelf prices.

Retailers Use Trade Funds To Offer Deeper and More Frequent Promotional Discounts

76. Competition between Respondents has led to deeper and more frequent promotional discounts on CV oils. The following examples from Respondents' ordinary course documents are just some of the numerous instances where head-to-head competition led to deeper and more frequent promotional discounts:

a. In June 2016, a Conagra employee who manages the [redacted] account reported that [redacted] "called me and told me that [Wesson's] program is now at risk of being pull [sic] because Crisco is offering $1.97." To save the program, which was a one-week promotional price on 48-ounce canola and vegetable oils, Conagra reduced its unit price to [redacted] from $2.13 to $2.07. Conagra lowered [redacted] unit price because it recognized that "we need to put our best offer on the table now with Crisco's offer being $1.97."

b. In August 2016, Conagra observed that Crisco's shelf price for 48-ounce was $2.69 at [redacted] while the price for Wesson was $3.99. To be more competitive, Wesson "approved a $1 mega and 2/$5" promotion.

c. In October 2016, Conagra approved more than $240,000 in incremental trade funding for various promotions at [redacted] to compete with Crisco. For example, Conagra approved over $[redacted] in incremental trade funding for [redacted] to "Secure Holiday event instead of Crisco." [redacted] received about $[redacted] in trade funding to "Defend Wesson versus Crisco." And [redacted] received over $[redacted] in trade funding because Conagra wanted to "Steal Crisco business."

d. In June 2017, Smucker approved incremental trade funding to run a four-week promotion on 128-ounce bottles of canola and vegetable oils at [redacted] to respond to Wesson's pricing. Wesson canola oil was priced at $[redacted], while vegetable oil was priced at $[redacted]. Smucker's promotion temporarily reduced pricing on Crisco canola oil from $10.98 to $8.48 and on vegetable oil from $10.48 to $7.98, or $[redacted] better than Wesson's shelf prices.

77. Retailers often use increased trade funding resulting from head-to-head competition between Respondents to offer larger and more frequent promotional discounts that result in lower prices for end consumers.

Retailers Use Trade Funds To Offer More In-Store Displays and Advertisements

78. Head-to-head competition between Respondents has led to more in-store displays and advertisements. In-store displays benefit retailers because they allow them to use their shelf and floor space effectively. Retailers benefit from advertisements because they help attract additional end consumers. End consumers benefit from in-store displays and advertisements because they provide greater convenience and product and price awareness. The following are some examples from Respondents' ordinary course documents showing that competition between Crisco and Wesson can result in more prominent and convenient product placement inside of retailers' stores, as well as more frequent promotional advertisements:

a. In [redacted], Smucker's National Account Manager for the [redacted] account reported that "[redacted] has requested a [Crisco] [redacted]oz BOGO ['buy-one-get-one-[free]'] ad on [redacted]," but noted that one of his "concerns" was "Does the company NEED any volume for F[redacted] or should I simply reject the request and stay with my plan to run the [redacted] event? However, rejecting this request would mean that

Wesson would get the BOGO. Also, my [redacted] BOGO could be at risk."

b. In May 2017, Wesson pursued an "[o]pportunity to kick out crisco [sic] in [redacted] if we can deliver a display ready pallet to them."

79. Retailers often use increased trade funding resulting from head-to-head competition between Respondents to provide more in-store displays and advertisements of Respondents' CV oils.

Competition from Other Brands or Private Label Will Not Replace the Competition Eliminated by the Acquisition

80. Competition from other branded CV oils sold in the United States would not replace the competition eliminated by the Acquisition. Although there are other branded CV oils available in the United States, their presence would not prevent a price increase post-acquisition, as they have far lower market shares and brand recognition in CV oils than Respondents. For example, despite its more than 100-year history, Mazola's national market share of CV oils is significantly below [redacted] even in a market that includes only branded CV oils. Other brands, including LouAna, have an even smaller share of the CV oils market than Mazola. These low sales figures reflect the fact that end consumers do not see the other brands as equivalent to Crisco and Wesson and that, therefore, they provide limited leverage to retailers in their price negotiations with Crisco and Wesson.

81. Competition from private label CV oils would not replace the competition eliminated by the Acquisition. For many retailers, a substantial portion of their end consumers demand branded CV oils, especially Crisco or Wesson. Many of these end consumers perceive branded CV oils to be superior in quality to private label, while others prefer branded CV oils because of the brands' tradition and familiarity. Accordingly, many retailers offer branded CV oils because, if they did not, end consumers would shop elsewhere for branded CV oils, especially Crisco and Wesson, and likely other products at another store.

82. Traditional grocers, as opposed to club stores or discount retailers, have an especially strong need to offer branded CV oils. Traditional grocers' business model is to offer a wide selection of products that includes well-known brands in each product category, including cooking oils. Dropping brands is not a viable option for these retailers, as they need to meet their end consumers' demands.

83. In recent years, retailers that have attempted to switch from a strategy of offering branded and private label CV oils to a strategy of offering only private label CV oils have restored their brand offerings. For example, [redacted] reverted to offering branded CV oils during the holiday baking season after its decision to eliminate branded CV oils resulted in significant sales declines. In March 2017, Smucker's [redacted] reported that, "the Base Oils business at [redacted] seems to be trending very low since they made the decision to take branded oil out of the category. . . . [redacted] After seeing its private label strategy fall short of expectations, [redacted] solicited bids from Smucker and Conagra because it wanted to offer Crisco or Wesson during the 2017 holiday season. Smucker and Conagra submitted bids, and Conagra won after offering a lower price on Wesson than Smucker offered on Crisco.

VII.

LACK OF COUNTERVAILING FACTORS

84. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, and sufficient to offset the anticompetitive effects of the Acquisition. Entry by another private label supplier would be insufficient to replace the competition lost between the branded products offered by Respondents.

85. Brand equity is the most significant barrier to entry. Brand equity is the premium that a company generates from a product's recognizable name compared to a generic equivalent.

Crisco's and Wesson's brand equity permit a price premium over private label of approximately 10% to 20%. A new entrant seeking to supply CV oils to retailers, or an existing firm seeking to expand its sales of CV oils to retailers, would face significant challenges in convincing retailers to purchase its CV oils because retailers want to offer consumers the strongest brands. Building sufficient brand equity would require substantial investment and take at least several years.

86. A firm seeking to enter or expand would face significant difficulty getting its products placed on store shelves. Post-acquisition, retailers would have minimal shelf space to offer another brand for two reasons: first, retailers prefer offering their customers only the strongest brands of CV oils, which are Crisco and Wesson; and second, Smucker plans to maintain both Crisco and Wesson on store shelves after the acquisition closes.

87. Facing these and other impediments to entry, existing suppliers of CV oils are unlikely to expand in the CV oils market to replace the competitive significance of Wesson today.

88. Respondents cannot demonstrate cognizable and merger-specific efficiencies that rebut the strong presumption and evidence that the Acquisition likely would substantially lessen competition in the relevant market.

VIII.

VIOLATION

COUNT I—ILLEGAL AGREEMENT

89. The allegations of Paragraphs 1 through 88 above are incorporated by reference as though fully set forth.

90. The Acquisition constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II—ILLEGAL ACQUISITION

91. The allegations of Paragraphs 1 through 88 above are incorporated by reference as though fully set forth.

92. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the seventh day of August, 2018, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that this administrative proceeding shall be conducted as though the Commission, in an ancillary proceeding, has also filed a complaint in a United States District Court, seeking relief pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), as provided by Commission Rule 3.11(b)(4), 16 CFR 3.11(b)(4). You are also notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall

consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Smucker and Conagra were offering and planning to offer prior to the Acquisition.

2. A prohibition against any transaction between Smucker and Conagra that combines their businesses in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Smucker and Conagra provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant market.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Conagra as viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this fifth day of March, 2018.

By the Commission.

ORDER DISMISSING COMPLAINT

On March 5, 2018, the Commission issued an Administrative Complaint alleging that Respondents The J.M. Smucker Company and Conagra Brands, Inc. had executed an Asset Purchase Agreement – pursuant to which Smucker would acquire the Wesson brand, including intellectual property, inventory, and some manufacturing equipment, from Conagra – that violated Section 5 of the FTC Act, 15 U.S.C. § 45, and that if the acquisition were consummated, it would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. Complaint Counsel and Respondents have now filed a Joint Motion to dismiss the Complaint, on the grounds that the Respondents have terminated their Asset Purchase Agreement, and have withdrawn the Hart-Scott-Rodino Notification and Report Forms that they filed for the proposed acquisition.[1]

The Commission has determined to dismiss the Complaint without prejudice, in light of Respondents' decision to abandon the proposed transaction and their withdrawal of their respective Hart-Scott-Rodino Notification and Report Forms. Respondents would not be able to effectuate the proposed transaction without filing new Hart-Scott-Rodino Notification and

Report Forms, and the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint therefore have been accomplished without the need for further administrative litigation.[2]

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1 *See* Joint Motion to Dismiss Complaint (filed March 7, 2018).

2 *See, e.g.*, *In the Matter of DraftKings, Inc. and FanDuel Limited, Docket No. 9375*, Order Dismissing Complaint (July 14, 2017); *In the Matter of Advocate Health Care Network, Advocate Health and Hospitals Corporation, and NorthShore University HealthSystem, Docket No. 9369*, Order Dismissing Complaint (Mar. 20, 2017); *In the Matter of The Penn State Hershey Medical Center and PinnacleHealth System, Docket No. 9368*, Order Dismissing Complaint (Oct. 23, 2016); *In the Matter of Superior Plus Corp. and Canexus Corporation, Docket No. 9371*, Order Dismissing Complaint (Aug. 2, 2016); *In the Matter of Staples Inc. and Office Depot, Inc., Docket No. 9367*, Order Dismissing Complaint (May 18, 2016).

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED THAT the Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

Complaint

IN THE MATTER OF

SEVEN & I HOLDINGS CO., LTD., 7-ELEVEN, INC., AND SUNOCO LP

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4641; File No. 171 0126
Complaint, January 18, 2018 – Decision, March 26, 2018

This consent order addresses the $3.3 billion acquisition by Seven & i Holdings Co., Ltd., through its wholly owned subsidiaries, 7-Eleven, Inc. and SEI Fuel Services, Inc., of certain assets of Sunoco LP. The complaint alleges that the acquisition would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in 76 local markets across 20 metropolitan statistical areas. The consent order requires 7-Eleven to sell retail fuel outlets in some local markets to Sunoco and reject Sunoco retail fuel outlets in other local markets.

