

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

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

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Marathon Petroleum Corporation, through its wholly owned subsidiary, Speedway LLC (collectively “Marathon”), of retail fuel outlets and other interests from Respondents REROB, LLC, Petr-All Petroleum Consulting Corporation, and Express Mart Franchising Corp. (collectively “Express Mart”). 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.

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. At the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. 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 530 South Main Street, Findlay, Ohio 45840.
2. Speedway, LLC is a limited liability company 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 500 Speedway Drive, Enon, Ohio 45323. Speedway LLC is a wholly-owned subsidiary of Respondent Marathon Petroleum Corporation.
3. 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.
4. Respondent Petrol 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.
5. 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.
6. Sunoco LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at 8111 Westchester Drive, Suite 600, Dallas, Texas 75225.

7. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Marathon" means Marathon Petroleum Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Marathon (including Speedway LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Express Mart" means Express Mart Franchising Corp. directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates, in each case controlled by Express Mart and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Petr-All Petroleum Consulting Corporation" means Petr-All Petroleum Consulting Corporation, its directors, officers, employees, agents, representatives, successors, and assigns of each.

- H. "Acquisition" means the proposed acquisition described in the Asset Purchase Agreement by and between Petrol Petroleum Consulting Corporation, Express Mart Franchising Corp., REROB, LLC, and Speedway, LLC dated as of April 13, 2018.
- I. "Acquisition Date" means the date the Acquisition is consummated.
- J. "Books and Records" means all originals and all copies of any operating, financial, environmental, governmental compliance, regulatory, or other information, documents, data, databases, printouts, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video imag

- S. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph V of this Order.
- T. "Equipment" means all tangible personal property (other than Inventories) of every kind owned or leased by Respondents in connection with the operation of the Retail Fuel Outlet Business associated with the Retail Fuel Assets at each of the locations specified in Appendix A to this Order, including, but not limited to all: fixtures, furniture, computer equipment and third-party software, office equipment, telephone systems, security systems, registers, credit card systems, credit card invoice printers and electronic point of sale devices, money order machines and money order stock, shelving, display racks, walk-in boxes, furnishings, signage, canopies, fuel dispensing equipment, UST systems (including all fuel storage tanks, fill holes and fill hole covers and tops, pipelines, vapor lines, pumps, hoses, Stage I and Stage II vapor recovery equipment, containment devices, monitoring equipment, cathodic protection systems, and other elements associated with any of the foregoing), parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Retail Fuel Outlet Business associated with the Retail Fuel Assets at each of the locations specified in Appendix A to this Order, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, to the extent such warranty is transferrable, all maintenance records and other documents relating thereto.
- U. "Firewalled Employees" means any Sunoco employee(s) that are designated by Sunoco to be officially and directly responsible for establishing, setting, or changing the retail prices of Fuel Products at Speedway 7653, identified in Appendix A of this Order.
- V. "Fuel Products" means refined petroleum gasoline and diesel products.
- W. "Governmental Entity" means any federal, state, local, or U.S. government, or any court, legislature, governmental agency or commission, or any judicial or regulatory authority of any government.
- X. "Governmental Permit(s)" means all Consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any Governmental Entity(ies) necessary to effect the complete transfer and divestiture of the Retail Fuel Assets to an Acquirer and for such Acquirer to operate any aspect of the Retail Fuel Outlet Business.
- Y. "Inventories" means all inventories of every kind and nature for retail sale associated with the Retail Fuel Assets, including

packaging, or preparation and ingredients from which prepared foods are made to be sold.

Z. "Monitor" means any Person appointed by the Commission to serve as a Monitor pursuant to Paragraph V. of this Order ~~or~~ Paragraph V. of the Order to Maintain Assets.

AA. "Order to Maintain Assets" means the (Order to Maintain Assets incorporated (-5 (a)-6 (rt)-4 (tt)-6 7)

4. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto to the extent transferable, and at the Acquirer's option;
5. All Governmental Permits, and all pending applications therefor or renewals thereof, to the extent transferable;
6. All intangible rights and property, including intellectual property, owned or licensed (as licensor or licensee) by Respondents (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings and
7. Books and Records; provided, however, that in cases in which Books and Records included in the Retail Fuel Assets contain information: (a) that relates both to the Retail Fuel Assets and to other, retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Retail Fuel Assets, or (b) where Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies of the materials containing such information with appropriate redactions to the Acquirer. In instances where such copies are provided to an Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copihols wlul (an)-4 (2 ((e)4 ()) 5Bp4 (c)s2 Tet)4 (n A)2 (c)4 (qG2 ((F)8imcior) (F)8ili [(F)8Td [(l(or)3Td [(o)3 ((-5[(4)-1 (s)) (e)4 7.85 w)-25a)eI0 Tc 0 Tw 0.712

and (2) the operation of associated convenience stores and related businesses and services, including, but not limited to the retail sale, promotion, marketing and provision of food and grocery products (including dairy and bakery items, snacks, gum, and candy), foodservice and quick-serve restaurant items, beverages (including alcoholic beverages), tobacco products, general merchandise, ATM services, gaming and lottery tickets and services, money order services, car wash services, and all other ~~uses~~ and services associated with the business operated or to be operated at each location identified in Appendix A of this Order.

