

**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

In the Matter of)	
)	
Seven & i Holdings, Co., Ltd,)	
 a corporation;)	Docket No. C-4748
)	
7-Eleven, Inc.,)	
 a corporation;)	
)	
 and)	
)	
Marathon Petroleum Corporation,)	
 a corporation.)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Seven & i Holdings Co., Ltd., through its wholly owned subsidiary, Respondent 7-Eleven, Inc., (collectively “7-Eleven”), of voting securities and non-corporate interest of 13 subsidiaries from Respondent Marathon Petroleum Corporation (“Marathon”) (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as

required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public record for a period of 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 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 is as follows, Senior Counsel, 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.
3. Respondent Marathon Petroleum Corporation 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.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the 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. "7-Eleven" means Seven & i Holdings Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Seven & i Holdings Co., Ltd., including Respondent 7-Eleven, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Marathon” means Marathon Petroleum Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, including Speedway LLC, divisions, groups, and affiliates controlled by Marathon Petroleum Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- D. “Commission” means the Federal Trade Commission.
- E. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that:

- A. Prior to the Acquisition Date, Respondent Marathon shall designate Gary Michniewicz, Division Director, Speedway LLC, as the Asset Maintenance Manager.
 - 1. During the Asset Maintenance Period, the Asset Maintenance Manager, in consultation with and overseen by the Monitor, shall:
 - a. Oversee the operations of the Retail Fuel Business relating to the Retail Fuel Assets to ensure that the requirements of Paragraph II.B of this Order are met;
 - b. Oversee the Divestiture Pricing Team to ensure that the requirements of Paragraph V.D of this Order are met; and
 - c. Facilitate the transfer of the Retail Fuel Assets to the Acquirers.
 - 2. The Asset Maintenance Manager shall serve during the Asset Maintenance Period and shall have no duties related to any other businesses other than the Retail Fuel Business related to the Retail Fuel Assets during the Asset Maintenance Period.
 - 3. The Asset Maintenance Manager shall report directly and exclusively to the Monitor.

4. Respondents shall indemnify the Asset Maintenance Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Asset Maintenance Manager'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 either the Asset Maintenance Manager's malfeasance, gross negligence, willful or wanton acts, or bad faith.
 5. If Mr. Michniewicz resigns or the Commission staff, in consultation with the Monitor, determines that he has ceased to act, has failed to act diligently, or is otherwise unable to continue serving in this role, Respondents, within 5 days of receipt of written notice of such determination and in consultation with Commission staff and the Monitor, shall designate a substitute Asset Maintenance Manager.
- B. During the Asset Maintenance Period, Respondents shall, subject to legal and regulatory requirements:
1. Operate the Retail Fuel Business relating to the Retail Fuel Assets in the ordinary course of business consistent with past practices and take all actions necessary to maintain the full economic viability, marketability, and competitiveness of such Retail Fuel Business;
 2. Prevent the destruction, removal, wasting, deterioration, closing, or impairment (other than as a result of ordinary wear and tear) of the Retail Fuel Assets, including:
 - a. Maintaining, repairing, and replacing any Equipment to the extent and in a manner consistent with past practices;
 - b. Maintaining Inventory levels in a manner consistent with past practices;
 - c. Not terminating, canceling, renewing, or amending any Contract, except as consistent with past practices and as required by Paragraph VI.B of this Order and Paragraph II.D of the Decision and Order; and
 - d. Not entering any Contract that would restrain or restrict the ability of the Acquirers to compete against Respondents;
 3. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Retail Fuel Assets;

4. Provide the Retail Fuel Business relating to the Retail Fuel Assets with sufficient funds to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, promotional activities, and marketing activities;
5. Provide resources as may be necessary to respond to competition against the Retail Fuel Business relating to the Retail Fuel Assets, prevent diminution in sales of such Retail Fuel Business, and maintain the competitive strength of such Retail Fuel Business;
6. Not reduce operating hours;
7. Not reduce, change, or modify in any material respect, the level of marketing, promotional, pricing, or advertising practices, programs, and policies for the Retail Fuel Business related to the Retail Fuel Assets, other than changes in the ordinary course of business consistent with changes made at Respondents' other businesses that Respondents will not divest;
8. Not target, encourage, or convert customers of the Retail Fuel Business relating to the Retail Fuel Assets to become customers of Respondents' other businesses that will not be divested; *provided, however*, that nothing in this subparagraph shall prevent Respondents from engaging in advertising, marketing, and promotion activities: (i) generally applicable to all of Respondent businesses, or (ii) in the ordinary course of business and in accordance with past practice;
9. Provide support services at levels customarily provided by Respondents;
10. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Retail Fuel Business relating to the Retail Fuel Assets, and otherwise operate such Retail Fuel Business in accordance and compliance with all regulatory obligations and requirements;
11. Not sell, transfer, encumber, or otherwise impair the Retail Fuel Assets (other than in the manner prescribed in the Orders);
12. Not take any action that lessens the full economic viability, marketability, or competitiveness of the Retail Fuel Assets;
13. Not terminate the operations of the Retail Fuel Business relating to the Retail Fuel Assets;

14. Preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, Site Operators, and others having business relationships with the Retail Fuel Business relating to the Retail Fuel Assets;
15. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Retail Fuel Business relating to the Retail Fuel Assets, including:
 - a. Continuing to provide each member of the Divestiture Pricing Team with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
 - b. Providing reasonable financial incentives to encourage each member of the Divestiture Pricing Team to continue in their positions until the end of the Asset Maintenance Period, and as may be necessary, to facilitate their employment by an Acquirer;
 - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - d. Not transferring any employees from the Retail Fuel Business relating to the Retail Fuel Assets to any of Respondents' assets or businesses that Respondents will not divest.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Retail Fuel Assets and consistent with the purposes of the Orders.

III. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information and divested all Retail Fuel Assets to the relevant Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the relevant Acquirer with access to that Business Information (wherever located and however stored) that Respondents have not yet transferred to the relevant Acquirer, and to employees who possess the records and information.
- B. At the option of an Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Retail Fuel Assets to the Acquirer and

(2) allow the Acquirer and Site Operator, if applicable, to operate the Retail Fuel Business with the related Retail Fuel Assets at each Location in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Acquisition.

C. Respondents shall provide Transitional Assistance:

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost;
3. For a period sufficient to meet the requirements of Section III; and
4. Which shall be, at the option of each Acquirer, for up to 12 months after the last Divestiture Date for that Acquirer; *provided, however*, that within 15 days after a request by the Acquirer, Respondent 7-Eleven shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance as the Acquirer requests in order to achieve the purposes of this Order.

D. Respondents shall allow each Acquirer to terminate, in whole or part, any Transitional Assistance of a Divestiture Agreement or otherwise agreed upon pursuant to Paragraph III.C.1 upon commercially reasonable notice and without cost or penalty.

E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of the Divestiture Agreement.

IV. Employees

IT IS FURTHER ORDERED that:

A. Until one year after the last Divestiture Date for each Acquirer, Respondents shall cooperate with and assist each Acquirer to evaluate independently and offer employment to any Relevant Employee.

B. Until 90 days after the last Divestiture Date for each Acquirer, Respondents shall:

1. No later than 10 days after a request from an Acquirer, provide a list of the requested Relevant Employees and provide Employee Information for each;

2. No later than 10 days after a request from an Acquirer, provide an opportunity to privately interview any of the Relevant Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Relevant Employees;
3. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with an Acquirer, including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to an Relevant Employee who receives an offer of employment from the 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;
4. Continue to provide Relevant Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
5. Provide reasonable financial incentives to encourage Relevant Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Relevant Employees by an Acquirer; and
6. Not interfere, directly or indirectly, with the hiring, recruiting, or employing by an Acquirer of any Relevant Employee, including not offering any incentive to such employees to decline employment with an Acquirer.

C. Respondents shall not:

1. For a period of 90 days after the last Divestiture Date for each Acquirer, directly or indirectly, solicit or otherwise attempt to induce any Person employed at the store level by that Acquirer to terminate his or her employment with the Acquirer; and
2. For a period of 180 days after the last Divestiture Date for each Acquirer, directly or indirectly, solicit or otherwise attempt to induce any Person employed above the store level by that Acquirer to terminate his or her employment with the Acquirer.

Provided, however, Respondents may (i) hire any such Person whose employment has been terminated by the Acquirer; (ii) 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 one or more Person employed by the

Acquirer; or (iii) hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of Section IV.