Participants

For the *Commission*: *Nicholas Bush, Mary Casale, Marc Lanoue, Eric Olson, Marc Schneider,* and *Julia Zhang.*

For the *Respondents*: *Deona Kalala* and *Corey Roush, Akin Gump Strauss Hauer & Feld LLP; David Smith* and *William Vigdor, Vinson & Elkins LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Seven & i Holdings Co., Ltd. has entered into an agreement through its wholly owned subsidiaries, including Respondent 7-Eleven, Inc., to acquire certain retail fuel assets from Respondent Sunoco LP, that such acquisition, if consummated, would violate 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 that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTS

1. Respondent Seven & i Holdings Co., Ltd. ("Seven & i") is a corporation organized, existing, and doing business under, and by virtue of, the laws of Tokyo, Japan, with its office and principal place of business located at 8-8 Nibancho, Chiyoda-Ku, Tokyo, Japan 102-8452, and the address of its United States subsidiary, 7-Eleven, Inc., 3200 Hackberry Road, Irving, Texas 75063.

2. Respondent 7-Eleven, Inc. ("7-Eleven") is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Texas with its office and principal place of business located at 3200 Hackberry Road, Irving, Texas. 7-Eleven is a wholly owned subsidiary of Seven & i. Respondent 7-Eleven is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

3. Respondent Sunoco LP ("Sunoco") 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 8111 Westchester Drive, Suite 600, Dallas, Texas. Respondent Sunoco is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

4. Each Respondent, either directly or through its subsidiaries, is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. Pursuant to an Asset Purchase Agreement dated April 6, 2017, Seven & i, through its wholly owned subsidiaries 7-Eleven and SEI Fuel Services, Inc., proposes to acquire approximately 1,100 convenience stores and retail fuel outlets and related assets, for approximately $3.3 billion (the "Acquisition"). SEI Fuel Services, Inc. will enter into a fuel supply agreement with Sunoco, LLC as a part of the Acquisition.

6. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

7. Relevant product markets in which to analyze the effects of the Acquisition are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. No economic or practical alternative to the retail sale of gasoline or diesel at retail fuel outlets exists.

8. Relevant geographic markets in which to analyze the effects of the Acquisition include 76 local markets within the following metropolitan statistical areas: Boston, Massachusetts; Brownsville, Texas; Buffalo, New York; Fort Myers, Florida; Corpus Christi, Texas; Daytona Beach, Florida; Killeen, Texas; Laredo, Texas; Mission, Texas; Miami, Florida; Gettysburg, Pennsylvania; Titusville, Florida; Pittsburgh, Pennsylvania; Richmond, Virginia; San Antonio, Texas; Venice, Florida; Tampa, Florida; Roma, Texas; Victoria, Texas; and Washington, DC.

9. The relevant geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting the commuting patterns, traffic flows, and outlet characteristics unique to each market.

Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes.

IV. MARKET STRUCTURE

10. The Acquisition, if consummated, would create a monopoly in 18 local markets. In 39 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from three to two. In 19 local markets, the Acquisition, if consummated, would reduce the number of independent market participants from four to three. The Acquisition would result in a highly concentrated market in each of these 76 markets.

V. BARRIERS TO ENTRY

11. Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

VI. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

a. increasing the likelihood that Respondent 7-Eleven would unilaterally exercise market power in the relevant markets; and/or

b. increasing the likelihood of collusive or coordinated interaction between any remaining competitors in the relevant markets.

VII. VIOLATIONS CHARGED

13. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

14. The Asset Purchase Agreement entered into by Respondents 7-Eleven and Sunoco constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this eighteenth day of January, 2018, issues its Complaint against Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Seven & i Holdings Co., Ltd., through its wholly owned subsidiaries, Respondent 7-Eleven, Inc. and SEI Fuel Services, Inc., (collectively "7-Eleven"), of retail fuel outlets, convenience stores, and related assets of Respondent Sunoco LP, through its wholly owned subsidiaries, Susser Petroleum Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., and MACS Retail LLC, (collectively "Sunoco"), and Respondents 7-Eleven and Sunoco 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 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:

1. Respondent Seven & i Holdings Co., Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Japan, with its headquarters and principal place of business located at 8-8 Nibancho, Chiyoda-Ku, Tokyo, Japan 102-8452, 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: Senior Counsel (as of the date of execution of the ACCO, Dawud Crooms) 7-Eleven, Inc., 3200 Hackberry Road, Irving, Texas 75063.

2. Respondent 7-Eleven, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its headquarters and principal place of business located at 3200 Hackberry Road, Irving, Texas 75063. 7-Eleven, Inc. is a wholly owned subsidiary of Seven & i Holdings Co., Ltd.

3. Respondent Sunoco LP is a limited partnership 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 8111 Westchester Drive, Suite 600, Dallas, Texas 75225.

4. 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.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, and Schedule A, Schedule B, Schedule C, confidential Schedule D, and non-public Appendix A, which are attached to the Decision and Order and identify the 7-Eleven Assets and the Sunoco Retained Assets, are incorporated herein by reference and made a part hereof, shall apply:

A. "7-Eleven" means Respondent Seven & i Holdings Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Seven & i Holdings Co., Ltd., including, but not limited to, Respondent 7-Eleven, Inc. and SEI Fuel Services, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each, and the respective joint ventures, subsidiaries, divisions, groups, and affiliates controlled by each.

B. "Sunoco" means Sunoco LP, its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, partnerships, subsidiaries, divisions, groups, and affiliates, in each case controlled by Sunoco LP, including, but not limited to, Susser Petroleum

Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., MACS Retail LLC, Sunoco Finance Corp., and Sunoco LLC, and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means 7-Eleven and Sunoco, individually and collectively.

D. "7-Eleven Confidential Wholesale Information" means any confidential information that Respondent Sunoco obtains as a wholesaler of Fuel Products to 7-Eleven, including wholesale price and wholesale volume information, and any discounts or rebates applied to Sunoco's provision of Fuel Products to 7-Eleven, including, but not limited to, information obtained directly or indirectly from the Fuel Supply Agreement.

E. "Closing Date" means the closing date for the Acquisition.

F. "Confidential Business Information" means any information not in the public domain, including, but not limited to, all Books and Records and all fuel volume, pricing and cost information; *provided, however,* that Confidential Business Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Business Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.

G. "Commission Agent" means a Person who enters into an agreement with Sunoco to operate a Retail Fuel Outlet Business at any Retail Fuel Location identified on Schedule A (or any of the corresponding Substitute

Retail Fuel Locations identified in Schedule C) or Schedule B.

H. "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.

I. "Divestiture Date(s)" means the dates on which Respondents or a Divestiture Trustee close on the divestiture of the 7-Eleven Assets as required by Paragraph II. or Paragraph VI. of the Decision and Order.

J. "Firewalled Employees" means any Sunoco employee(s) that are designated by Sunoco to be officially and directly responsible for establishing, setting, or changing the retail prices of Fuel Products at the Retail Fuel Locations identified in Schedules A, B and, as applicable, C during the term of the Fuel Supply Agreement. Firewalled Employees shall not be involved in any way, directly or indirectly, in the implementation or execution of the Fuel Supply Agreement, and shall have no duties and responsibilities that relate, directly or indirectly, to the implementation or execution of the Fuel Supply Agreement.

K. "Inventory(ies)" means all inventories of every kind and nature for retail sale at the 7-Eleven Assets including: (1) all gasoline, diesel fuel, 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.

L. "Monitor" means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph V. of the Decision and Order and Paragraph V. of this Order to Maintain Assets.

M. "Orders" means the Decision and Order in this matter and this Order to Maintain Assets.

N. "Proposed Acquirer" means any proposed acquirer of the 7-Eleven Assets that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order. "Proposed Acquirer" includes Sunoco and its designees, including any Commission Agents.

O. "Transfer Date" means the date on which the operation of the Retail Fuel Outlet Business at each Retail Fuel Location is transferred to Sunoco or a Commission Agent. The Transfer Date may be after the Divestiture Date.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective and until the Transfer Date:

A. Respondent 7-Eleven shall maintain the viability, marketability, and competitiveness of the 7-Eleven Assets, and shall not cause the wasting or deterioration of any of the 7-Eleven Assets. Respondent 7-Eleven shall not cause the 7-Eleven Assets to be operated in a manner inconsistent with applicable laws, nor shall it sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the 7-Eleven Assets.

Order to Maintain Assets

B. Respondent 7-Eleven shall conduct the business of the 7-Eleven Assets in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts), and otherwise direct and ensure this result, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the 7-Eleven Assets in the regular and ordinary course of business, in accordance with past practice.

C. Respondent 7-Eleven shall not terminate the operation of any of the 7-Eleven Assets, and shall continue to maintain the Inventory of each of the 7-Eleven Assets at levels and selections in the regular and ordinary course of business, in accordance with past practice.

D. Respondent 7-Eleven shall maintain the organization and properties of each of the 7-Eleven Assets, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the 7-Eleven Assets. Among other actions as may be necessary to comply with these obligations, Respondent 7-Eleven shall, without limitation:

1. Maintain all operations at each of the 7-Eleven 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 7-Eleven 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 7-Eleven Assets;

3. Provide each employee of the 7-Eleven 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 7-Eleven Assets;

4. Not transfer Inventory from any 7-Eleven Asset, other than in the ordinary course of business, in accordance with past practice;

5. Make all payments required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the 7-Eleven Assets, in each case in a manner in accordance with past practice;

6. Maintain the Books and Records of each of the 7-Eleven Assets;

7. Not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that Respondent 7-Eleven is moving its operations at any 7-Eleven Asset to another location, or that indicates a 7-Eleven Asset will close;

8. Not conduct any "going out of business," "close-out," "liquidation," or similar sales or promotions at or relating to any 7-Eleven Asset;

9. Not materially change or modify the existing pricing or advertising practices, marketing, or merchandising programs and policies, or price zones for or applicable to any of the 7-Eleven Assets, other than changes or modifications in the regular and ordinary course of business, in accordance with past practices and business strategy;

Order to Maintain Assets

10. Provide each of the 7-Eleven Assets with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the 7-Eleven Assets;

11. Continue, at least at their scheduled pace, any additional expenditures for each of the 7-Eleven 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 to prevent any diminution in sales at each of the 7-Eleven Assets;

13. Make available for use by each of the 7-Eleven Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the 7-Eleven Assets;

14. Provide support services to each of the 7-Eleven Assets at least at the level as were being provided to such 7-Eleven Assets by Respondent 7-Eleven as of the date the Consent Agreement was signed by Respondent 7-Eleven; and

15. Maintain, and not terminate or permit the lapse of, any Governmental Permits necessary for the operation of any 7-Eleven Asset.

