



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**JOINT CONCURRING STATEMENT OF
COMMISSIONERS ROHIT CHOPRA AND REBECCA KELLY SLAUGHTER**

In the Matter of Seven & i Holdings Co., Ltd. / Marathon Petroleum Corporation
File No. Commission File No. 201-0108
June 25, 2021

Today, the Commission accepted for public comment an order that would resolve competitive concerns raised by the illegal acquisition of a Marathon Petroleum subsidiary by Seven & i Holdings (collectively “7-Eleven”). The approximately \$21 billion deal involved nearly 4,000 retail fuel and convenience store locations. On May 14, 2021, the parties consummated the deal, despite knowing that the Commission had outstanding—but resolvable—concerns about the transaction and about the parties’ proposal to resolve those concerns at the time. The agreement to merge and the decision to consummate substantially lessened competition in 293 local geographic markets across twenty states, in violation of Section 5 of the FTC Act and Section 7 of the Clayton Act. While Commission staff had worked diligently to resolve the competitive concerns raised by the transaction, negotiating hundreds of divestitures to three different buyers, the parties had not reached a settlement that the Commission could accept when they closed.

The job of the Commission is to pursue the correct outcome in cases, not the expedient one. Here, it was important to take the few extra weeks necessary to ensure that the resolution would effectively preserve competition and that any risk would be borne by the parties, not by consumers, workers, and other market participants. Today’s settlement achieves that in a few key ways.

First, the order holds 7-Eleven accountable for executing divestitures quickly and efficiently. The Commission’s general preference is for divestitures to happen as close in time to the transaction as is practicable in order to protect competition.¹ Here, given the scope and complexity of the

¹ See, e.g., Press Release, Fed. Trade Comm’n, *FTC Requires Divestitures as Condition of 7-Eleven, Inc. Parent Company’s \$3.3 Billion Acquisition of Nearly 1,100 Retail Fuel Outlets from Competitor Sunoco* (Jan. 18, 2020), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-requires-divestitures-condition-7-eleven-inc-parent-companys> (requiring the parties divest 26 stations over the course of 90 days); Press Release, Fed. Trade Comm’n, *FTC Approves Final Order Imposing Conditions on Arko Holdings Ltd.’s Acquisition of Empire Petroleum Partners, LLC* (Oct. 7, 2020), <https://www.ftc.gov/news-events/press-releases/2020/10/ftc-approves-final-order-imposing-conditions-arko-holdings-ltds> (ordering divestiture of 7 stations over the course of 20 days); Press Release, Fed. Trade Comm’n, *FTC Approves Final Order Imposing Conditions on Tri Star Energy, LLC’s Acquisition of Certain Assets of Hollingsworth Oil Company, Inc., C & H Properties, and Ronald L. Hollingsworth* (Aug. 14, 2020), <https://www.ftc.gov/news-events/press-releases/2020/08/ftc-approves-final-order-imposing-conditions-tri-star-energy> (ordering divestiture of 2 stations over the course of 10 days); *but see* Press Release, Fed. Trade Comm’n, *FTC Requires Retail Fuel Station and Convenience Store Operator Alimentation Couche-Tard Inc. and its affiliate CrossAmerica Partners LP to Divest 10 Fuel Stations in Minnesota and Wisconsin as a Condition of Acquiring Holiday Companies* (Dec. 15, 2017), <https://www.ftc.gov/news-events/press-releases/2017/12/ftc->

required divestitures, a longer end date is justified, provided the divestitures happen on an ongoing basis. Today's proposal includes provisions with rolling divestiture timelines, benchmarked at 90, 120, and 150 days, and completed within 180 days from May 14, 2021—the date of the illegal merger. If 7-Eleven fails to follow these benchmarks and the buyers' schedules, 7-Eleven will be in violation of today's proposed order.

Second, 7-Eleven will be prohibited from enforcing noncompete provisions against current franchisees or others who might seek employment at the divestiture outlets. Noncompete provisions generally prevent workers and small business franchises from fairly bargaining for employment and opportunity. In this instance, they could also prevent divestiture buyers from accessing the talent that could best facilitate their ability to restore competition in the relevant markets. The prohibition in the order is consistent with prior Commission action,² but is especially important in this case, 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 terms of this order are well-grounded in Commission precedent and reflect learned experience from past orders. The Commission's past experiences show that divestitures that are not carefully constructed end up failing to adequately protect consumers, workers, and competition.³ It is disturbing that 7-Eleven failed to resolve these matters before consummating their illegal transaction. Typically, merging parties will wait for the Commission to accept an order for public comment before closing on their transaction. Here, the transaction involved billions of dollars in thousands of unique geographic markets across the United States; when parties propose transactions this large and complex, with obvious violations of the law, they must accept that proper review may take time. Notwithstanding that scope, in this case, Commission staff conducted an extensive investigation, identified overlaps, vetted divestiture buyers, and negotiated terms of divestitures with the parties—all in a matter of months. Working through the remaining concerns at the Commission level would not have been and was not time-consuming.

7-Eleven chose to close under a cloud of legal uncertainty rather than to resolve its issues with the Commission; it learned that this Commission will not be dared into accepting settlements we do not find adequate. We hope other parties will learn that working constructively with the

[requires-retail-fuel-station-convenience-store-operator](#) (allowing 120 days to find a buyer for and divest 10 stations; the Commission later alleged the parties violated the divestiture order, and the parties agreed to pay a \$3.5 million civil penalty to the FTC to settle those allegations).

² See *Statement of Commissioners Rohit Chopra and Rebecca Kelly Slaughter in the Matter of DTE Energy/Generation Pipeline*, Fed. Trade Comm'n (Sept. 12, 2019), https://www.ftc.gov/system/files/documents/public_statements/1544138/joint_statement_of_chopra_and_slaughter_dte_energy-generation_pipeline_9-13-19.pdf; Press Release, Fed. Trade Comm'n, *FTC Approves Final Order Imposing Conditions on Merger of Air Medical Group Holdings, Inc. and AMR Holdco, Inc.* (May 3, 2018), <https://www.ftc.gov/news-events/press-releases/2018/05/ftc-approves-final-order-imposing-conditions-merger-air-medical> (divestiture of air ambulance services in Hawaii).

³ See Press Release, Fed. Trade Comm'n, *FTC Releases Staff Study Examining Commission Merger Remedies between 2006 and 2012* (Feb. 3, 2017), <https://www.ftc.gov/news-events/press-releases/2017/02/ftc-releases-staff-study-examining-commission-merger-remedies>; Fed. Trade Comm'n, *A Study of the Commission's Divestiture Process* (1999), https://www.ftc.gov/sites/default/files/documents/reports/study-commissions-divestiture-process/divestiture_0.pdf.

Commission—rather than consummating an illegal merger—is a more effective and responsible path.