- D. To the extent that Relevant Employees are store-level employees, Site Operators shall have the same rights and access afforded to the Acquirer under Section IV.
- E. Respondent 7-Eleven shall not enforce any noncompete provision or noncompete agreement against any Person seeking employment from or otherwise doing business with any Retail Fuel Assets.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondents; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under the Orders or any 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 or any Retail Fuel Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Section V, Respondents shall limit such disclosure or use (1) only to the extent such information is required; (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A; and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. No later than the Acquisition Date and until the last divestiture to an Acquirer pursuant to Sections II and IX of the Decision and Order and Section VIII of this Order, Respondents shall:

1. Establish a Divestiture Pricing Team responsible for the retail fuel pricing for each of the Locations identified in Appendices IV, V, and VI of the Decision and Order, the Marysville Location, Lancaster Location, and the Reno Location, and obtain approval of the Monitor and Commission staff before changing or reducing the number of members of the Divestiture Pricing Team, once established pursuant to this Paragraph V.D.1;
2. 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 Divestiture Pricing Information by anyone other than Divestiture Pricing Team, except as is expressly permitted or required by the Orders;
3. 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 Non-Divestiture Pricing Information by the Divestiture Pricing Team; and
4. As part of the procedures and requirements described in Paragraph V.D of this Order, Respondents shall:
 - a. No later than the Acquisition Date, require the Divestiture Pricing Team and any other Person who may receive Non-Divestiture Pricing Information 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 Divestiture Pricing Information and Non-Divestiture Pricing Information in violation of this Order;
 - c. Distribute guidance and provide training regarding the procedures to all Persons referenced in Paragraph V.D.4.a of this Order; and
 - d. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with this Order's prohibitions and requirements.

VI. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Respondents shall obtain, no later than the Divestiture Date for the particular Retail Fuel Assets divested on that particular Divestiture Date and at their sole expense, all Consents from third parties and all Governmental Authorizations that are necessary to effect the

complete transfer and divestiture of those Retail Fuel Assets on such Divestiture Date to the Acquirer and for that Acquirer to operate any aspect of the relevant Retail Fuel Business.

Provided, however, that if Respondent 7-Eleven is unable to obtain the necessary landlord Consent for one or more Speedway Locations identified in Appendix VII of the Decision and Order, Respondent shall: (i) in consultation with the Monitor and Commission staff, substitute the corresponding Substitute Location, and (ii) divest the corresponding Retail Fuel Assets, as an ongoing Retail Fuel Business, to the respective Acquirer pursuant to Paragraph II.A of the Decision and Order no later than 15 days after receipt of written notification from the Commission or its staff directing such divestiture if it has not already occurred;

Provided, further, however, that Respondents may satisfy the requirement to obtain all Consents from third parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant third party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and

Provided, further, however, that with respect to any Governmental Authorizations that are not transferable, Respondents shall, to the extent permitted under applicable law, allow each Acquirer and Site Operator to operate the Retail Fuel Business at the relevant Location under Respondents' Governmental Authorizations pending the Acquirer's, or the Site Operator's, receipt of its own Governmental Authorizations, and Respondents shall provide such assistance as each Acquirer or each Site Operator may reasonably request in connection with its efforts to obtain such Governmental Authorizations.

- B. Within 60 days of the Acquisition Date, in consultation with the respective Acquirer and the Monitor, and with the agreement of the respective Acquirer, Respondents shall obtain, at their sole expense and:
1. On customary market terms, and consistent with past practices Contracts providing an additional leasehold interest in Leased Locations 1; and
 2. On terms and conditions no less favorable than current terms and conditions for such Location, a Contract providing no less than an additional 11 month leasehold interest in Leased Location 2.

Provided, however, that if Respondent 7-Eleven is unable to obtain the necessary Contract for one or more Leased Locations identified in Appendix VII of the Decision and Order, at the Acquirer's option, Respondent shall: (i) in consultation with the Monitor and Commission staff, substitute the corresponding Substitute Location, and (ii) divest the corresponding Retail Fuel Assets to the respective Acquirer pursuant to Paragraph II.A of the Decision and Order no later than 15 days after receipt of written

notification from the Commission or its staff directing such divestiture if it has not already occurred.

- C. Respondent 7-Eleven shall not hold a leasehold interest or operate a retail fuel business at:
 - 1. The Lancaster Location after January 30, 2022;
 - 2. The Marysville Location after November 28, 2021; and
 - 3. The Reno Location after September 30, 2021.

- D. Respondents shall assist each potential Acquirer to conduct a due diligence investigation of the Retail Fuel Assets such Acquirer seeks to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.

VII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints The Claro Group, LLC as the Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.

- B. The Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 - 1. Shall be subject to the approval of the Commission;
 - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of Section VII of this Order or the Section relating to the Monitor in the Decision and Order ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any

provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order 30 days after this Order is issued, and every 60 days thereafter until Respondents have complied fully with Sections II, IV, and VI of the Decision and Order and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, VI of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
 2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
 3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
 4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
 5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.
- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Paragraphs of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents who:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;

2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VII.B; or (b) receives Commission approval.
- 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.