E. The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the 7-Eleven Assets as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that Respondent 7-Eleven obtains no Confidential Business Information relating to the 7-

Eleven Assets, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

III.

IT IS FURTHER ORDERED that from the date the Divestiture Agreement is executed until one (1) year after the Divestiture Date applicable to each Retail Fuel Location included in the 7-Eleven Assets, Respondent 7-Eleven shall provide the Proposed Acquirer and the respective Commission Agents, when applicable, with the opportunity to recruit and employ any employee of the 7-Eleven Assets in conformance with the following:

A. No later than seven (7) days after a request from the Proposed Acquirer (including any request made on behalf of any Commission Agent), or from Commission staff, Respondent 7-Eleven shall provide the Proposed Acquirer or the Commission Agent with the following information for each employee of the 7-Eleven Assets, as requested by the Proposed Acquirer, and to the extent permitted by law:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. Base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for Respondent 7-Eleven's last fiscal year, and current target or guaranteed bonus, if any;

5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

B. Within seven (7) days after a request from the Proposed Acquirer (including any request made on behalf of any Commission Agent), Respondent 7-Eleven shall provide to the Proposed Acquirer or any Commission Agent an opportunity to meet personally and outside the presence or hearing of any employee or agent of Respondent 7-Eleven, with any one, or all, of the employees of the 7-Eleven Assets, and to make offers of employment to any one, or more, of the employees of the 7-Eleven Assets.

C. Respondent 7-Eleven shall not interfere, directly or indirectly, with the hiring or employing by the Proposed Acquirer or any Commission Agent of any employee of the 7-Eleven Assets, not offer any incentive to such employees to decline employment with the Proposed Acquirer or any Commission Agent, and not otherwise interfere with the recruitment or employment of any employee by the Proposed Acquirer or Commission Agent.

D. Respondent 7-Eleven shall remove any impediments within the control of Respondent 7-Eleven that may deter employees of the 7-Eleven Assets from accepting employment with the Proposed Acquirer or Commission Agent, including, but not limited to, removal of any non-compete or confidentiality provisions of employment, or other contracts with Respondent 7-Eleven that may affect the ability or incentive of those individuals to be employed by the Proposed Acquirer or Commission Agent, and not make any counteroffer to an employee who has an

outstanding offer of employment from the Proposed Acquirer or Commission Agent, or has accepted an offer of employment from the Proposed Acquirer or Commission Agent.

E. Respondent 7-Eleven shall provide all employees with reasonable financial incentives to continue in their positions until the Divestiture Date. Such incentives shall include, but are not limited to, a continuation, until the Divestiture Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting as of the Divestiture Date of any unvested qualified 401(k) plan account balances (to the extent permitted by law, and for those employees covered by a 401(k) plan), offered by Respondent 7-Eleven.

F. Respondent 7-Eleven shall not, directly or indirectly, solicit, or otherwise attempt to induce any of the employees who have accepted offers of employment with the Acquirer or with a Commission Agent to terminate his or her employment with the Acquirer or a Commission Agent; *provided, however*, that Respondent 7-Eleven may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at employees of the 7-Eleven Assets; or

2. Hire employees of the 7-Eleven Assets who apply for employment with Respondent 7-Eleven, as long as such employees were not solicited by Respondent 7-Eleven in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondent 7-Eleven from making offers of employment to, or employing, any such employees if the Acquirer (or a Commission Agent operating or planning to operate the relevant Retail Fuel Location) has

notified Respondent 7-Eleven in writing that the Acquirer or such Commission Agent does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer or such Commission Agent.

IV.

IT IS FURTHER ORDERED that:

A. Respondent 7-Eleven shall:

1. Take all actions as are necessary and appropriate to prevent access to or the disclosure or use of any Confidential Business Information of Respondent Sunoco or of any Commission Agent that may be transmitted to or received by Respondent 7-Eleven in connection with the divestiture of the 7-Eleven Assets, the provision of Transition Services, or otherwise by any Persons (including, but not limited, to 7-Eleven's employees) except as is expressly permitted or required by the Orders or necessary to comply with the terms or obligations of the Remedial Agreement; *provided, however*, that Respondent 7-Eleven may disclose or use such Confidential Business Information in the course of: (a) performing its Order obligations or as otherwise permitted under the Orders or any Remedial Agreement; or (b) complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the 7-Eleven Assets, or as required by law;

2. Enforce the terms of Paragraph IV.A. of this Order to Maintain Assets as to its employees or any other Person, and take such actions as are necessary to cause each of its employees and any other Person

to comply with the terms of Paragraph IV.A., including implementation of access and data controls, training of its employees, and all other actions that Respondent 7-Eleven would take to protect its own confidential and proprietary information;

3. If disclosure or use of any Confidential Business Information of Respondent Sunoco or of any Commission Agent is permitted to Respondent 7-Eleven's employees or to any other Person pursuant to Paragraph IV.A. of this Order to Maintain Assets, Respondent 7-Eleven shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

4. As part of the procedures and requirements described in Paragraph IV.A. of this Order to Maintain Assets, Respondent 7-Eleven shall:

   a. No later than the Closing Date or otherwise prior to allowing any of its employees or other Persons to have access to the Confidential Business Information of Respondent Sunoco or of any Commission Agent, require all such employees and other Persons to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of the Orders;

   b. Require compliance with this Order to Maintain Assets and take appropriate action in the event of non-compliant access, use, or disclosure of Confidential Business Information in violation of the Orders;

c. Distribute guidance and provide training regarding the procedures to all relevant employees, at least annually, until such time as all Transition Services have been provided; and

d. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Orders' prohibitions and requirements.

B. No later than the Closing Date, Respondent Sunoco shall:

1. Institute all measures and take all actions as are necessary and appropriate to prevent the direct or indirect access to or disclosure or use of any 7-Eleven Confidential Wholesale Information by any Firewalled Employees except as is expressly permitted or required by the Orders or by the Remedial Agreement, where such measures shall include, but not be limited to, prohibiting any of its Firewalled Employees from receiving, having access to, using, or continuing to use or disclose any 7-Eleven Confidential Wholesale Information;

2. As part of the procedures and requirements described in Paragraph IV.B.1. of this Order to Maintain Assets, Respondent Sunoco shall:

a. No later than the Closing Date, require the Firewalled Employees to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of the Orders;

b. Require compliance with this Order and take appropriate action in the event of non-compliant access, use, or disclosure of 7-Eleven Confidential Wholesale Information in violation of this Order;

c. Distribute guidance and provide training regarding the procedures to all relevant employees referenced in Paragraph IV.B.1. of this Order to Maintain, at least annually; and

d. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Orders' prohibitions and requirements.

3. To the extent that Respondent Sunoco must access, disclose, or use any Confidential Business Information of Respondent 7-Eleven other than 7-Eleven Confidential Wholesale Information in connection with the Acquisition, Sunoco Retained Assets, or the divestiture of the 7-Eleven Assets for the purposes of complying with its obligations under the Orders or the Remedial Agreements, then Respondent Sunoco shall limit such access, disclosure, or use (i) only to those Persons who require such information for the purposes permitted under Paragraph IV.B., (ii) only to the extent such Confidential Business Information is required, and (iii) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information; and

4. Enforce the terms of this Paragraph IV.B. as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph IV.B, including training of Respondent Sunoco's employees and all other actions that Respondent Sunoco would take to protect is own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

A. Robert E. Ogle shall serve as Monitor separately to each Respondent to assure that each Respondent expeditiously complies with all of their respective obligations and performs all of their responsibilities as required by the Orders and the Remedial Agreements, including, Respondents' respective obligations pursuant to Paragraphs II., III., and IV. of this Order to Maintain Assets, Respondents' respective obligations pursuant to Paragraphs II., III., and IV., of the Decision and Order, and any Transition Services Agreement approved by the Commission.

B. Respondents shall enter into Monitor Agreements with the Monitor that is attached as non-public Appendix A to this Order to Maintain Assets. The Monitor Agreements shall become effective on the date this Order To Maintain Assets is issued. Respondents shall transfer to, and confer upon, the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities pursuant to this Order to Maintain Assets in a manner consistent with the purposes of the Orders, and in consultation with Commission staff, and shall require that the Monitor act in a fiduciary capacity for the benefit of the Commission. Respondents shall assure that, and the Monitor Agreements shall provide that:

1. The Monitor shall have the responsibility for monitoring the operations and transfer of the 7-Eleven Assets; overseeing the maintenance of the 7-Eleven Assets; overseeing the supervision of Transition Services by Respondent 7-Eleven's employees, agents, and representatives pursuant to the Transition Services Agreement; ensuring that the 7-Eleven Assets receive continued and adequate funding by Respondent 7-Eleven, as provided for in this Order; and monitoring

Respondents' compliance with its obligations pursuant to the Orders and the Remedial Agreements;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;

4. The Monitor shall have full and complete access to all of Respondents' facilities, personnel, books, documents, and records relating to the 7-Eleven Assets and the Sunoco Retained Assets, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of the relevant Respondent, on such reasonable and customary terms and conditions as the Commission may set;

6. The Monitor shall have the authority to employ, at the expense of the relevant Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

7. Each Respondent shall indemnify the Monitor, and hold the Monitor harmless, against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties with respect to each relevant Respondent, including all reasonable fees of counsel, and other reasonable expenses incurred, in

connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith of the Monitor; and

8. Respondents shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.

C. The Commission may, among other things, require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

D. Respondents may require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

E. If the Commission determines that the Monitor has ceased to act, or failed to act diligently, the Commission may appoint a substitute Monitor, subject

to the consent of each relevant Respondent, which consent shall not be unreasonably withheld, as follows:

1. If the relevant Respondent has not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within five (5) days after notice by the staff of the Commission to the relevant Respondent of the identity of the proposed substitute Monitor, then relevant Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Each relevant Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into agreements with the substitute Monitor that, subject to the prior approval of the Commission, confers on the substitute Monitor all of the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in this Paragraph IV. of the Order to Maintain Assets.

F. The Monitor shall serve for the terms of the Orders; *provided*, *however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

G. The Commission may, on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of these Orders or the Remedial Agreement.

H. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VI.

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 report due under this Order to Maintain Assets may be consolidated with and submitted to the Commission on the same timing as the 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.

VII.

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

A. Any proposed dissolution of any Respondent;

B. Any proposed acquisition, merger, or consolidation of Seven & i Holdings Co., Ltd., 7-Eleven, Inc., or Sunoco LP; or

C. Any other change in 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.

VIII.

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 with reasonable notice to Respondents, with respect to any matter contained in this Order to Maintain Assets, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities, and 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 Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

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.

IX.

