

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

**COMMISSIONERS:**      **Lina M. Khan, Chair  
Rebecca Kelly Slaughter  
Christine S. Wilson  
Alvaro M. Bedoya**

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<b>In the Matter of</b>	)	
	)	
<b>Seven &amp; i Holdings, Co., Ltd, a corporation;</b>	)	
	)	
<b>7-Eleven, Inc., a corporation;</b>	)	<b>DOCKET NO. C-4748</b>
	)	<b>PUBLIC</b>
<b>and</b>	)	
	)	
<b>Marathon Petroleum Corporation, a corporation.</b>	)	
	)	

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**ORDER REOPENING AND MODIFYING ORDER**

On September 28, 2022, Seven & i Holdings Co., Ltd and 7-Eleven Inc. (“7-Eleven”) filed a petition with the Federal Trade Commission (“Commission”) asking the Commission to reopen and modify the Decision and Order (“Order”), which the Commission issued as final on November 10, 2021. 7-Eleven requested the modifications to correct scrivener errors in some of the Prior Notice Locations listed in Nonpublic Appendix VIII to the Order.

For the reasons stated below, the Commission has determined to grant 7-Eleven’s petition and reopen and modify the Order as requested.

**BACKGROUND**

On November 10, 2021, the Commission issued a final Order to remedy the anticompetitive effects resulting from 7-Eleven’s acquisition of the retail fuel business from Marathon Petroleum Corporation. The Order required 7-Eleven to divest retail fuel outlets in 293 local markets in twenty states. Paragraph X.B of the Order requires 7-Eleven to give prior notice before acquiring interest in any retail fuel outlet in the 293 local markets (“Prior Notice Locations”). Nonpublic Appendix VIII lists the Prior Notice Locations. Each Prior Notice Location lists the competitor who owns the station, a street address, and an Oil Price and Information Service (“OPIS”) number. OPIS is a third-party data source that identifies and assigns unique ID numbers to each retail fuel outlet for tracking purposes. 7-Eleven agreed to

the form and content of Nonpublic Appendix VIII when it entered into the consent agreement. After the Order issued as final, 7-Eleven discovered 23 scrivener errors in Nonpublic Appendix VIII.<sup>1</sup> These ambiguities and typographical errors include instances where the address of a location does not match the OPIS number; typographical or transcription issues, and one vague address. There are no competitive or substantive effects or changes relating to 7-Eleven’s obligations under the order as a result of fixing the transcription and typographical errors in this Appendix.

### STANDARD FOR REOPENING AND MODIFYING A FINAL ORDER

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b) provides that the Commission shall reopen an order to consider whether it should be modified if the respondent “makes a satisfactory showing that changed conditions of law or fact” so require.<sup>2</sup> A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes either eliminate the need for the order or make continued application of it inequitable or harmful to competition.<sup>3</sup>

Section 5(b) also provides that the Commission may reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.<sup>4</sup> In the case of “public interest” requests, FTC Rule of Practice § 2.51(b), 16 C.F.R. § 2.51(b), requires an initial “satisfactory showing” of how the modification would serve the public interest before the Commission determines whether to reopen an order.

A “satisfactory showing” requires, with respect to public interest requests, that the petitioner make a *prima facie* showing of a legitimate public interest reason or reasons justifying relief. A request to reopen and modify will not contain a “satisfactory showing” if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.<sup>5</sup> This showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief.<sup>6</sup> In addition, this showing must be supported by evidence that is credible and reliable.

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<sup>1</sup> See Petition of Respondents Seven & i Holdings Co., Ltd. and 7-Eleven, Inc. to Reopen and Modify Decision and Order, (public version) at 2.

<sup>2</sup> See Supplementary Information, Amendment to 16 CFR 2.51(b), (“Amendment”), 65 Fed. Reg. 50636, August 21, 2000.

<sup>3</sup> S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) (“Hart Letter”); see also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992).

<sup>4</sup> Hart Letter at 5; 16 C.F.R. § 2.51.

<sup>5</sup> 16 C.F.R. § 2.51.

<sup>6</sup> See Order Reopening and Modifying Order, *In the Matter of Watson Pharmaceuticals, Inc.*, Docket No. C-4373 (Dec 17, 2018) (Commission found that modifying the Order to eliminate a four year supply agreement would “serve the clear public interest in achieving the contemplated remedial purpose of the Order”).

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,<sup>7</sup> and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.<sup>8</sup> All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

### **THE PUBLIC INTEREST WARRANTS REOPENING AND MODIFYING THE ORDER**

The Commission has determined that the public interest requires that the Order be reopened and modified to correct the scrivener errors found in Nonpublic Appendix VIII. Because the Commission has determined that 7-Eleven has made a satisfactory showing that the public interest would be served by the modification, there is no need for the Commission to consider whether changed conditions of fact would justify the requested Order modification.

The Commission finds that the public interest is best served by having a list of Prior Notice Locations appended to and incorporated as part of the order that is clear, unambiguous, and contains information that both the Commission and the Respondents charged with complying with the Order understand. The scrivener errors contained in Nonpublic Appendix VIII could complicate 7-Eleven's ability to comply with its prior notice obligations under the Order. In turn, a failure to receive prior notification would undermine the remedial purpose of the Order. In addition, it is in the public interest to make the Prior Notice Locations clear and unambiguous to strengthen the Commission's ability to enforce the Order, if it believed that Respondent violated the order by acquiring a Prior Notice Location without providing the notice the Order requires.

Accordingly,

**IT IS ORDERED** that the Order in Docket No. C-4748 be, and hereby is, reopened; and

**IT IS FURTHER ORDERED** that the Order be, and it hereby is, modified by replacing Nonpublic Appendix VIII with a revised Nonpublic Appendix VIII reflecting the correction of scrivener errors to 23 retail gas locations requiring prior notice.

By the Commission, Chair Khan not participating.

April J. Tabor  
Secretary

SEAL  
ISSUED: January 24, 2023

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<sup>7</sup> See *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

<sup>8</sup> See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).