VIII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets as required by the Decision and Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of the Decision and 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 assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section 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 the Orders.
- 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 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. Not later than 10 days after the 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 divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Section VIII, 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 assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures 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 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 divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Paragraph 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 divestitures shall be made in the manner and to Acquirers that receive the prior approval of the Commission as required by the Decision and Order;

provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission;

provided, further, however, that Respondents shall select such person within 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 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 the Decision and 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;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by the Decision and Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 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, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may, among other things, require 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.
- 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 Section VIII of this Order.
- 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 the Orders.

IX. Prior Approval and Prior Notice

IT IS FURTHER ORDERED that:

- A. For the term of this Order, Respondent 7-Eleven shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, commission franchise interest, or any other interest, in whole or in part, in the Retail Fuel Assets and the 7-Eleven Commission Franchise Location.
- B. Respondent 7-Eleven shall not, without providing advance written notification to the Commission ("Notification"):
 1. Acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in the Retail Fuel Assets or any concern, corporate or non-corporate, or in any assets engaged in the sale of Fuel Products at a Prior Notice Location, *provided however,* prior

notification shall not be required by this Paragraph IX.B.1 for a transaction for which approval is required to be made, and has been made, pursuant to Paragraph IX.A; or

2. Enter into any contract with any concern, corporate or non-corporate, engaged in the sale of Fuel Products at a Prior Notice Location in which Respondents will control the retail price of such products.

C. The Notification shall:

1. Be provided 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, 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 Respondent 7-Eleven and not of any other party to the transaction;
2. 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 5 driving miles of the relevant Prior Notice Location;
 - b. For each retail fuel outlet owned by Respondent 7-Eleven that is located within 5 driving miles of the relevant Prior Notice Location, a list of the retail fuel outlets that Respondent 7-Eleven monitored at any time within the preceding 12 month period (to the extent such information is available); and
 - c. Respondent 7-Eleven's pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph IX.C.2.b of this Order.
3. Provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). Further, 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 30 days after submitting such additional information or documentary material.
4. Early termination of the waiting periods in Section IX may be requested and, where appropriate, granted by letter from the Bureau of Competition, *provided, however*, that prior notification shall not be required by Section IX 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.

5. If related to a geographic area located within a Specified State, Respondent 7-Eleven shall provide a copy of each Notification described in Section IX to the relevant Attorney General's Office for the Specified State at the same time that such Notification is transmitted to the Commission.

X. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
 1. Within 60 days of the Acquisition Date, submit a schedule of anticipated Divestiture Dates by Location that has received prior written approval by the relevant Acquirer, and within 5 days of modifying any anticipated Divestiture Date, submit the modified divestiture schedule.
 2. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of each Divestiture Date no later than 5 days after the occurrence of each; and
 3. Submit each complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the last Divestiture Date for each Acquirer.
- B. Respondents shall file verified written reports ("Compliance Reports") in accordance with the following:
 1. Respondents shall submit:
 - a. Interim Compliance Reports 30 days after this Order to Maintain Assets is issued, and every 60 days thereafter until the Commission issues a Decision and Order in this matter; and
 - b. Additional Compliance Reports as the Commission or its staff may request;
 2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents

shall include in their Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance:

- a. A full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each Section the Orders; and
 - b. Until 60 days after the last Divestiture Date, a full description of the steps Respondents took to comply with Section VI and Section VII of the Decision and Order since the last interim Compliance Report;
3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under the Orders during the period covered by such Compliance Report. Respondent shall provide copies of these documents to Commission staff upon request.
 4. Each Respondent shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall file its Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that Respondent Marathon's reporting obligations under Section X shall cease once it has completed its obligations under Sections II, IV and VI of the Decision and Order.

XI. Change in Respondent

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

- A. The proposed dissolution of Seven & i Holdings Co., Ltd., 7-Eleven, Inc., or Marathon Petroleum Corporation, respectively;
- B. The proposed acquisition, merger or consolidation of Seven & i Holdings Co., Ltd., 7-Eleven, Inc., or Marathon Petroleum Corporation, respectively; or

- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of the Orders.

XII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; or
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to maintain the full economic viability, marketability and competitiveness of the Retail Fuel Business at the Locations identified in Appendices IV, V, and VI, and as applicable, Substitute Locations identified in Appendix VII of the Decision and Order, through their full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for such Retail Fuel Business at the Locations; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Retail Fuel Assets except for ordinary wear and tear.

XIV. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission, Chair Khan not participating.

April J. Tabor
Secretary

SEAL
ISSUED: June 25, 2021