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;

B. With respect to each 7-Eleven Asset, the day after Respondent 7-Eleven or a Divestiture Trustee completes the divestiture of each of the 7-Eleven Assets, as described in and required by the Decision and Order; *provided, however*, that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires Respondent 7-Eleven to rescind any or all of the divestitures contemplated by any Divestiture Agreement, or Respondent 7-Eleven, pursuant to Paragraph II.C. of the Decision and Order, determines, in consultation with the Monitor and Commission

staff, to divest any Substitute Retail Fuel Location(s), then, upon such rescission or substitution, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant 7-Eleven Assets until the day after Respondent 7-Eleven (or a Divestiture Trustee) completes the divestiture(s) of the relevant 7-Eleven Assets as described in and required by the Decision and Order;

C. The day after Respondent 7-Eleven, with the concurrence of the Acquirer, certifies in writing to the Commission as to the completion of all Transition Services provided by Respondent 7-Eleven to the Acquirer pursuant to any Transition Services Agreement approved by the Commission; or

D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

NON-PUBLIC APPENDIX A

MONITOR AGREEMENTS

[Redacted From the Public Record Version, But Incorporated By Reference]

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Respondent Seven & i Holdings Co., Ltd., through its wholly owned subsidiaries, Respondent 7-Eleven, Inc. and SEI Fuel Services, Inc., (collectively "7-Eleven"), of retail fuel outlets, convenience stores, and related assets from Respondent Sunoco LP, through its wholly owned subsidiaries, Susser Petroleum Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., and MACS Retail LLC, (collectively "Sunoco"), and Respondents 7-Eleven and Sunoco 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 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 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 has 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 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 issues the following Decision and Order ("Order"):

1. Respondent Seven & i Holdings Co., Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Japan, with its headquarters and principal place of business located at 8-8 Nibancho, Chiyoda-Ku, Tokyo, Japan 102-8452, 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: Senior Counsel (as of the date of execution of the ACCO, Dawud Crooms) 7-Eleven, Inc., 3200 Hackberry Road, Irving, Texas 75063.

2. Respondent 7-Eleven, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its headquarters and principal place of business located at 3200 Hackberry Road, Irving, Texas 75063. 7-Eleven, Inc. is a wholly owned subsidiary of Seven & i Holdings Co., Ltd.

3. Respondent Sunoco LP is a limited partnership 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 8111 Westchester Drive, Suite 600, Dallas, Texas 75225.

4. 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 ORDERED that, as used in this Order, the following definitions shall apply:

A. "7-Eleven" means Respondent Seven & i Holdings Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Seven & i Holdings Co., Ltd., including, but not limited to, Respondent 7-Eleven, Inc. and SEI Fuel Services, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each, and the respective joint ventures, subsidiaries, divisions, groups, and affiliates controlled by each.

B. "Sunoco" means Sunoco LP, its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, partnerships, subsidiaries, divisions, groups, and affiliates, in each case controlled by Sunoco LP, including, but not limited to, Susser Petroleum Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., MACS Retail LLC, Sunoco Finance Corp., and Sunoco LLC, and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means 7-Eleven and Sunoco, individually and collectively.

D. "7-Eleven Assets" means all of Respondent 7-Eleven's rights, title, and interests in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Retail Fuel Outlet Business operated at each of those Retail Fuel Locations identified in (i) Schedule A, and (ii) Schedule C of this Order; *provided, however*, that 7-Eleven Assets shall not include any 7-Eleven Assets identified in Schedule A of this Order for which the corresponding Substitute Retail Fuel Location identified in Schedule C is divested. 7-Eleven Assets include:

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;

3. All Inventories;

4. All Contracts (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 thereof or renewals thereof (to the extent transferable);

6. Telephone and fax numbers; and

7. Books and Records;

Provided, however, that in cases in which Books and Records included in the 7-Eleven Assets contain information: (a) that relates both to the 7-Eleven Assets and to other retained businesses of Respondent 7-Eleven and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the 7-Eleven Assets, or (b) where Respondent 7-Eleven has a legal obligation to retain the original copies, then Respondent 7-Eleven 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, Respondent 7-Eleven shall provide to such Acquirer access to original materials under

circumstances where copies of materials are insufficient for regulatory or evidentiary purposes;

8. *Provided, however*, that the 7-Eleven Assets shall not include:

   a. Any 7-Eleven Retail Fuel Locations listed on Schedule C for which the corresponding Substitute Retail Fuel Locations are instead divested;

   b. Respondent 7-Eleven's Brands, except with respect to any purchased Inventory; *provided further, however*, that, at the Acquirer's option, Respondent 7-Eleven shall grant a worldwide, royalty-free, fully paid-up license to the Acquirer to use any of Respondent 7-Eleven's Brands as are applicable to the 7-Eleven Assets as part of any License Agreement that Respondent 7-Eleven may enter into with the Acquirer, or as may otherwise be allowed pursuant to any Remedial Agreement(s);

   c. Assets used in the distribution of Inventories that are not located at any locations identified on Schedule A of this Order;

   d. All cash or cash equivalents (except change funds or cash on hand), rebates, and accounts receivable relating to the operation of the 7-Eleven Assets immediately prior to the actual date and time that possession of the respective 7-Eleven Assets are conveyed to the Acquirer; or

   e. If Respondent Sunoco is the Acquirer, Books and Records, Contracts, and Equipment that will not be conveyed to Respondent Sunoco pursuant to the Sunoco Divestiture Agreement.

E. "7-Eleven Confidential Wholesale Information" means any confidential information that Respondent Sunoco obtains as a wholesaler of Fuel Products to 7-Eleven, including wholesale price and wholesale volume information, and any discounts or rebates applied to Sunoco's provision of Fuel Products to 7-Eleven, including, but not limited to, information obtained directly or indirectly from the Fuel Supply Agreement.

F. "Acquirer" means Respondent Sunoco or any other Person approved by the Commission to acquire the 7-Eleven Assets pursuant to this Order.

G. "Acquisition" means the proposed acquisition of certain Sunoco assets by Respondent 7-Eleven, Inc. and SEI Fuel Services, Inc. pursuant to the Acquisition Agreement.

H. "Acquisition Agreement" means the Asset Purchase Agreement between 7-Eleven, Inc., and SEI Fuel Services, Inc., on the one hand, and Susser Petroleum Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., MACS Retail LLC, Sunoco Finance Corp., Sunoco LLC, and Sunoco LP, on the other hand, dated as of April 6, 2017, as amended, that was submitted by 7-Eleven and Sunoco to the Commission in this matter.

I. "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, 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 the operation of Retail Fuel Locations.

J. "Closing Date" means the closing date for the Acquisition.

K. "Commission Agent" means a Person who enters into an agreement with Sunoco to operate a Retail Fuel Outlet Business at any Retail Fuel Location identified on Schedule A (or any of the corresponding Substitute Retail Fuel Locations identified in Schedule C) or Schedule B.

L. "Confidential Business Information" means any information not in the public domain, including, but not limited to, all Books and Records and all fuel volume, pricing and cost information; *provided, however,* that Confidential Business Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any

Confidential Business Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

M. "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.

N. "Direct Costs" means costs not to exceed the actual cost of labor, goods and material, travel, third party vendors, and other expenditures that are directly incurred to provide and fulfill the Transition Services provided pursuant to the Transition Services Agreement.

O. "Divestiture Agreement" means any agreement between Respondent 7-Eleven and an Acquirer (or between a Divestiture Trustee and an Acquirer), and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the 7-Eleven Assets that have been proposed for approval by the Commission or approved by the Commission to accomplish the requirements of this Order.

P. "Divestiture Date(s)" means the dates on which Respondents or a Divestiture Trustee close on the divestiture of the 7-Eleven Assets as required by Paragraph II. or Paragraph VI. of this Order.

Q. "Divestiture Trustee" means any Person appointed by the Commission to serve as a Divestiture Trustee pursuant to Paragraph VI. of this Order.

R. "Equipment" means all tangible, nonproprietary personal property (other than Inventory(ies)) of every kind owned or leased by Respondent 7-Eleven in

connection with the operation of the 7-Eleven Assets, including, but not limited to, all: fixtures, furniture, computer equipment, office equipment, telephone systems, security systems, registers, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST Systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, dispenser pans or under-dispenser containers and overfill sumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of and located at the 7-Eleven Assets, 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, but excluding third-party software, inventory management system, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock.

S. "Firewalled Employees" means any Sunoco employee(s) that are designated by Sunoco to be officially and directly responsible for establishing, setting, or changing the retail prices of Fuel Products at the Retail Fuel Locations identified in Schedules A, B, and, as applicable, C during the term of the Fuel Supply Agreement. Firewalled Employees shall not be involved in any way, directly or indirectly, in the implementation or execution of the Fuel Supply Agreement, and shall have no duties and responsibilities that relate, directly or indirectly to the implementation or execution of the Fuel Supply Agreement.

T. "Fuel Products" means refined petroleum gasoline and diesel products.

U. "Fuel Supply Agreement" means the Fuel Supply Agreement by and among SEI Fuel Services, Inc. and Sunoco LLC, which will be executed on the Closing Date as required by the terms of the Acquisition Agreement and which was submitted by 7-Eleven and Sunoco to the Commission in this matter.

V. "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.

W. "Governmental Permit(s)" means all licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any Governmental Entity(ies) necessary to effect the complete transfer and divestiture of the 7-Eleven Assets to the Acquirer and for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.

X. "Inventory(ies)" means all inventories of every kind and nature held for retail sale and located at the Retail Fuel Location identified in Schedule A of this Order, including: (1) all gasoline, diesel fuel, 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.

Y. "Laredo Taco Intellectual Property" means all brands, trademarks, recipes and know-how owned by Sunoco, to the extent related primarily to the conduct of the Laredo Taco Company® business as conducted by Sunoco on or before the Closing Date, including in Stripes® Convenience Stores, as each of the relevant

assets and terms are defined in the Acquisition Agreement.

Z. "License Agreement" means the license agreement by and among 7-Eleven, Inc., Sunoco Retail LLC, and Sunmarks, LLC dated as of January 4, 2018, that was submitted by Respondents 7-Eleven and Sunoco to the Commission in this matter.

AA. "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.

BB. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.

CC. "Orders" means this Decision and Order and the related Order to Maintain Assets.

DD. "Person" means any individual, or any partnership, firm, corporation, limited liability company, limited liability partnership, association, trust, unincorporated organization, or other business entity.

EE. "Proposed Acquirer" means any proposed acquirer of the 7-Eleven Assets that Respondents or the Divestiture Trustee intend to submit or have submitted to the Commission for its approval under this Order. "Proposed Acquirer" includes Sunoco, and its designees, including any Commission Agents.

