ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Seven & i Holdings Co., Ltd.
File No. 201-0108

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Seven & i Holdings Co., Ltd., a Japanese company, 7-Eleven, Inc., the U.S. subsidiary, (collectively, "7-Eleven") and Marathon Petroleum Corporation ("Marathon") (collectively, the "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that likely are resulting from 7-Eleven's consummated acquisition of Marathon's wholly-owned subsidiary Speedway LLC ("Speedway"). The Commission also issued the Order to Maintain Assets included in the Consent Agreement. Pursuant to Commission Rules of Practice, a consent agreement was proposed prior to Respondents' 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 resolve competitive concerns stemming from the transaction. 7-Eleven closed on the acquisition on May 14, 2021 with full knowledge that the acquisition was in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act.

Respondents subsequently agreed to a revised proposed Decision and Order ("Order"), described herein, that restores competition lost from the transaction. Under the terms of the Order included in the Consent Agreement, 7-Eleven must divest to Commission-approved Buyers certain Speedway retail fuel outlets and related assets in 291 local markets, and certain 7-Eleven retail fuel outlets and related assets in 2 local markets, across 20 states. The Order requires the divestitures to take place no later than 180 days after May 14, 2021, the day 7-Eleven closed on its acquisition of Marathon's assets. The Commission prefers divestitures to upfront buyers that occur close in time with the closing of the main transaction, but Commission orders will allow for a longer divestiture period when specific, demonstrable circumstances warrant. In this matter, the Commission recognizes that the particular logistical and regulatory requirements of transferring 293 stations across 20 states necessitates a longer process of rolling divestitures to three Buyers. To ensure that as many divestitures happen as quickly as possible, the Order requires that 7-Eleven divests the outlets to the Buyers based on the Buyer-approved divestiture schedules which are incorporated into the Order, and that 7-Eleven meets specific divestiture benchmarks at 90, 120, and 150 days.

The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Commission-approved Buyer acquires the outlet. In addition, the Order and Order to Maintain Assets require that until 7-Eleven divests the outlets, it must maintain separate retail fuel pricing teams and keep information related to pricing decisions for the divestiture outlets separate from the retail fuel pricing for 7-Eleven's other outlets.

The Order also prohibits 7-Eleven from enforcing noncompete provisions in its franchise agreements against current franchisees or others who might seek employment at the divestiture outlets. This provision reduces the likelihood that any 7-Eleven noncompete provisions will have a chilling effect on franchisees or others in seeking employment or doing business with the divestiture outlets. Given that 7-Eleven consummated an illegal transaction, expressly safeguarding the Buyers' access to essential employees or business partners is particularly necessary to protect the effectiveness of the divestitures.

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 Order final.

II. The Respondents

Seven & i Holdings Co., Ltd., a publicly-traded company headquartered in Tokyo, Japan, owns and operates convenience stores and retail fuel outlets worldwide under the 7-Eleven brand. 7-Eleven, Inc. owns, operates, and franchises approximately 9,000 stores in the United States, making it the largest convenience store chain in the country. Roughly 46 percent of 7-Eleven's stores offer fuel. 7-Eleven's revenue in 2020 totaled over $20 billion, with fuel sales accounting for over $13 billion.

Marathon, a publicly-traded company headquartered in Findlay, Ohio, operates a vertically-integrated refining, marketing, retail, and transportation system for petroleum and petroleum products. Marathon is the largest U.S. refiner, with approximately 2.9 million barrels per day of crude oil refining capacity. In 2020, Marathon's revenues totaled over $69 billion. Marathon's former wholly-owned subsidiary, Speedway, controls and sets retail fuel pricing at 3,898 retail transportation fuel and convenience stores across the United States, making it the third-largest domestic chain of company-owned and -operated retail fuel outlets and convenience stores. Speedway's 2020 retail business revenues totaled over $19 billion, with sales of nearly 6 billion gallons of gasoline and diesel in 2019.

III. The Transaction

Pursuant to an Asset Purchase Agreement dated August 2, 2020, 7-Eleven acquired substantially all of Marathon's Speedway retail assets for approximately $21 billion, subject to adjustments (the "Transaction").

