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March 10, 2021

The Honorable Rebecca K. Slaughter
Acting Chair
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Dear Acting Chair Slaughter:

On behalf of the 1.4 million members of The International Brotherhood of Teamsters, we ask that the Federal Trade Commission (FTC) pause its review of the proposed sale of Marathon Petroleum Corporation's Speedway retail service station and convenience store business to Seven & i Holdings Co., Ltd., the parent company of 7-Eleven convenience stores, until either: (a) the legislation introduced by Senator Amy Klobuchar, Chairwoman on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights, has been enacted; or (b) the Commission is able to ensure that the legal and economic staffs have meaningfully taken into account the lack of efficiencies and the full range of competitive harms that the transaction may cause. Senator Klobuchar's legislation seeks to strengthen antitrust enforcement and to reverse the willingness of some courts to impede effective enforcement. The bill returns coordinated effects to the center of merger analysis; does away with unrealistic requirements that the agencies prove competitive effects to a near certainty; and, emphasizes the importance of examining and preventing exclusionary conduct. In this case, it is our belief that the anticompetitive effects of the proposed transaction would not be remedied by selected divestitures of stores in local markets.

On August 3, 2020, Marathon announced the sale of over 3,900 Speedway service stations and convenience stores to Seven & i Holdings for $21 billion in cash. If completed, this deal would merge the first and third largest convenience store operators in the United States into a nationwide chain of more than 13,000 stores, more than double the size of the nearest competitor, the Circle-K chain owned by Alimentation Couche-Tard Inc. Significantly, much of the rest of the market consists

of individually-owned convenience stores with none of the power of the few large chains.

Access to affordable gasoline is a key economic driver in the United States for millions of working men and women and their families. The proposed sale of Speedway to 7-Eleven has no efficiencies; indeed, it is an example of vertical *dis*integration that could result in a double mark up and therefore higher prices to consumers. Moreover, the transaction includes an unusually long (15 year) supply agreement between Marathon and 7-Eleven to supply up to nearly 8 billion gallons of gasoline annually for the life of the agreement. Effectively, this agreement duplicates vertical integration – *minus* any efficiencies – and thus may provide an incentive for Marathon to raise wholesale prices to competing retailers. With gas prices now on a steep rise to nearly $3 a gallon in most states, the FTC should exercise its full authority to ensure that the Marathon/7-Eleven supply agreement will neither limit competitors' ability to buy fuel nor stick customers with sky-high costs to refill their gas tanks to get to and from work and school.

Senator Klobuchar's bill aims to strengthen antitrust enforcement by the FTC and the Department of Justice and to revise the legal standard under Section 7 of the Clayton Act to better enable enforcers to arrest the likely anticompetitive effects of harmful mergers in their incipiency.[1] In addition to bringing agency practice back to the incipiency standard Congress has already mandated for merger enforcement, the bill highlights the importance of analyzing coordinated effects and exclusionary effects in mergers where such effects may be expected. That is the situation here. The parties to the deal may hope to beat the legislative reforms to the punch by going ahead with the proposed transaction now. But we note that many of the principles behind the legislation are already part of the law, including incipiency, coordinated and exclusionary effects, and we urge the Commission not to shortcut the review of this transaction or accept a settlement that does not remedy all competitive issues.

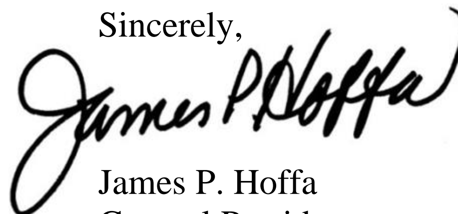
The Speedway sale to 7-Eleven was the result of 18 months of intense pressure on Marathon's management from activist shareholder Elliott Management and Elliott's singular desire to liquidate Marathon's assets to fund enormous share buybacks and special dividends. Indeed, Marathon plans to use the $21 billion in Speedway proceeds exclusively to pay down debt and reward shareholders, such as Elliott Management, handsomely. There are no perceived market benefits in terms of efficiencies or

[1] The Competition and Antitrust Law Enforcement Act, https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf.

infrastructure improvements, and the only parties that stand to benefit are the companies and their shareholders, particularly those of Marathon Petroleum Corp. In addition, nearly 200 Teamster represented workers from Marathon's St. Paul Park refinery have been locked out of their jobs since January 22, creating extraordinary financial hardship for longtime employees who risked their health operating the refinery throughout the pandemic, and unnecessary risk for the safety of neighboring communities. Numerous unfair labor practice charges have been filed against Marathon with the National Labor Relations Board for bad faith bargaining and unlawful retaliation against workers in Minnesota.

The sale of Speedway to 7-Eleven is the last thing consumers need in the midst of a nationwide economic crisis. The proposed transaction will further concentrate the market and create a convenience store industry behemoth with markedly increased power to drive more small businesses into closing their doors forever. We know from Marathon's own reports to investors, the billions in cash generated by the sale will not benefit Marathon workers. We, therefore, call on the FTC to pause its antitrust review of the Speedway sale to Seven & i Holdings Co., Ltd., until the agency has time to interpret, integrate and employ the antitrust legislation currently making its way through Congress, or at a very minimum, ensure that all competitive effects from the transaction have been fully considered and remedied.

Sincerely,



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