FF. "Relevant Notice Outlets" means the Retail Fuel Outlet Businesses identified on Non-Public Schedule D of this Order.

GG. "Remedial Agreement" means the Sunoco Divestiture Agreement if approved by the Commission, or

1. Any other Divestiture Agreement that is approved by the Commission; and

2. Any other agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer), including any Transition Services Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the 7-Eleven Assets, that have been approved by the Commission to accomplish the requirements of this Order.

HH. "Respondent 7-Eleven's Brands" means all of Respondent 7-Eleven's trademarks, trade dress, logos, service marks, trade names, brand names, and all associated intellectual property rights, including rights to the names and marks 7-Eleven®, A Good ID is a Good Idea®, ID Zone®, Oh Thank Heaven®, and Oh Thank Heaven for 7-Eleven®.

II. "Retail Fuel Location" means: (1) any existing retail facility engaged in the activities of a Retail Fuel Outlet Business; and (2) any property site where the repair, restoration, or remodel of a retail facility to be engaged in the activities of a Retail Fuel Outlet Business is planned or underway.

JJ. "Retail Fuel Outlet Business" means all business activities relating to: (1) the retail sale, promotion, marketing, and provision of motor fuels, including gasoline, diesel fuel, 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 at each Retail Fuel Location.

KK. "SEI Fuel Services, Inc." means SEI Fuel Services, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its headquarters and principal place of business located at 3200 Hackberry Road, Irving, Texas 75063. SEI Fuel Services, Inc. is an indirect wholly-owned subsidiary of 7-Eleven.

LL. "Specified State" means Florida, Texas, or Virginia.

MM. "Stripes" means Stripes LLC, a limited liability company 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 8020 Park Lane, Suite 200, Dallas, Texas 75231. Stripes is a wholly owned subsidiary of Sunoco LP.

NN. "Stripes Intellectual Property" means the brands, trademarks, service marks and logos and other indicia or source owned by Sunoco, to the extent related solely to the conduct of the business of Stripes® as conducted by Sunoco on or before the Closing Date.

OO. "Substitute Retail Fuel Location" means all of the Sunoco Retail Fuel Locations that are identified in Schedule C, corresponding to each 7-Eleven Retail Fuel Location.

PP. "Sunoco Divestiture Agreement" means the Asset Purchase Agreement between 7-Eleven, Inc., and SEI Fuel Services, Inc., on the one hand, and Sunoco Retail, LLC, Stripes LLC, MACS Retail LLC, and Sunoco LP, on the other hand, dated as of January 4, 2018; the Transition Services Agreement among Sunoco Retail, LLC, 7-Eleven, Inc., and SEI Fuel Services, Inc., dated as of January 4, 2018; and all amendments, exhibits, attachments, agreements, and

schedules submitted to the Commission with the foregoing to accomplish the divestiture of the 7-Eleven Assets. The Sunoco Divestiture Agreement is attached to this Order as Non-Public Schedule E.

QQ. "Sunoco Retained Assets" means all of Respondent Sunoco's rights, title, and interests in and to all assets, tangible and intangible, relating to, used in, and/or reserved for use in, the Retail Fuel Outlet Business operated at each of those Retail Fuel Locations identified in Schedule B.

Provided, however, that the Sunoco Retained Assets shall not include:

1. Laredo Taco Intellectual Property or Stripes Intellectual Property, except with respect to any purchased Inventory (including private label inventory); *provided further, however,* that, at the Acquirer's option, Respondents shall grant a worldwide, royalty-free, fully paid-up license to the Acquirer to use any of Laredo Taco Intellectual Property or Stripes Intellectual Property as are applicable to the Sunoco Retained 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); or

2. Assets used in the distribution of Inventories that are not located at the Retail Fuel Locations identified in Schedule B of this Order.

RR. "Third Party(ies)" means any Person other than the Respondents or the Acquirer.

SS. "Third Party Consents" means all consents, approvals, permissions, waivers, ratifications, or other authorizations from any Third Party(ies) that are necessary to effect the complete transfer and divestiture of the 7-Eleven Assets to the Acquirer and

for the Acquirer to operate any aspect of a Retail Fuel Outlet Business.

TT. "Transition Services" means convenience store management, technical services, personnel, assistance, training, product supply, and other logistical, administrative, and transitional support as required by the Acquirer, or by the Acquirer's Commission Agent, and approved by the Commission to facilitate the transfer of the 7-Eleven Assets from Respondent 7-Eleven to the Acquirer, or to the Acquirer's Commission Agent, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, information technology and systems (including point of sale systems and networks), credit card processing, asset protection, maintenance and repair of facilities and equipment, purchasing, quality control, research and development support, technology transfer, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management, customer transfer logistics, and the use of Respondent 7-Eleven's Brands for transitional purposes, *provided, however,* if Respondent Sunoco is the Acquirer, use of Respondent 7-Eleven's Brands shall be consistent with the License Agreement.

UU. "Transition Services Agreement" means an agreement that receives the prior approval of the Commission between Respondents and the 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 7-Eleven Assets to the Acquirer and to operate the 7-Eleven Assets in a manner consistent with the purposes of this Order.

II.

IT IS FURTHER ORDERED that:

A. With respect to the Sunoco Retained Assets:

1. Respondents shall, no later than the Closing Date, exercise their respective rights under Section 5.4(d) of the Acquisition Agreement to designate the Sunoco Retained Assets as "Rejected Properties" as defined in the Acquisition Agreement, and exclude the Sunoco Retained Assets from the Acquisition; and

2. Respondent 7-Eleven shall not acquire the Sunoco Retained Assets from Respondent Sunoco, except as provided in Paragraph VII.A. of this Order.

B. No later than ninety (90) days after the Closing Date, Respondent 7-Eleven shall divest the 7-Eleven Assets, absolutely and in good faith, as ongoing Retail Fuel Outlet Businesses, to Respondent Sunoco pursuant to and in accordance with the Sunoco Divestiture Agreement.

C. *Provided, however,* that if Respondent 7-Eleven has divested the 7-Eleven Assets to Respondent Sunoco pursuant to Paragraph II.A. of this Order prior to the date this Order becomes final, and if at the time the Commission determines to make this Order final, the Commission notifies Respondent 7-Eleven and Respondent Sunoco that:

1. Respondent Sunoco is not an acceptable Acquirer, then Respondent 7-Eleven shall, within fifteen (15) days of notification by the Commission, rescind such transaction with Respondent Sunoco and shall divest the 7-Eleven Assets as ongoing Retail Fuel Outlet Businesses, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission,

within ninety (90) days of the date the Commission notifies Respondent 7-Eleven that Respondent Sunoco is not an acceptable Acquirer; or

2. The manner in which the divestiture identified in Paragraph II.A. was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph VI. of this Order, to effect such modifications to the manner of divesting the 7-Eleven Assets to Respondent Sunoco (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Remedial Agreements) as may be necessary to satisfy the requirements of this Order.

D. Respondent 7-Eleven shall:

1. Prior to the Divestiture Date, obtain, at its sole expense, all required Third Party Consents relating to the divestiture of all 7-Eleven Assets;

Provided, however, that:

a. for each of the Retail Fuel Locations identified in Schedule A that require landlord consent or franchisee consent in order to effectuate the required divestiture, in the event that Respondent 7-Eleven is unable to obtain the necessary landlord consent or franchisee consent for divestiture of any one or more of such 7-Eleven Retail Fuel Locations, Respondents may, in consultation with the Monitor and Commission staff, substitute the corresponding Substitute Retail Fuel Location; *provided, however,* that the divestiture of any Substitute Retail Fuel Location(s) shall not include the Stripes Intellectual Property or the Laredo Taco Intellectual Property; *provided further,* that Respondents shall divest such Substitute Retail Fuel Location(s) to the

Acquirer no later than fifteen (15) days after receipt of written notification from the Commission or its staff directing such divestiture if it has not already occurred; and

b. Respondent 7-Eleven may satisfy this requirement by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies) or has otherwise obtained all necessary consents and waivers; and

2. With respect to any Governmental Permits relating to the 7-Eleven Assets that are not transferable, allow the Acquirer or the Commission Agent to operate the 7-Eleven Assets under Respondent 7-Eleven's Governmental Permits pending the Acquirer's or the Commission Agent's receipt of its own Governmental Permits, and provide such assistance as the Acquirer or the Commission Agent may reasonably request in connection with its efforts to obtain such Governmental Permits.

E. Respondent 7-Eleven shall:

1. At the option of the Acquirer, and subject to the prior approval of the Commission, provide Transition Services to the Acquirer or in the case of Sunoco, to Sunoco and Commission Agents, pursuant to a Transition Services Agreement for six (6) months following the Divestiture Date, with an opportunity to extend for up to twelve (12) months at the option of the Acquirer. Such Transition Services Agreement shall provide that: (1) the Acquirer may terminate the Transition Services Agreement at any time upon commercially reasonable notice to Respondent 7-Eleven, and without cost or penalty to the Acquirer; and (2) at the Acquirer's request, Respondent 7-Eleven shall agree to extend the term of any Transition Service(s) for an additional

period of up to twelve (12) months (*i.e.*, in addition to the initial term plus any extension), and shall file with the Commission any request for prior approval to extend the term of the Transition Services Agreement for such Transition Service(s); and

2. The Transition Services provided pursuant to the Transition Services Agreement shall be provided at no more than Respondent 7-Eleven's Direct Costs and shall enable the Acquirer or the Commission Agent to operate Retail Fuel Outlet Businesses at least at the same level of quality and service as they were operated prior to the divestiture.

F. The purpose of the divestiture is to ensure the continuation of the 7-Eleven Assets and the Sunoco Retained Assets as ongoing, viable enterprises engaged in the Retail Fuel Outlet Business and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that from the date the Divestiture Agreement is executed until one (1) year after the Divestiture Date applicable to each Retail Fuel Location included in the 7-Eleven Assets, Respondent 7-Eleven shall provide the Proposed Acquirer and the respective Commission Agents, when applicable, with the opportunity to recruit and employ any employee of the 7-Eleven Assets in conformance with the following:

A. No later than seven (7) days after a request from the Proposed Acquirer (including any request made on behalf of any Commission Agent), or from Commission staff, Respondent 7-Eleven shall provide the Proposed Acquirer or the Commission Agent with the following information for each employee of the 7-

Eleven Assets, as requested by the Proposed Acquirer, and to the extent permitted by law:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. Base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for Respondent 7-Eleven's last fiscal year, and current target or guaranteed bonus, if any;

5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

B. Within seven (7) days after a request from the Proposed Acquirer (including any request made on behalf of any Commission Agent), Respondent 7-Eleven shall provide to the Proposed Acquirer or any Commission Agent an opportunity to meet personally and outside the presence or hearing of any employee or agent of Respondent 7-Eleven, with any one, or all, of the employees of the 7-Eleven Assets, and to make offers of employment to any one, or more, of the employees of the 7-Eleven Assets.

