



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

Office of the Chair

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya
In the Matter of ARKO Corp./Express Stop
Commission File No. 2110087**

June 10, 2022

Last year, in an unreportable transaction valued at approximately \$94 million, GPM Petroleum, LLC, GPM Southeast, LLC, GPM Investments, LLC, and ARKO Corp. (collectively
company

enforcement action alleging that GPM illegally acquired five of those retail fuel stations from Corrigan, and imposed illegitimate, overbroad agreements not to compete in connection with that acquisition. This action marks an important step forward in protecting the public from harm when rivals agree not to compete. Firms proposing mergers should take note that the Commission will scr

a merger agreement may unduly and illegitimately restrain competition when both of the parties remain competitors in other markets.

By its very nature, an agreement not to compete between two businesses reduces competition if it restrains the activities of actual and potential rivals during the term of the agreement. Indeed, noncompete agreements between competing businesses are suspect: for instance, an agreement not to compete may constitute a thinly veiled market allocation scheme, a per se violation of the antitrust laws.

In the context of mergers, parties sometimes assert that noncompete clauses are necessary to protect a legitimate business interest in connection with the sale of a business, such as the goodwill acquired in a transaction. When the seller is exiting the business or selling off assets needed to compete with the buyer, a noncompete that limits prospects for reentry may in certain instances reflect that goodwill, if appropriately limited in geographic scope and duration.

In this matter, as alleged
at were overbroad and facially
unrelated to protecting any goodwill GPM might hope to acquire with the Corrigan stations. According to the complaint, these noncompete provisions are illegal because they were designed to ensure that GPM would not face direct or indirect competition from Corrigan not only in the competitively overlapping areas, but even in geographic areas far from the acquired stations.

