Attorney General Conway Announces Lawsuit Filed in Federal Court Against Marathon Petroleum (http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID={55F72683-6DC6-4889-9E78-9C50E4C6100F}&activityType=PressRelease)

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Attorney General Jack Conway filed a lawsuit today in federal court against Marathon Petroleum. The suit, filed in U.S. District Court in the Western District of Kentucky, alleges that Marathon engages in anti-competitive practices that lead to higher gas prices for consumers across Kentucky.

“For almost two decades, Marathon has been allowed to run rampant in Kentucky,” Attorney General Conway said. “Marathon owns and operates the only refinery in Kentucky, and it maintains its wholesale monopoly by making retailers and other potential suppliers enter into contracts that are outright anti-competitive. This conducts harms everyone who buys gas in Kentucky.”

As reflected in the complaint filed today, the Office of the Attorney General (OAG) believes Marathon violated state and federal antitrust laws by abusing the monopoly created when Marathon and Ashland Oil merged in 1998.

The suit alleges Marathon abused its monopoly, which led to higher gas prices for Kentucky consumers and businesses. The price disparity is most pronounced in the Louisville and Covington markets, where retailers are required to sell reformulated gas (RFG) during the summer months to reduce pollution emissions and improve air quality. Gas prices in Louisville are generally 20 to 30 cents higher than the rest of the state. When Louisville is compared to St. Louis, an RFG market of similar size in the region, gas prices averaged roughly 25 cents more per gallon in Louisville than St. Louis in the summer of 2014.

The Office of the Attorney General alleges that Marathon discourages competition by requiring independent retailers to sign unlawful supply agreements that eliminate wholesale competition, by forming exchange agreements with horizontal competitors that keep other suppliers from entering the Kentucky market, and
by writing deed restrictions into the sales agreements of some properties sold by Marathon.

The Attorney General’s investigation uncovered that some supply agreements Marathon enters into with retailers require retailers to purchase 100 percent of their RFG from Marathon, with penalties if the retailers fail to do so. The agreements also prohibit unbranded retailers from challenging Marathon’s pricing.

Marathon executes exchange agreements with other major suppliers, which allows Marathon to supply branded stations with gasoline. Through these agreements, Marathon has limited competition. The competitors have no incentive to upgrade their refineries and supply infrastructure to produce and deliver RFG to Kentucky because Marathon is already supplying the stations with gasoline.

Marathon further reduces competition by adding deed restrictions to some of the property parcels it sells. The restrictions prohibit the purchaser of the property from selling gas or operating a convenience store. Some of the restrictions have an exception that will allow for development of a gas station – if the station sells only Marathon gas.

History of the Merger & OAG Investigation
When Ashland and Marathon merged in the late 1990s, the Federal Trade Commission said one state bore watching because the merger could create a lack of competition at the wholesale level. That state was Kentucky.

Attorney General Conway first started investigating gas prices in Kentucky in 2008 after it became clear that Kentucky stations were charging more for a gallon of gasoline than retailers in surrounding states. The disparity was even more significant in markets like Louisville and Covington, where retailers are required to sell reformulated gas during the summer months.

In 2008, Attorney General Conway forwarded his investigation to the Federal Trade Commission (FTC). It declined to review the merger. In 2011, Attorney General Conway spoke with U.S. Attorney General Eric Holder and forwarded the investigation to the Department of Justice’s Oil and Gas Price Fraud Working Group. In 2014, when new commissioners were named to the FTC, Attorney General Conway once again asked for a review of the merger and its impact on Kentucky.

“\textquote{I am tired of waiting for the federal government to do its job and act on this case,\textquote{}} Attorney General Conway said. “There is too much at stake, so we’ve taken matters into our own hands. We are standing up for Kentucky consumers and proceeding with our own antitrust case against Marathon.”

To view a copy of the complaint, visit - http://goo.gl/A6n3vO (http://goo.gl/A6n3vO)