C. Respondent 7-Eleven shall not interfere, directly or indirectly, with the hiring or employing by the

Proposed Acquirer or any Commission Agent of any employee of the 7-Eleven Assets, not offer any incentive to such employees to decline employment with the Proposed Acquirer or any Commission Agent, and not otherwise interfere with the recruitment or employment of any employee by the Proposed Acquirer or Commission Agent.

D. Respondent 7-Eleven shall remove any impediments within the control of Respondent 7-Eleven that may deter employees of the 7-Eleven Assets from accepting employment with the Proposed Acquirer or Commission Agent, including, but not limited to, removal of any non-compete or confidentiality provisions of employment, or other contracts with Respondent 7-Eleven that may affect the ability or incentive of those individuals to be employed by the Proposed Acquirer or Commission Agent, and not make any counteroffer to an employee who has an outstanding offer of employment from the Proposed Acquirer or Commission Agent, or has accepted an offer of employment from the Proposed Acquirer or Commission Agent.

E. Respondent 7-Eleven shall provide all employees with reasonable financial incentives to continue in their positions until the Divestiture Date. Such incentives shall include, but are not limited to, a continuation, until the Divestiture Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting as of the Divestiture Date of any unvested qualified 401(k) plan account balances (to the extent permitted by law, and for those employees covered by a 401(k) plan), offered by Respondent 7-Eleven.

F. Respondent 7-Eleven shall not, directly or indirectly, solicit, or otherwise attempt to induce any of the employees who have accepted offers of employment with the Acquirer or with a Commission Agent to terminate his or her employment with the Acquirer or

a Commission Agent; *provided, however*, that Respondent 7-Eleven may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at employees of the 7-Eleven Assets; or

2. Hire employees of the 7-Eleven Assets who apply for employment with Respondent 7-Eleven, as long as such employees were not solicited by Respondent 7-Eleven in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondent 7-Eleven from making offers of employment to, or employing, any such employees if the Acquirer (or a Commission Agent operating or planning to operate the relevant Retail Fuel Location) has notified Respondent 7-Eleven in writing that the Acquirer or such Commission Agent does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer or such Commission Agent.

IV.

IT IS FURTHER ORDERED that:

A. Respondent 7-Eleven shall:

1. Take all actions as are necessary and appropriate to prevent access to or the disclosure or use of any Confidential Business Information of Respondent Sunoco or of any Commission Agent that may be transmitted to or received by Respondent 7-Eleven in connection with the divestiture of the 7-Eleven Assets, the provision of Transition Services, or otherwise by any Persons (including, but not

limited, to 7-Eleven's employees) except as is expressly permitted or required by the Orders or necessary to comply with the terms or obligations of the Remedial Agreement; *provided, however*, that Respondent 7-Eleven may disclose or use such Confidential Business Information in the course of: (a) performing its Order obligations or as otherwise permitted under this Order, the Order to Maintain Assets, or any Remedial Agreement; or (b) complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the 7-Eleven Assets, or as required by law;

2. Enforce the terms of Paragraph IV.A. of this Order as to its employees or any other Person, and take such actions as are necessary to cause each of its employees and any other Person to comply with the terms of Paragraph IV.A., including implementation of access and data controls, training of its employees, and all other actions that Respondent 7-Eleven would take to protect its own confidential and proprietary information;

3. If disclosure or use of any Confidential Business Information of Respondent Sunoco or of any Commission Agent is permitted to Respondent 7-Eleven's employees or to any other Person pursuant to Paragraph IV.A. of this Order, Respondent 7-Eleven shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

4. As part of the procedures and requirements described in Paragraph IV.A. of this Order, Respondent 7-Eleven shall:

   a. No later than the Closing Date or otherwise prior to allowing any of its employees or other Persons to have access to the Confidential Business Information of Respondent Sunoco or of any Commission Agent, require all such employees and other Persons to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order;

   b. Require compliance with this Order and take appropriate action in the event of non-compliant access, use, or disclosure of Confidential Business Information in violation of this Order;

   c. Distribute guidance and provide training regarding the procedures to all relevant employees, at least annually, until such time as all Transition Services have been provided; and

   d. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's prohibitions and requirements.

B. No later than the Closing Date, Respondent Sunoco shall:

   1. Institute all measures and take all actions as are necessary and appropriate to prevent the direct or indirect access to or disclosure or use of any 7-Eleven Confidential Wholesale Information by any Firewalled Employees except as is expressly permitted or required by the Orders or by the Remedial Agreement, where such measures shall include, but not be limited to, prohibiting any of its

Firewalled Employees from receiving, having access to, using, or continuing to use or disclose any 7-Eleven Confidential Wholesale Information;

2. As part of the procedures and requirements described in Paragraph IV.B.1. of this Order, Respondent Sunoco shall:

   a. No later than the Closing Date, require the Firewalled Employees to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order;

   b. Require compliance with this Order and take appropriate action in the event of non-compliant access, use, or disclosure of 7-Eleven Confidential Wholesale Information in violation of this Order;

   c. Distribute guidance and provide training regarding the procedures to all relevant employees referenced in Paragraph IV.B.1. of this Order, at least annually; and

   d. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's prohibitions and requirements.

3. To the extent that Respondent Sunoco must access, disclose, or use any Confidential Business Information of Respondent 7-Eleven other than 7-Eleven Confidential Wholesale Information in connection with the Acquisition, Sunoco Retained Assets, or the divestiture of the 7-Eleven Assets for the purposes of complying with its obligations under the Orders or the Remedial Agreements, then Respondent Sunoco shall limit such access, disclosure, or use (i) only to those Persons who require such information for the purposes

permitted under Paragraph IV.B., (ii) only to the extent such Confidential Business Information is required, and (iii) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information; and

4. Enforce the terms of this Paragraph IV.B. as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph IV.B, including training of Respondent Sunoco's employees and all other actions that Respondent Sunoco would take to protect its own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

A. Robert E. Ogle shall serve as Monitor separately to each Respondent to assure that each Respondent expeditiously complies with all of their respective obligations and performs all of their responsibilities as required by the Orders and the Remedial Agreements, including Respondent 7-Eleven's obligations pursuant to Paragraph II. of the Order to Maintain Assets, Respondents' respective obligations pursuant to Paragraph II., III., and IV. of the Decision and Order, and any Transition Services Agreement approved by the Commission.

B. Respondents shall enter into the Monitor Agreements with the Monitor that are attached to the Order to Maintain Assets as Appendix A. The Monitor Agreements shall become effective on the date the Order To Maintain Assets is issued. Respondents shall transfer to, and confer upon, the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities pursuant to the Orders in a manner consistent with the purposes of

the Orders, and in consultation with Commission staff, and shall require that the Monitor act in a fiduciary capacity for the benefit of the Commission. Respondents shall assure that, and the Monitor Agreements shall provide that:

1. The Monitor shall have the responsibility for monitoring the operations and transfer of the 7-Eleven Assets; overseeing the maintenance of the 7-Eleven Assets; overseeing the supervision of Transition Services by Respondent 7-Eleven's employees, agents, and representatives pursuant to the Transition Services Agreement; ensuring that the 7-Eleven Assets receive continued and adequate funding by Respondent 7-Eleven, as provided for in the Orders; and monitoring Respondents' compliance with their obligations pursuant to the Orders and the Remedial Agreements;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;

4. The Monitor shall have full and complete access to all of Respondents' facilities, personnel, books, documents, and records relating to the 7-Eleven Assets and the Sunoco Retained Assets, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of the relevant Respondent,

on such reasonable and customary terms and conditions as the Commission may set;

6. The Monitor shall have the authority to employ, at the expense of the relevant Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

7. Each Respondent shall indemnify the Monitor, and hold the Monitor harmless, against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties with respect to each relevant Respondent, including all reasonable fees of counsel, and other reasonable expenses incurred, in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith of the Monitor; and

8. Respondents shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement. Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.

C. The Commission may, among other things, require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and

assistants, to sign a customary confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

D. Respondents may require the Monitor, and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.

E. If the Commission determines that the Monitor has ceased to act, or failed to act diligently, the Commission may appoint a substitute Monitor, subject to the consent of each relevant Respondent, which consent shall not be unreasonably withheld, as follows:

1. If the relevant Respondent has not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within five (5) days after notice by the staff of the Commission to the relevant Respondent of the identity of the proposed substitute Monitor, then the relevant Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Each relevant Respondent shall no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the prior approval of the Commission, confers on the substitute Monitor all of the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in this Paragraph V. of this Order and Paragraph IV. of the Order to Maintain Assets.

F. The Monitor shall serve for the terms of the Orders; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

G. The Commission may, on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders or the Remedial Agreement.

H. The Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

VI.

IT IS FURTHER ORDERED that:

A. If Respondent 7-Eleven has not divested the 7-Eleven Assets in the time and manner required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the 7-Eleven Assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under Paragraph VI. of this Order shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within fifteen (15) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, contract, deliver, or otherwise convey the relevant assets or rights that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order.

3. Within fifteen (15) days after appointment of the Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures or transfers required by the Order.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VI.B.3. of this Order to accomplish the divestiture(s),

which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets that are required to be assigned, granted, licensed, divested, transferred, contracted, delivered, or otherwise conveyed by this Order or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Respondents shall extend the time for divestiture under Paragraph VI. of this Order in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture(s) shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for any of the relevant 7-

Eleven Assets, and if the Commission determines to approve more than one such acquiring entity for such assets, the Divestiture Trustee shall divest such assets to the acquiring entity selected by Respondent 7-Eleven from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties,

including all reasonable fees of counsel and other 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 such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the 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 Paragraph VI. of this Order.

10. The Commission or, in the case of a court-appointed 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 divestiture(s) required by this Order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

12. The Divestiture Trustee shall report in writing to the Commission and Respondents every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture(s).

13. 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.

14. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture

Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

VII.

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years from the date this Order is issued, Respondent 7-Eleven shall not, without the prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in the 7-Eleven Assets or the Sunoco Retained Assets.