JJ.

“Retained Assets” means Respondents’ assets other than the Retail Fuel Assets to be divested pursuant to the (t)-2 (s)-1Cd (t)-2 (s)-2 hCd (t)3Bn(d)-4 (al)o(d)]TJ -0.004 Tc 0.004 Tw (

information technology and systems, maintenance and repair of facilities and equipment, Fuel Products supply, purchasing, quality control, R&D support, technology transfer, use of Respondents' Brands for transitional purposes, operating permits and licenses, regulatory compliance, sales and marketing, customer service, and supply chain management and customer transfer logistics.

- OO. "Transition Services Agreement(s)" means an agreement that receive the prior approval of the Commission between Respondents and an Acquirer to provide, at the option of the Acquirer, Transition Services (or training for an Acquirer to provide services for itself), necessary to transfer the Retail Fuel Assets to the Acquirer and to operate the Retail Fuel Outlet Business in a manner consistent with the purposes of this Order

II.

IT IS FURTHER ORDERED that:

- A. No later than 90 days after the Acquisition Date, Respondents shall divest Retail Fuel Assets, absolutely and in good faith, at no minimum price, as an ongoing business, to

E. The purpose of the divestiture of the Retail Fuel ja

targeted specifically at the Retail Fuel Employees (ii) hire Retail Fuel Employees if employment has been terminated by an Acquirer or Commission Agent, or who apply for employment with Respondents, so long as such Retail Fuel Employees were not solicited by Respondents in violation of this paragraph; or (iii) hire any Retail Fuel Employees if the Acquirer or Commission Agent has notified Respondents in writing that the Acquirer or Commission Agent does not intend to make an offer of employment to that Retail Fuel Employee, or where such an offer has been made and the Retail Fuel Employee has declined the offer

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information received or maintained by Respondents relating to the Retail Fuel Assets, Retail Fuel Outlet Business, and the post-divestiture Retail Fuel Outlet Business, provided, however, that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under this Order, the Order to Maintain Assets, or the 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.

(, s) 0 4 T c 0 4 T c n (e) 4

V.

IT IS FURTHER ORDERED that:

- A. Robert Ogle shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix C ("Monitor Agreement") and Non-Public Appendix D ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. No later than one day after the Acquisition Date, Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
 1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondent or of the Commission.
 2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order and the Order to Maintain Assets or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order and the Order to Maintain Assets;
 3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection

with, the performance of his 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 the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a

- H. 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 this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestituCID 7 >>BDs

1.

- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives ~~and~~ ~~to~~ sign a 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 ~~sub~~ Divestiture Trustee in the same manner as provided in this Paragraph VI.
- 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 this ~~Order~~.

VII.

IT IS FURTHERED ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission ("Notification") in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any ~~Prior Notice Outlet~~.
- B. With respect to the Notification
 - 1. The prior notification required by this Paragraph VII. shall be given on the Notif

2. An annual compliance report one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 3. Additional compliance reports as the Commission or its staff may request.
- C. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, and a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted. Respondents shall retain copies of all material written communications to and from such parties, as well as all ~~privileged~~ internal memoranda, reports, and recommendations concerning completing their obligations under the Order for a period of 3 years, and shall provide copies of those records to Commission staff upon request.
- D. Each compliance report shall be verified 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. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XI.

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

- A. Any proposed dissolution of the Respondents;
- B. Any proposed acquisition, merger, or consolidation of the Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Appendix A

Retail Fuel and Convenience Store Properties To Be Divested

Owner	State	Area	Property Name & Address
Speedway 7653	New York	Rochester	3000 S. Winton Road, Rochester, NY 14623
Express Mart 306	New York	Johnson City	719 Main Street, Johnson City, NY 13790
Speedway 7728	New York	Whitney Point	2811 US11, Whitney Point, NY 13862
Speedway 7733	New York	Farmington	1429 NY-332, Farmington, NY 14425
Speedway 7899	New York	Fayetteville	407 East Genesee Street, Fayetteville, NY 13066

Non-Public Appendix B

Prior Notice Outlets

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix C

Monitor Agreement

Non-Public Appendix D

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]

Non-Public Appendix E

Sunoco Acquisition Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]