7-Eleven and Marathon also entered into a 15-year agreement under which Marathon will supply and transport fuel to the Speedway business, with a base volume of 7.7 billion gallons per year of gasoline and diesel.

The Commission's Complaint alleges that the Transaction violates 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, by substantially lessening competition for the retail sale of gasoline and/or the retail sale of diesel in 293 local markets across 20 states.

IV. The Retail Sale of Gasoline and Diesel

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

The Commission's Complaint alleges 293 local relevant geographic markets in which to assess the competitive effects of the Transaction 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.

The geographic markets for retail gasoline and retail diesel 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 are similar to the corresponding geographic markets for retail gasoline, as many diesel consumers exhibit preferences and behaviors similar to those of gasoline consumers.

The Transaction substantially lessens competition in each of these local markets, resulting in 264 highly concentrated markets for the retail sale of gasoline and 153 highly concentrated markets for the retail sale of diesel fuel, with many of the 293 markets presenting concerns for both products. 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 retail markets, the Transaction reduces the number of competitively constraining independent market participants to three or fewer. 7-Eleven will be able to raise prices unilaterally in markets where 7-Eleven and Speedway are close competitors. Absent the Transaction, 7-Eleven and Speedway would have continued to compete head to head in these local markets.

Moreover, the Transaction enhances the incentives for interdependent behavior in local markets where, including 7-Eleven, only two or three competitively constraining independent market participants 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 easily to 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 will not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Transaction. 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.

V. The Order

The Order remedies the Transaction's likely anticompetitive effects by requiring 7-Eleven to divest Speedway retail fuel outlets in 291 local markets, and 7-Eleven retail fuel outlets in 2 local markets, in three separate packages, to CrossAmerica Partners LP ("CAPL"), Jacksons Food Stores, Inc. ("Jacksons"), and Anabi Oil Corporation ("Anabi") (collectively, the "Buyers").

CAPL is a publicly-traded master limited partnership and a wholesale supplier of motor fuels, a convenience store operator, and an owner and lessor of real estate used in the retail distribution of motor fuels. CAPL distributes branded and unbranded fuel to approximately 1,800 locations and owns or leases approximately 1,100 sites, including 150 company-operated sites.

In 2020, the Commission fined Alimentation Couche-Tard Inc. ("ACT") and its then-affiliate CAPL $3.5 million to settle allegations that the companies violated a 2018 Commission order requiring divestitures of 10 retail fuel outlets related to ACT's acquisition of Holiday Companies. ACT controlled CAPL's general partner when the alleged order violation occurred and agreed to divest a package of retail fuel outlets that were part of CAPL's retail network to resolve the Commission's concerns. The alleged order violation resulted from, among other things, ACT's failure to divest the CAPL outlets by the Commission-imposed deadline.

The alleged violation does not disqualify CAPL from consideration as an acceptable buyer in this instance. CAPL has not been affiliated with ACT in any way since November 2019, when Mr. Joseph V. Topper, Jr. and his organization, the Topper Group, acquired the controlling interest in CAPL's general partner from ACT, and thereby severed completely CAPL's affiliation with ACT. CAPL has since revamped its management. Mr. Topper now serves as CAPL's chairman of the board, and he and his organization have the ability to appoint all members of CAPL's board as well as control CAPL's operations and activities. Moreover, prior to Mr. Topper acquiring control of CAPL, ACT agreed to indemnify CAPL for penalties and legal costs associated with the alleged order violation.

The two other Buyers are Jacksons and Anabi. Jacksons is a privately-held corporation that controls a chain of over 230 Chevron-, Shell-, and Texaco-branded retail fuel locations in six western states. Jacksons also is a joint venture partner in Jackson Energy, a wholesale fuel supply company that distributes gasoline and diesel fuel to retail fuel outlets in the western United States. Anabi, a privately-owned and operated retail fuel supplier, is one of the largest Shell-branded distributors in California and controls retail fuel locations in California, Nevada, and Alaska. The Commission is satisfied that the Buyers present no competitive problems in markets where they will acquire divested assets and are otherwise qualified to acquire and operate the assets in their respective divestiture packages.