B. For a period of ten (10) years from the date this Order is issued, Respondent 7-Eleven shall not, without providing advance written notification to the Commission in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Relevant Notice Outlets, *provided, however*, that prior notification shall not be required by Paragraph VII. of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. With respect to the notification:

1. The prior notification (the "Notification") required by Paragraph VII.B. of this Order shall contain:

   a. The Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended;

b. A map showing all Retail Fuel Locations by ownership (*e.g.*, OPIS Corporate Brand) within five (5) driving miles of each Relevant Notice Outlet that 7-Eleven intends to acquire;

c. For each retail fuel outlet owned by Respondent 7-Eleven within five (5) driving miles of the relevant Prior Notice Outlet, a list of the Retail Fuel Locations that Respondent 7-Eleven monitored at any time within the preceding twelve (12) month period (to the extent such information is available); and

d. Respondent 7-Eleven's pricing strategy in relation to each monitored Retail Fuel Location identified in response to Paragraph VII.B. of this Order.

No filing fee will be required for any such Notification. Notification shall be filed with the Secretary of the Commission and notification need not be made to the United States Department of Justice. Notification is required only of Respondent 7-Eleven and not of any other party to the transaction.

2. Respondent 7-Eleven shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent 7-Eleven shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.

3. Early termination of the waiting periods in Paragraph VII.B. of this Order may be requested

and, where appropriate, granted by letter from the Bureau of Competition.

4. If related to a geographic area located within a Specified State, Respondent 7-Eleven shall provide a copy of each Notification described in Paragraph VII.B. of this Order to the relevant Specified State at the same time that such Notification is transmitted to the Commission.

VIII.

IT IS FURTHER ORDERED that:

A. The Remedial Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.

B. Each Remedial Agreement shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all terms of each Remedial Agreement, and any failure by Respondents to comply with the terms of any Remedial Agreement shall constitute a violation of this Order. If any term of any Remedial Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order.

D. Respondents shall not modify or amend any of the terms of any Remedial 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). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any

Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

IX.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until Respondent 7-Eleven has fully complied with the provisions of Paragraphs II. and III. of this Order, Respondent 7-Eleven shall submit to the Commission and the Monitor a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order, *provided, however,* if Respondent Sunoco is the Acquirer, Respondent 7-Eleven's obligations under IX.A. of this Order will not extend beyond (i) one year or (ii) its provision of Transition Services related to the 7-Eleven Assets, whichever is longer. Respondent 7-Eleven shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with this Order;

B. One (1) year from the date this Order is issued, annually for the next nine (9) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondent 7-Eleven shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order;

C. Within thirty (30) days after the date this Order is issued, Respondent Sunoco shall submit to the Commission and the Monitor a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Sunoco shall include in its reports, among other things that are required from

time to time, a full description of the efforts being made to comply with this Order; and

D. One (1) year from the date this Order is issued, annually for the next fourteen (14) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondent Sunoco shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

X.

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

A. Any proposed dissolution of Seven & i Holdings Co., Ltd., 7-Eleven, Inc., or Sunoco LP;

B. Any proposed acquisition, merger, or consolidation of Seven & i Holdings Co., Ltd., 7-Eleven, Inc., or Sunoco LP; 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.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and upon five (5) days' notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of 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 Respondents relating to compliance with this Order, for which copying services shall be provided by such Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on March 26, 2033.

By the Commission.

NONPUBLIC APPENDIX A

Monitor Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

Schedule A

Schedule A
7-Eleven Retail Fuel and Convenience Store Properties To Be Divested

7-Eleven Internal ID	Address	City	State	Zip
1218	4783 E HIGHWAY 83	ROMA	TX	78584
19929	10121 CHESTER RD	CHESTER	VA	23831
25151	11714 SUNSET HILLS RD	RESTON	VA	20190
33482	43974 PIPELINE PLZ	ASHBURN	VA	20147
36190	20021 ROUTE 19	CRANBERRY TOWNSHIP	PA	16066
36403	3957 SARATOGA BLVD	CORPUS CHRISTI	TX	78415
36517	11801 FM 1472	LAREDO	TX	78045
36518	4706 S EXPRESSWAY 83	HARLINGEN	TX	78552
36519	9811 BOB BULLOCK LOOP	LAREDO	TX	78041
36520	9101 MCPHERSON RD	LAREDO	TX	78045
36524	300 E EXPRESSWAY 83	MERCEDES	TX	78570
36528	2719 E SAUNDERS ST	LAREDO	TX	78041
36529	822 W US HIGHWAY 83	SAN JUAN	TX	78589
36531	6302 SARATOGA BLVD	CORPUS CHRISTI	TX	78414
36533	5602 S SPID DR	CORPUS CHRISTI	TX	78412
36534	3955 S SPID DR	CORPUS CHRISTI	TX	78415
36537	1201 WILDCAT DR	PORTLAND	TX	78374
36538	1600 N BICENTENNIAL BLVD	MCALLEN	TX	78501
36541	1758 BOCA CHICA BLVD	BROWNSVILLE	TX	78520
36542	745 W ELIZABETH ST	BROWNSVILLE	TX	78520
36545	865 N EXPRESSWAY	BROWNSVILLE	TX	78520
36547	6780 W EXPRESSWAY 83	HARLINGEN	TX	78552
36550	1725 INTERNATIONAL BLVD	BROWNSVILLE	TX	78520
36552	1900 N JACKSON RD	PHARR	TX	78577
36553	3105 SH-35 N	FULTON	TX	78358
36576	12121 FM 306	CANYON LAKE	TX	78133

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Schedule B

Schedule B
Sunoco Retail Fuel and Convenience Store Properties To Be Retained

Sunoco Internal ID	Address	City	State	Zip
40	4710 WILLIAMSBURG ROAD	RICHMOND	VA	23231
45	7100 HULL STREET ROAD	RICHMOND	VA	23235
74	46373 BARTHOLOMEW FAIR DRIVE	STERLING	VA	20164
87	8384 COLESVILLE ROAD	SILVER SPRING	MD	20910
2144	601 SOUTH HIGHWAY 35	ROCKPORT	TX	78382
2192	4402 N. NAVARRO	VICTORIA	TX	77904
2429	190 E EAU GALLIE BLVD	INDIAN HARBOUR BEACH	FL	32937
2441	5001 S 31ST ST/WATERS DAIRY RD	TEMPLE	TX	76502
2524	2311 BUCKINGHAM ROAD	FORT MYERS	FL	33905
2587	6988 BENEVA ROAD	SARASOTA	FL	34238
2592	5100 34TH STREET SOUTH	ST PETERSBURG	FL	33711
2601	1390 GARDEN ST	TITUSVILLE	FL	32796
2607	1149 45TH ST.	WEST PALM BEACH	FL	33407
2709	1910 BALTIMORE PIKE	GETTYSBURG	PA	17325
2736	1200 S ATLANTIC AVE	DAYTONA BEACH	FL	32118
2738	2530 S ATLANTIC AVE	DAYTONA BEACH	FL	32118
5081	2502 E. UNIVERSITY DRIVE	EDINBURG	TX	78539
5138	2002 S. 23RD STREET	HARLINGEN	TX	78550
5139	4901 JOHN STOCKBAUER DRIVE	VICTORIA	TX	77904
7127	4849 LEOPARD STREET	CORPUS CHRISTI	TX	78408
7169	15 FAYETTE ST AT I-70	NORTH BELLE VERNON	PA	15012
7299	790 RIVER STREET	HAVERHILL	MA	01830
7348	302 N. NAVARRO STREET	VICTORIA	TX	77901
7351	2002 N. NAVARRO STREET	VICTORIA	TX	77901
7352	1901 SAM HOUSTON DRIVE	VICTORIA	TX	77901
7430	113 NOBLE AVENUE	CRAFTON	PA	15205
7459	1200 E. DEL MAR BOULEVARD	LAREDO	TX	78041
7562	2977 NIAGARA FALLS BLVD	AMHERST	NY	14228
7681	1 PIDGEON HILL DRIVE	STERLING	VA	20165
9125	1606 EAST RICHARDSON ROAD	EDINBURG	TX	78541
9438	4101 AGNES	CORPUS CHRISTI	TX	78405
9655	711 ED CAREY DRIVE	HARLINGEN	TX	78550
9682	1402 E. UNIVERSITY	EDINBURG	TX	78539

Schedule C

Schedule C
Substitute Retail Fuel Locations

If third-party consent for any of the 7-Eleven Outlets listed below cannot be obtained, for each and every 7-Eleven for which consent has not been obtained, Respondents shall substitute the corresponding Sunoco Outlet(s) listed below, in consultation with the Monitor and staff of the Commission.

7-Eleven ID	Address (7-Eleven)	7-Eleven Consent Needed	Corresponding Sunoco ID	Address (Sunoco)
36190	20021 ROUTE 19 CRANBERRY TOWNSHIP, PA 16066	Lease Consent	7362	19090 PERRY HIGHWAY MARS, PA 16046
36517	11801 FM 1472 LAREDO, TX 78045	Lease Consent	2229	9219 FM 1472 (MINES ROAD) LAREDO, TX 78045
36517	11801 FM 1472 LAREDO, TX 78045	Lease Consent	2409	14118 FM 1472 LAREDO, TX 78405
36517	11801 FM 1472 LAREDO, TX 78045	Lease Consent	7462	9304 FM 1472 (MINES ROAD) LAREDO, TX 78045
36519	9811 BOB BULLOCK LOOP LAREDO, TX 78041	Lease Consent	2297	2519 JACAMAN ROAD LAREDO, TX 78041
36519	9811 BOB BULLOCK LOOP LAREDO, TX 78041	Lease Consent	5099	7120 BOB BULLOCK LOOP LAREDO, TX 78041
36520	9101 MCPHERSON RD LAREDO, TX 78045	Lease Consent	2187	2441 SAN ISIDRO PARKWAY LAREDO, TX 78045
36520	9101 MCPHERSON RD LAREDO, TX 78045	Lease Consent	7463	8612 MCPHERSON AVENUE LAREDO, TX 78045
36524	300 E EXPRESSWAY 83 MERCEDES, TX 78570	Lease Consent	2243	3939 EAST EXPRESSWAY 83 MERCEDES, TX 78570

