



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 171 0126]

Seven & i Holdings Co., Ltd., a corporation; 7-Eleven, Inc., a corporation; and Sunoco LP, a limited partnership.; Analysis to Aid Public

Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before February 20, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: "In the Matter of Seven & iHoldings Co., Ltd. File No. 1710126" on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/sevensunococonsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of Seven & iHoldings Co., Ltd. File No. 1710126" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Eric Olson (202-326-2349), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 2018), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 20, 2018. Write “In the Matter of Seven & iHoldings Co., Ltd. File No. 1710126” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/sevensunococonsent> by following the instructions on the

web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “In the Matter of Seven & iHoldings Co., Ltd. File No. 1710126” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 20, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Seven & i Holdings Co., Ltd. and 7-Eleven, Inc. (collectively, “7-Eleven”), and Sunoco LP (“Sunoco”) (collectively, the “Respondents”). The Consent Agreement is designed to remedy

the anticompetitive effects that likely would result from 7-Eleven's proposed acquisition of certain Sunoco retail fuel assets (the "Transaction").

Absent a remedy, the Transaction would raise competitive concerns in 76 local markets in 20 metropolitan statistical areas ("MSAs"). Under the terms of the proposed Consent Agreement, 7-Eleven must sell retail fuel outlets in some local markets to Sunoco and reject Sunoco retail fuel outlets in other local markets pursuant to the Respondents' asset purchase agreement (thereby allowing Sunoco to retain these assets). The divestitures must be completed no later than 90 days after the closing of 7-Eleven's acquisition of Sunoco. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each 7-Eleven divestiture outlet in the normal course of business through the date Sunoco acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent Seven & i Holdings Co., Ltd, a publicly traded company headquartered in Tokyo, Japan, operates convenience stores and retail fuel outlets throughout the United States and the world. 7-Eleven's U.S. network consists of approximately 8,500 stores located in 35 states. More than 1,000 locations are company-operated, making 7-Eleven one of the largest convenience store operators in terms of company-owned stores and the second-largest chain

overall in the country. 7-Eleven convenience store locations operate under the 7-Eleven banner, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent Sunoco operates convenience stores and retail fuel outlets in the United States and Canada. With more than 1,300 convenience stores and retail fuel outlets in the United States, Sunoco is one of the largest chains in the country. Sunoco's U.S. convenience stores operate primarily under the APlus and Stripes banners, while its retail fuel outlets operate under a variety of company and third-party brands. Sunoco also has an extensive wholesale fuel business that supplies more than 6,800 third-party outlets.

III. The Proposed Acquisition

On April 6, 2017, 7-Eleven, through its wholly owned subsidiaries 7-Eleven, Inc. and SEI Fuel Services, Inc. ("SEI Fuel Services"), entered into an agreement with Sunoco to acquire approximately 1,100 retail fuel outlets for approximately \$3.3 billion. Sunoco would continue to operate its wholesale business and approximately 200 retail fuel outlets following the Transaction. SEI Fuel Services would enter into a 15-year fuel supply agreement with Sunoco, LLC as a part of the Transaction.

The Commission's Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the asset purchase agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in 76 local markets across 20 MSAs.

IV. The Retail Sale of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. The retail sale of

gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects of the Transaction are 76 local markets within the following MSAs: Boston-Cambridge-Quincy, MA-NH; Brownsville-Harlingen, TX; Buffalo-Niagara Falls, NY; Cape Coral-Fort Myers, FL; Corpus Christi, TX; Deltona-Daytona Beach-Ormond Beach, FL; Killeen-Temple-Fort Hood, TX; Laredo, TX; McAllen-Edinburg-Mission, TX; Miami-Fort Lauderdale-Pompano Beach, FL; Gettysburg, PA; Palm Bay-Melbourne-Titusville, FL; Pittsburgh, PA; Richmond, VA; San Antonio, TX; Sarasota-Bradenton-Venice, FL; Tampa-St. Petersburg-Clearwater, FL; Rio Grande City-Roma, TX; Victoria, TX; and Washington-Arlington-Alexandria, DC-VA-MD-WV. Each particular geographic market is unique, with factors such as commuting patterns, traffic flows, and outlet characteristics playing important roles in determining the scope of the geographic market. Retail fuel markets are highly localized and can range up to a few miles in size.

The Transaction would substantially increase the market concentration in each of the 76 local markets, resulting in highly concentrated markets. In 18 local markets, the Transaction would result in a monopoly. In 39 local markets, the Transaction would reduce the number of independent market participants from three to two. In 19 local markets, the Transaction would reduce the number of independent market participants from four to three.

According to the Commission's Complaint, the Transaction would reduce the number of independent market participants in each market to three or fewer. The Transaction would

thereby substantially lessen competition in these local markets by increasing the likelihood that 7-Eleven would unilaterally exercise market power and by increasing the likelihood of successful coordination among the remaining firms. Absent relief, the Transaction would likely result in higher prices in each of the 76 local markets.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Transaction. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Proposed Consent Agreement

The proposed Consent Agreement remedies the Transaction's anticompetitive effects by requiring 7-Eleven to sell retail fuel outlets in some local markets to Sunoco and reject Sunoco retail fuel outlets in other local markets pursuant to the Respondents' asset purchase agreement (thereby allowing Sunoco to retain these assets). Sunoco intends to convert the acquired or retained stations from company-operated sites to commission agent sites. This remedy would preserve competition as it is today, ensure that the divestiture assets go to a viable, large-scale competitor, and reduce the risks and costs associated with asset integration.

The Commission is satisfied that allowing Sunoco to acquire or retain retail fuel stations and transition them to commission agent sites is an appropriate remedy. Most importantly, the proposed remedy preserves competition in each local market. Indeed, as Sunoco controls retail fuel pricing at both its company-operated stations and its commission agent stations, Sunoco and 7-Eleven would continue as independent retail fuel competitors in each local market. Moreover, Sunoco is a large, viable competitor capable of maintaining the competitive landscape in each

local market. Finally, the proposed Consent Agreement reduces the uncertainty and costs relating to integration since Sunoco already is familiar with the majority of the stations at issue.

The proposed Consent Agreement also requires that for up to six months following the divestiture, with up to an additional twelve months at the buyer's option, 7-Eleven make available transitional services, as needed, to assist the buyer of each divestiture asset. The buyer may extend the period for an additional twelve months, but only with Commission approval.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires 7-Eleven to provide the Commission (and Florida, Texas, or Virginia, where applicable) notice before acquiring designated outlets in the 76 local areas for ten years. The prior notice provision is necessary because acquisitions of the designated outlets likely would raise competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Respondents' complete divestiture of the outlet, thereby maintaining the economic viability, marketability, and competitiveness of each divestiture asset. During this period, and until such time as the buyer (or buyers) no longer requires transitional assistance, the Order to Maintain Assets authorizes the Commission to appoint an independent third party as a monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The proposed Consent Agreement also requires Sunoco to take steps to ensure that its employees in charge of setting retail fuel prices at the acquired or retained retail fuel outlets do not have access to confidential information about Sunoco's post-Transaction wholesale supply of 7-Eleven's retail fuel stations. To ensure appropriate firewalls remain in place for the duration of the Respondents' fuel supply agreement, the proposed Consent Agreement has a term of fifteen years.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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