ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Global Partners LP
File No. 211-0050, Docket No. C-

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Global Partners LP ("Global") and Richard Wiehl ("Wheels") (collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Global's proposed acquisition of retail fuel assets from Wheels.

Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, Respondents must divest certain retail fuel assets in five local markets in Connecticut to a Commission-approved buyer. Respondents must complete the divestiture within 20 days after the closing of the acquisition. The Commission has issued, and Respondents have agreed to comply with, 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 approved buyer acquires the divested assets.

The Commission has placed the 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 review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Respondents

Respondent Global, a publicly traded independent owner, supplier, and operator of gasoline stations and convenience stores, is headquartered in Waltham, Massachusetts. Global operates approximately 1,550 retail fuel outlets, primarily in the Northeastern United States. Global also operates petroleum products terminals, through which it distributes gasoline, distillates, residual oil, and renewable fuels to wholesalers, retailers, and commercial customers.

Respondent Wheels is a family-owned chain of retail service stations and convenience stores headquartered in Milford, Connecticut. It has approximately 27 retail locations in its network, all in Connecticut, which operate under the Wheels convenience store brand. All of Wheels' retail outlets offer either Sunoco or Citgo branded fuel. Wheels also operates a small wholesale fuel distribution business, serving 24 locations in Connecticut and New York under the Consumers Petroleum brand.

III. The Proposed Acquisition

On December 9, 2020, Global entered into an agreement to acquire the retail and wholesale fuel assets of Wheels and related entities (the "Acquisition"). The Commission's Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the Acquisition 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 in five local markets in Connecticut, and additionally by substantially lessening competition for the retail sale of diesel fuel in four of those same local markets.

IV. The Retail Sale of Gasoline

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

The Commission's Complaint alleges that the relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of gasoline are five local markets in and around the following cities: Fairfield, Connecticut; Bethel, Connecticut; Milford, Connecticut; Wilton, Connecticut; and Shelton, Connecticut. The relevant geographic markets in which to assess the competitive effects of the Acquisition with respect to the retail sale of diesel fuel are the local markets in and around Fairfield, Bethel, Milford, and Shelton.

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

The Acquisition would substantially lessen competition in each of these local markets, resulting in five highly concentrated markets for the retail sale of gasoline and four highly concentrated markets for the retail sale of diesel fuel. 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.

In each of the local gasoline and diesel fuel retail markets where the Commission alleges harm, the Acquisition would reduce the number of competitively constraining independent market participants to three or fewer. Absent the Acquisition, Global and Wheels would continue to compete head to head in these local markets. Post-Acquisition, the combined entity would be able to raise prices unilaterally in markets where Global and Wheels are close competitors.

Moreover, the Acquisition would enhance the incentives for interdependent behavior 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 such coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors to easily observe each other's fuel prices. 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 changing prices affect fuel sales.

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 and uncertainty associated with obtaining necessary permits and approvals.

V. The Consent Agreement

The proposed Order would remedy the Acquisition's likely anticompetitive effects by requiring Global to divest certain Global and Wheels retail fuel assets to Petroleum Marketing Investment Group, LLC ("PMG") in each local market. PMG is an experienced operator of retail fuel sites and will be a new entrant into the local markets.

The proposed Order requires that the divestiture be completed no later than 20 days after Global consummates the Acquisition. The proposed Order further requires Global and Wheels to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestiture to PMG is complete.

In addition to requiring outlet divestitures, the proposed Order requires Respondents to obtain prior approval from the Commission before acquiring retail fuel assets within a 2-mile driving distance of any divested outlet for ten years. The prior approval provision is necessary because an acquisition in close proximity to the divested assets likely would raise the same competitive concerns as the Acquisition. The proposed Order further requires PMG to obtain prior approval from the Commission for a period of 3 years before transferring any of the divested stations to any buyer, and for a period of 7 years to any buyer with an interest in a retail fuel outlet within 2 miles of a divested station.

The Consent Agreement contains additional provisions designed to ensure the effectiveness of the 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 the divestiture. The proposed Order also includes a provision that allows the Commission to appoint an independent third party as a Monitor if necessary to oversee the Respondents' compliance with the requirements of the Order.

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