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7-Eleven ID	Address (7-Eleven)	7-Eleven Consent Needed	Corresponding Sunoco ID	Address (Sunoco)
36528	2719 E SAUNDERS ST LAREDO, TX 78041	Lease Consent	2275	5002 SAUNDERS STREET LAREDO, TX 78041
36528	2719 E SAUNDERS ST LAREDO, TX 78041	Lease Consent	7461	3410 ARKANSAS LAREDO, TX 78043
36528	2719 E SAUNDERS ST LAREDO, TX 78041	Lease Consent	9668	1120 SAUNDERS LAREDO, TX 78041
36529	822 W US HIGHWAY 83 SAN JUAN, TX 78589	Lease Consent	2210	2201 SOUTH I ROAD SAN JUAN, TX 78589
36529	822 W US HIGHWAY 83 SAN JUAN, TX 78589	Lease Consent	5104	600 EAST BUSINESS 83 SAN JUAN, TX 78589
36529	822 W US HIGHWAY 83 SAN JUAN, TX 78589	Lease Consent	5134	328 E. U.S. HIGHWAY 83 PHARR, TX 78577
36531	6302 SARATOGA BLVD CORPUS CHRISTI, TX 78414	Lease Consent	2155	5614 SARATOGA BOULEVARD CORPUS CHRISTI, TX 78414
36531	6302 SARATOGA BLVD CORPUS CHRISTI, TX 78414	Lease Consent	2182	5529 SARATOGA BOULEVARD CORPUS CHRISTI, TX 78413
36533	5602 S SPID DR CORPUS CHRISTI, TX 78412	Lease Consent	2102	5301 S. STAPLES CORPUS CHRISTI, TX 78411
36533	5602 S SPID DR CORPUS CHRISTI, TX 78412	Lease Consent	2168	5939 SOUTH PADRE ISLAND DRIVE CORPUS CHRISTI, TX 78412
36533	5602 S SPID DR CORPUS CHRISTI, TX 78412	Lease Consent	9502	4202 S. STAPLES CORPUS CHRISTI, TX 78411

7-Eleven ID	Address (7-Eleven)	7-Eleven Consent Needed	Corresponding Sunoco ID	Address (Sunoco)
36534	3955 S SPID DR CORPUS CHRISTI, TX 78415	Lease Consent	2167	4754 SOUTH PADRE ISLAND DRIVE CORPUS CHRISTI, TX 78411
36537	1201 WILDCAT DR PORTLAND, TX 78374	Lease Consent	7055	1301 MOORE AVENUE PORTLAND, TX 78374
36537	1201 WILDCAT DR PORTLAND, TX 78374	Lease Consent	7115	1650 WILDCAT DRIVE PORTLAND, TX 78374
36547	6780 W EXPRESSWAY 83 HARLINGEN, TX 78552	Lease Consent	2211	1837 N. STUART PLACE HARLINGEN, TX 78552
36553	3105 SH-35 N FULTON, TX 78358	Lease Consent	2420	2902 HWY 35 NORTH ROCKPORT, TX 78382
36553	3105 SH-35 N FULTON, TX 78358	Lease Consent	9391	3306 N. HIGHWAY 35 FULTON, TX 78358
25151	11714 SUNSET HILLS RD RESTON, VA 20190	Franchisee	79	11854 SUNRISE VALLEY DRIVE RESTON, VA 20191
25151	11714 SUNSET HILLS RD RESTON, VA 20190	Franchisee	80	1818 WIEHLE AVE RESTON, VA 20190
25151	11714 SUNSET HILLS RD RESTON, VA 20190	Franchisee	7676	11190 SOUTH LAKES DR RESTON, VA 20191
33482	43974 PIPELINE PLZ ASHBURN, VA 20147	Franchisee	70	43971 FARMWELL HUNT PLAZA ASHBURN, VA 20147
33482	43974 PIPELINE PLZ ASHBURN, VA 20147	Franchisee	75	43305 JUNCTION PLAZA ASHBURN, VA 20147

7-Eleven ID	Address (7-Eleven)	7-Eleven Consent Needed	Corresponding Sunoco ID	Address (Sunoco)
33482	43974 PIPELINE PLZ ASHBURN, VA 20147	Franchisee	76	43740 PARKHURST PLAZA ASHBURN, VA 20147
33482	43974 PIPELINE PLZ ASHBURN, VA 20147	Franchisee	77	21880 RYAN CENTER PKWY ASHBURN, VA 20147
36576	12121 FM 306 CANYON LAKE, TX 78133	Franchisee	1543	14580 RIVER ROAD NEW BRAUNFELS, TX 78130
36576	12121 FM 306 CANYON LAKE, TX 78133	Franchisee	1546	9100 FM 306 NEW BRAUNFELS, TX 78130

Schedule D

Prior Consent Retail Fuel Outlets

[Redacted From the Public Record Version, But Incorporated By Reference]

Analysis to Aid Public Comment

Schedule E

Acquisition Agreement and Remedial Agreements

[Redacted From the Public Record Version, But Incorporated By Reference]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Seven & i Holdings Co., Ltd. and 7-Eleven, Inc. (collectively, "7-Eleven"), and Sunoco LP ("Sunoco") (collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from 7-Eleven's proposed acquisition of certain Sunoco retail fuel assets (the "Transaction").

Absent a remedy, the Transaction would raise competitive concerns in 76 local markets in 20 metropolitan statistical areas ("MSAs"). Under the terms of the proposed Consent Agreement, 7-Eleven must sell retail fuel outlets in some local markets to Sunoco and reject Sunoco retail fuel outlets in other local markets pursuant to the Respondents' asset purchase agreement (thereby allowing Sunoco to retain these assets). The divestitures must be completed no later than 90 days after the closing of 7-Eleven's acquisition of Sunoco. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each 7-Eleven divestiture outlet in the normal course of business through the date Sunoco acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent Seven & i Holdings Co., Ltd, a publicly traded company headquartered in Tokyo, Japan, operates convenience stores and retail fuel outlets throughout the United States and the world. 7-Eleven's U.S. network consists of approximately 8,500 stores located in 35 states. More than 1,000 locations are company-operated, making 7-Eleven one of the largest convenience store operators in terms of company-owned stores and the second-largest chain overall in the country. 7-Eleven convenience store locations operate under the 7-Eleven banner, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent Sunoco operates convenience stores and retail fuel outlets in the United States and Canada. With more than 1,300 convenience stores and retail fuel outlets in the United States, Sunoco is one of the largest chains in the country. Sunoco's U.S. convenience stores operate primarily under the APlus and Stripes banners, while its retail fuel outlets operate under a variety of company and third-party brands. Sunoco also has an extensive wholesale fuel business that supplies more than 6,800 third-party outlets.

III. The Proposed Acquisition

On April 6, 2017, 7-Eleven, through its wholly owned subsidiaries 7-Eleven, Inc. and SEI Fuel Services, Inc. ("SEI Fuel Services"), entered into an agreement with Sunoco to acquire approximately 1,100 retail fuel outlets for approximately $3.3 billion. Sunoco would continue to operate its wholesale business and approximately 200 retail fuel outlets following the

Transaction. SEI Fuel Services would enter into a 15-year fuel supply agreement with Sunoco, LLC as a part of the Transaction.

The Commission's Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the asset purchase agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in 76 local markets across 20 MSAs.

IV. The Retail Sale of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. The retail sale of gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Transaction are 76 local markets within the following MSAs: Boston-Cambridge-Quincy, MA-NH; Brownsville-Harlingen, TX; Buffalo-Niagara Falls, NY; Cape Coral-Fort Myers, FL; Corpus Christi, TX; Deltona-Daytona Beach-Ormond Beach, FL; Killeen-Temple-Fort Hood, TX; Laredo, TX; McAllen-Edinburg-Mission, TX; Miami-Fort Lauderdale-Pompano Beach, FL; Gettysburg, PA; Palm Bay-Melbourne-Titusville, FL; Pittsburgh, PA; Richmond, VA; San Antonio, TX; Sarasota-Bradenton-Venice, FL; Tampa-St. Petersburg-Clearwater, FL; Rio Grande City-Roma, TX; Victoria, TX; and Washington-Arlington-Alexandria, DC-VA-MD-WV. Each particular geographic market is unique, with factors such as commuting patterns, traffic flows, and outlet characteristics playing important roles in determining the scope of the geographic market. Retail fuel markets are highly localized and can range up to a few miles in size.

The Transaction would substantially increase the market concentration in each of the 76 local markets, resulting in highly concentrated markets. In 18 local markets, the Transaction would result in a monopoly. In 39 local markets, the Transaction would reduce the number of independent market participants from three to two. In 19 local markets, the Transaction would reduce the number of independent market participants from four to three.

According to the Commission's Complaint, the Transaction would reduce the number of independent market participants in each market to three or fewer. The Transaction would thereby substantially lessen competition in these local markets by increasing the likelihood that 7-Eleven would unilaterally exercise market power and by increasing the likelihood of successful coordination among the remaining firms. Absent relief, the Transaction would likely result in higher prices in each of the 76 local markets.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Transaction. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Proposed Consent Agreement

The proposed Consent Agreement remedies the Transaction's anticompetitive effects by requiring 7-Eleven to sell retail fuel outlets in some local markets to Sunoco and reject Sunoco retail fuel outlets in other local markets pursuant to the Respondents' asset purchase agreement (thereby allowing Sunoco to retain these assets). Sunoco intends to convert the acquired or retained stations from company-operated sites to commission agent sites. This remedy would preserve competition as it is today, ensure that the divestiture assets go to a viable, large-scale competitor, and reduce the risks and costs associated with asset integration.

The Commission is satisfied that allowing Sunoco to acquire or retain retail fuel stations and transition them to commission agent sites is an appropriate remedy. Most importantly, the

proposed remedy preserves competition in each local market. Indeed, as Sunoco controls retail fuel pricing at both its company-operated stations and its commission agent stations, Sunoco and 7-Eleven would continue as independent retail fuel competitors in each local market. Moreover, Sunoco is a large, viable competitor capable of maintaining the competitive landscape in each local market. Finally, the proposed Consent Agreement reduces the uncertainty and costs relating to integration since Sunoco already is familiar with the majority of the stations at issue.

The proposed Consent Agreement also requires that for up to six months following the divestiture, with up to an additional twelve months at the buyer's option, 7-Eleven make available transitional services, as needed, to assist the buyer of each divestiture asset. The buyer may extend the period for an additional twelve months, but only with Commission approval.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires 7-Eleven to provide the Commission (and Florida, Texas, or Virginia, where applicable) notice before acquiring designated outlets in the 76 local areas for ten years. The prior notice provision is necessary because acquisitions of the designated outlets likely would raise competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Respondents' complete divestiture of the outlet, thereby maintaining the economic viability, marketability, and competitiveness of each divestiture asset. During this period, and until such time as the buyer (or buyers) no longer requires transitional assistance, the Order to Maintain Assets authorizes the Commission to appoint an independent third party as a

monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The proposed Consent Agreement also requires Sunoco to take steps to ensure that its employees in charge of setting retail fuel prices at the acquired or retained retail fuel outlets do not have access to confidential information about Sunoco's post-Transaction wholesale supply of 7-Eleven's retail fuel stations. To ensure appropriate firewalls remain in place for the duration of the Respondents' fuel supply agreement, the proposed Consent Agreement has a term of fifteen years.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.