

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

_____)
In the Matter of)
)
Marathon Petroleum Corporation,)
a corporation,)
)
Express Mart Franchising Corp.,)
a corporation,) Docket No. C-4661
)
Petr-All Petroleum Consulting Corporation,)
a corporation, and)
)
REROB, LLC,)
a limited liability company.)
)
_____)

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 Marathon Petroleum Corporation has, through its wholly owned subsidiary Speedway LLC, entered into an agreement to acquire retail fuel outlets and other interests from Express Mart Franchising Corp., Petr-All Petroleum Consulting Corporation, and REROB, LLC (collectively “Express Mart”), 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

Marathon Petroleum Corporation

1. 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 at 539 South Main Street, Findlay, Ohio, 45840. Speedway LLC (“Speedway”) is a wholly owned subsidiary of Marathon.
2. Respondent Marathon, through its wholly owned subsidiary Speedway, 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 Marathon 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.

Express Mart

4. Express Mart is comprised of three affiliated entities:
 - a. Respondent Express Mart Franchising Corp. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 7401 Round Pond Road, Syracuse, New York, 13212;
 - b. Respondent Petr-All Petroleum Consulting Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 7401 Round Pond Road, Syracuse, New York 13212; and
 - c. Respondent REROB, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at 7401 Round Pond Road, Syracuse, New York 13212.
5. Express Mart 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. Express Mart 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

7. Pursuant to an Asset Purchase Agreement dated April 13, 2018, Marathon proposes to acquire, through its wholly owned subsidiary Speedway, retail outlets and other interests from Express Mart (the “Acquisition”). Marathon proposes to acquire the interests of the following Express Mart affiliated entities, each of which was a New York corporation or company at the time the Asset Purchase Agreement was signed: Express Mart Franchising Corp.; Petr-All Petroleum Consulting Corporation; and REROB, LLC.

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 exists.

10. Relevant geographic markets in which to analyze the effects of the Acquisition include five local markets within the following cities: Farmington, Fayetteville, Johnson City, Rochester, and Whitney Point in New York.

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 such features as 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. With regard to the retail sale of gasoline, the Acquisition, if consummated, would reduce the number of competitively constraining independent market participants from three to two in four local markets, and from four to three in one local market. The Acquisition would result in a highly concentrated market in each of these five markets.

13. With regard to the retail sale of diesel, the Acquisition, if consummated, would create a merger to monopoly in three markets, and reduce the number of competitively constraining independent market participants from three to two in one local market, and from four to three in one local market. The Acquisition would result in a highly concentrated market in each of these five markets.

V. BARRIERS TO ENTRY

14. 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

15. 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 Marathon and Express Mart 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

16. 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.

17. The Asset Purchase Agreement entered into by Marathon, through its wholly owned subsidiary Speedway, and Express Mart 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-third day of October, 2018, issues its Complaint against Respondents.

By the Commission.

SEAL:

Donald S. Clark
Secretary