The Order requires 7-Eleven to divest: (a) 105 Speedway retail fuel outlets and a single 7-Eleven retail fuel outlet to CAPL; (b) 63 Speedway retail fuel outlets to Jacksons; and (c) 123

Speedway retail fuel outlets and a single 7-Eleven retail fuel outlet to Anabi. To ensure that 7-Eleven is incentivized to complete all of the divestitures in an expedient manner, the Order requires 7-Eleven to: (1) divest on Buyer-approved divestiture schedules, and (2) divest no fewer than a certain number of outlets at certain points within the 180 day divestiture period.

Specifically, Paragraph II.A of the Order requires Respondents to divest pursuant to the Buyer-approved divestiture schedules. Under Paragraph XI.A.1 of the Order, 7-Eleven is required to submit to the Commission the Buyer-approved divestiture schedules – identifying the divestiture date for each location – within 60 days after May 14. The Buyers will control the divestiture schedules, and those schedules are enforceable by the Commission against 7-Eleven. The Order also requires 7-Eleven to meet certain divestiture benchmarks – with no fewer than 20 percent of each package divested within 90 days, an additional 20 percent of each package divested within 120 days, and an additional 20 percent of each package divested within 150 days of the main Transaction closing. 7-Eleven will have to complete all of the divestitures within 180 days. Taken together, this divestiture process will incentivize 7-Eleven to complete the divestitures in a timely and expeditious manner, and give the Commission close oversight into the divestiture schedules.

The Order contains additional provisions designed to ensure the effectiveness of the relief, and to prevent 7-Eleven from having access to critical competitive information regarding the divestiture outlets. The Order requires 7-Eleven and Marathon to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the divestitures are complete. Also, the Order requires Respondents to designate an Asset Maintenance Manager to oversee operations of the divestiture assets to ensure the Respondents maintain the divestiture assets' full economic viability, marketability, and competitiveness until the divestitures are completed and to help facilitate the transfer of the divestiture assets to the Buyers. Additionally, the Order requires the Respondents to establish a divestiture pricing team that will handle retail fuel pricing at the divestiture outlets, and to prevent access and disclosure of that pricing information to anyone other than the divestiture pricing team. The Asset Maintenance Manager will oversee the divestiture pricing team to ensure that confidential pricing information is not shared with other employees at 7-Eleven who may price retail fuel at competing stations. The Order requires the Respondents to institute information technology procedures, authorizations, protocols, and any other controls necessary to prevent unauthorized disclosure or access of information to or from the divestiture pricing team. Finally, the Order appoints The Claro Group as an independent third-party Monitor to oversee the Respondents' compliance with the requirements of the Order and to oversee the Asset Maintenance Manager.

The Order also contains provisions regarding Respondents' employees and franchisees, designed to protect the viability of the divestiture assets. Section V contains provisions to ensure that the Buyers face no impediments in hiring employees necessary to operate the divestiture assets as competitively as Speedway operated them before the Transaction. Paragraph V.E prohibits 7-Eleven from enforcing noncompete provisions against current franchisees or others who might seek employment at the divestiture outlets. This provision reduces the likelihood that the noncompete provisions will have a chilling effect on franchisees or others in seeking employment or doing business with the divestiture outlets. Given that 7-Eleven has consummated an illegal transaction, expressly safeguarding the Buyers' access to essential

employees or business partners is particularly necessary to protect the effectiveness of the divestitures.

In addition to requiring retail fuel outlet divestitures, the Order also requires 7-Eleven, for a period of five years, to obtain prior Commission approval before purchasing any of the divested outlets, and for a period of ten years, to provide the Commission prior notice of future acquisitions of the divested outlets and of Commission-identified retail fuel outlets located in the 293 local markets at issue and three additional markets. These three additional markets raised concerns that are addressed by Speedway's near-term exit from the markets for reasons outside its control. The prior notice provision is necessary because an acquisition in close proximity to divested assets likely would raise the same competitive concerns as the Transaction and may fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The purpose of this analysis is to facilitate public comment on the Order, and the Commission does not intend this analysis to constitute an official interpretation of the Order or to modify its terms in any way. The Offices of the California and Florida Attorneys General participated in both the investigation and the consent process.