

to notify third parties subject to similar noncompete agreements of GPM's obligations under the Order.

Retail fuel competition varies based on many factors, including driving patterns, population density, and consumer demand. The reasonableness of agreements not to compete will necessarily differ with local retail fuel competition. A 3-year and 3-mile radius around each acquired location in this transaction resembles a reasonable duration and geographic scope given the local competitive conditions around each Express Stop location.

Noncompete agreements affecting areas geographically distinct from acquired retail fuel outlets, and noncompete agreements untethered to protecting goodwill acquired in the acquisition, are highly suspect and warrant Commission scrutiny.

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

By direction of the Commission.

April J. Tabor,
Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

Last year, in an unreportable transaction valued at approximately \$94 million, GPM Petroleum, LLC, GPM Southeast, LLC, GPM Investments, LLC, and ARKO Corp. (collectively "GPM") acquired 60 retail gasoline, diesel, and convenience stores from Corrigan Oil Company ("Corrigan"). Today, after a thorough investigation of this deal, the Commission announced an 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 scrutinize contract terms in merger agreements that impede fair competition.

Noncompete agreements affect millions of Americans every day, but they come in a variety of forms. Much of the discussion surrounding noncompete clauses in recent years has focused on their inclusion in employment contracts and the resulting harm to workers. Noncompete covenants, however, can also govern

businesses that are direct or potential competitors, and sometimes are included in merger agreements. Today's Commission action highlights that noncompete clauses in 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 in the Commission's complaint, GPM's agreement to purchase Corrigan's retail fuel stations contained noncompete terms that 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.

As today's consent agreement makes clear, firms may not use a merger as an excuse to impose overbroad restrictions on competition or competitors. The Commission will evaluate agreements not to compete in merger agreements with a critical eye.

We look forward to reviewing input and comments from the public about the approach this settlement has taken with respect to the noncompetes at issue here. The Commission is committed to acting in the public interest, and comments from the public are vital to ensuring that we are successful in doing so.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22-007: Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE22-007: Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline, June 7-8, 2022, 8:30 a.m.-5:30 p.m., EDT, Videoconference.

The meeting was published in the **Federal Register** on February 1, 2022, Volume 87, Number 21, page 5483.

The meeting notice is being amended in the first column (FR Doc 2022-01950) to change the meeting date and should read as follows:

CE22-007: Reduce Health Disparities and Improve Traumatic Brain Injury (TBI) Related Outcomes Through the Implementation of CDC's Pediatric Mild TBI Guideline, June 7, 2022.

The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mikel Walters, Ph.D., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F-63, Atlanta, Georgia 30341; Telephone: (404) 639-0913; Email: MWalters@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

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