

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

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

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| <p>In the Matter of</p> <p>SEVEN & I HOLDINGS CO., LTD., a corporation;</p> <p>7-ELEVEN INC., a corporation;</p> <p style="text-align: center;">and</p> <p>MARATHON PETROLEUM CORPORATION, a corporation.</p> | <p>)</p> | <p>Docket No. C-4748</p> |
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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., through its wholly owned subsidiary, Respondent 7-Eleven, Inc., has acquired thirteen entities wholly owned by Respondent Marathon Petroleum Corporation with full knowledge that such acquisition was 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, 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., Inc. (“Seven & i”) is a publicly-traded company with its office and principal place of business located in Tokyo, Japan.

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 in Irving, Texas. 7-Eleven is a wholly owned subsidiary of Seven & i.
3. 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.
4. Respondent Marathon Petroleum Corporation (“Marathon”) is a corporation 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 in Findlay, Ohio.
5. Respondent Marathon, 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. 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. NATURE OF THE CASE

7. On May 14, 2021, 7-Eleven, the largest U.S. retail fuel and convenience store chain with approximately 10,000 locations, acquired substantially all of Marathon’s Speedway LLC (“Speedway”) business, the third largest U.S. retail fuel and convenience store chain (“the Acquisition”) with full knowledge that such acquisition was in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. Pursuant to Commission Rules of Practice, a consent agreement was proposed prior to consummation of the transaction, but the Commission had not accepted the proposal because a majority did not find certain provisions in the proposal sufficient to fully remedy the likely harm from the transaction. In consummating the Acquisition, 7-Eleven illegally obtained market power that threatened consumers with higher prices at fuel pumps across the country, in the relevant markets alleged herein.
8. Both companies operate networks of retail gas and diesel stations with associated convenience stores throughout most of the United States.
9. 7-Eleven and Speedway each set site-specific retail gasoline and diesel prices based on nearby competition. At each station, Respondents identify nearby locations that compete closely for consumers and track retail fuel prices at those locations, to help establish their own fuel prices and to manage their own fuel volumes and margins. Respondents’ site-specific pricing strategy relies on identifying rival fuel outlets that would gain gasoline and diesel volume if Respondents’ fuel prices are too high, or from whom Respondents’ would gain sales if Respondents’ fuel prices are too low. Prior to the Acquisition, 7-Eleven’s closest

competitors frequently included Speedway, and Speedway's closest competitors frequently included 7-Eleven.

10. In local markets where 7-Eleven and Speedway were each other's close or closest competitor, the Acquisition allows 7-Eleven to raise gasoline or diesel prices at one or more of the overlapping retail locations, knowing that 7-Eleven will capture some or all of the volume that, absent the Acquisition, would otherwise have been lost. Knowing that it will recapture the "lost" volumes, 7-Eleven will profit by unilaterally increasing gasoline and/or diesel at the expense of the everyday driving public.

III. THE ACQUISITION

11. Pursuant to an Asset Purchase Agreement dated August 2, 2020, 7-Eleven, the United States subsidiary of Seven & i, acquired substantially all of Marathon's Speedway LLC retail assets for approximately \$21 billion.

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

IV. THE RELEVANT MARKET

13. 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 fuel at retail fuel outlets exists.

14. Relevant geographic markets in which to analyze the effects of the Acquisition include 293 local markets within the following states: Arizona; California; Florida; Illinois; Indiana; Kentucky; Massachusetts; Michigan; North Carolina; New Hampshire; Nevada; New York; Ohio; Pennsylvania; Rhode Island; South Carolina; Tennessee; Utah; Virginia; and West Virginia.

15. The relevant geographic markets for retail gasoline and retail diesel are highly localized, ranging from a few blocks to a few miles, depending on local circumstances. Each relevant market is distinct and reflects 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.

V. MARKET STRUCTURE

16. The Acquisition created a monopoly in 31 local markets for the retail sale of gasoline and in 26 local markets for the retail sale of diesel. In 73 local markets for the retail sale of gasoline and 63 local markets for the retail sale of diesel, the Acquisition reduced the number

of independent market participants from three to two. In 160 local markets for the retail sale of gasoline and 64 local markets for the retail sale of diesel, the Acquisition reduced the number of independent market participants from four to three. The Acquisition created a highly concentrated market in each of these local markets. For many of these local markets, the Acquisition will result in competitive harm for both the retail sale of gasoline and the retail sale of diesel.

VI. BARRIERS TO ENTRY

17. Entry into each relevant market will 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.

VII. EFFECTS OF THE ACQUISITION

18. The Acquisition eliminated significant head-to-head competition in the relevant markets. In those areas, 7-Eleven and Speedway were each other's close or closest competitor for retail gasoline and diesel sales (and sometimes were each other's only competitor), and the competition between them benefited driving consumers across the United States.

19. The effects of the Acquisition 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 will 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.

VIII. VIOLATIONS CHARGED

20. The Acquisition violates 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.

21. The Asset Purchase Agreement entered into by Respondents 7-Eleven and Marathon 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 twenty-fifth day of June, 2021, issues its Complaint against Respondents.

By the Commission, Chair Khan not participating.

April J. Tabor
Secretary