

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

In the Matter of)
)
)
Marathon Petroleum Corporation,)

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.

4. All Contracts and all outstanding offers or solicitations thereinto 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;

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 ~~businesses~~ 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 this Order, and assets excluded from the Divestiture Agreement approved by the Commission, including but not limited to, the following assets excluded from the Sunoco Acquisition Agreement:

1. Any government permit, license or similar right that is not legally transferable to Acquirer;
2. All claims and rights of Respondents to federal, state and local income tax refunds, credits and benefits;
3. Books and Records of Respondents relating to the interests transferred to Acquirer under the Sunoco Acquisition Agreement;
- 4.

9. Proceeds from any underground storage tank fund or private insurance claim that are payable to Respondents for investigations, corrective action and/or remediation performed by Respondents at the locations listed in Appendix A of this Order prior to or after the Acquisition Date;
 10. Inventories or any supplies such as coffee cups, napkins, motor oil, sandwiches and other inventory or supplies bearing the "Speedway" name, or other proprietary name and/or logos;
 11. All lottery tickets located at the locations listed in Appendix A of this Order as of the Acquisition Date;
 12. All intellectual property rights of Respondents;
 13. All Respondents' employees, including all such employees employed at the locations listed in Appendix A of this Order, unless otherwise required by this Order; and
 14. Any computers and point of sale equipment listed on the Excluded Speedway Equipment portion of Schedule 1.1(a)(iii) of the Sunoco Acquisition Agreement.
- KK. "Sunoco" means Sunoco LP, its partners, directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, partnerships, subsidiaries, divisions, groups, and affiliates, in each case controlled by Sunoco LP, including, but not limited to, Susser Petroleum Property Company LLC, Sunoco Retail LLC, Stripes LLC, Town & Country Food Stores, Inc., MACS Retail LLC, Sunoco Finance Corp., and Sunoco LLC, and the respective partners, directors, officers, employees, agents, representatives, successors, and assigns of each.
- LL. "Sunoco Acquisition Agreement" means the asset purchase agreement between Sunoco and Speedway LLC dated October 5, 2018, including related ancillary agreements, amendments, schedules, exhibits, and attachments, thereto, that have been approved by the Commission to accomplish the requirements of this Order, attached as Non-Public Appendix E.
- MM. "Third Party(ies)" means any Person other than the Respondents or an Acquirer.
- NN. "Transition Services" means technical services, personnel, assistance, training, the supply of Products, and other logistical, administrative, and other transitional support as required by an Acquirer and approved by the Commission to facilitate the transfer of the Retail Fuel Assets from the Respondents to an Acquirer, including, but not limited to, services, training, personnel, and support related to: audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources,

Provided however, that

1. Respondents may satisfy the requirement to obtain all Consents from Third Party(ies) by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies)

- E. The purpose of the divestiture of the Retail Fuel Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist the Acquirer or the Commission Agent, as applicable, to evaluate and retain any and all Retail Fuel Employees necessary to operate the Retail Fuel Assets in substantially the same manner as Respondents prior to the divestiture. Respondents shall retain any and all the sq(nne)4 (r)3 (-4 ()e)4 (s)-1 (t)-2 (i)-2 (t)-2(e) JTJ 0 Tc 0 Te

may (i)

- 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 divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Retail Fuel Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- 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 (any other statute enforced by the Commission), Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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 this Order.
- 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. Within ten 10 days after 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 relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, 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 ~~retail~~ assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Retail Fuel ~~Assets~~ and perform Respondents' other obligations in ~~any~~ ~~one~~ that satisfies the requirements of this Order;
2. The Divestiture Trustee shall have 12 months from the date the Commission approves the ~~trust~~ agreement described herein to accomplish the ~~divest~~ which shall be subject to the prior approval of the Commission. ~~If~~ ~~how~~ at the end of the 12-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved with ~~an~~ ~~reasonable~~ time, the divestiture period may be ~~extended~~ by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
- 3.

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 and, in the case of a court-appointed Divestiture Trustee, by the court, 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 this 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. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Retail Fuel Assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 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

- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives ~~to~~ ^{on} basis sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture ~~Trustee's~~ ^{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 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 Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), 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 Respondents and not of any other party to the transaction.
 - 2. Respondents shall include a description of the proposed acquisition and provide:
 - (a) A map showing all retail fuel outlets by ownership (OPIS Corporate Brand) within 5 driving miles of the relevant Prior Notice Outlet;
 - (b) For each retail fuel outlet owned by Respondents within 5 driving miles of the relevant Prior Notice Outlet, a list of the retail fuel outlets that

Respondents monitored at any time with the preceding 12-month period (to the extent such information is available)

- (c) Respondents' pricing strategy in relation to each monitored retail fuel outlet identified in response to Paragraph VII.B.2.(b) of this Order.
- 3. Respondents shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). 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), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material.
- 4. Early termination of the waiting periods in this Paragraph VII. may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph 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. Respondent shall provide a copy of each Notification described in Paragraph VII.B. of this Order to the State of New York at the same time that such Notification is transmitted to the Commission.

VIII.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondents shall comply with all terms of the Divestiture Agreement. Any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order. In the event of a conflict between the terms of this Order and a Divestiture Agreement, or any ambiguity in the language used in a Divestiture Agreement, the terms of this Order shall govern to resolve such conflict.

IX.

IT IS FURTHER ORDERED that Sunoco shall

- A. Prior to the Divestiture Date, 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 Confidential Wholesale Information by any Firewalled Employees except as is expressly permitted or required by the Orders or by the Divestiture Agreement, where such measures shall include, but not be limited to, prohibiting any of its Firewalled Employees from receiving, having access to, using, or continuing to use or disclose any Confidential Wholesale Information.
- B. Within thirty (30) days after the Divestiture Date, one (1) year from the date this Order is issued, annually for the next 9 years on the anniversary of the date this Order is issued, and at other times as the Commission may require, file with the Commission and submit to the Monitor a verified written report setting forth in detail the manner and form in which it has complied and is complying with the provisions of Paragraph IX.A. of this Order. Sunoco's annual reports due pursuant to this Order may be consolidated and filed with the Commission on the same timing as the reports of compliance required to be submitted by Respondent Sunoco pursuant to the Decision and Order issued in In the Matter of Seven & Holdings Co., Ltd., 7-Eleven, Inc., and Sunoco EPC Docket No. C-4641.

X.

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. notify Commission staff via email at bccompliance@ftc.gov by the Acquisition Date no later than 5 days after the Acquisition Date, and;
 2. submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:
1. An interim compliance report 30 days after the Order is issued, and every 30 days thereafter until Respondents have fully complied with the provisions of Paragraph II 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 on February 4, 2029.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:
ISSUED: February 4, 2019

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

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]