REPORT OF THE FEDERAL TRADE COMMISSION ON ACTIVITIES IN THE OIL AND NATURAL GAS INDUSTRIES

REPORTING PERIOD JULY-DECEMBER 2013

The Federal Trade Commission ("Commission" or "FTC") is pleased to submit this report to the Congressional Appropriations Committees ("the Committees") in response to directions, carried forward through various continuing resolutions, for the Commission to keep the Committees apprised of findings made regarding fuel prices, as well as other planned activities and investigations regarding the oil and natural gas industries.[1]

Overview

The Commission undertook or continued a number of significant activities involving petroleum and natural gas during the second half of calendar 2013, pursuant to the agency's enduring commitment to protect American consumers from potentially anticompetitive and anti-consumer practices in the energy sector. As it always does, the energy sector commanded the Commission's close attention during this six-month period. The FTC and its staff focused on mergers and acquisitions, potentially anticompetitive or deceptive conduct, and other activities involving pricing and competition in the petroleum and natural gas industries.

Law Enforcement Activities

The analysis of mergers and acquisitions is a primary component of the Commission's work in the oil and natural gas sector. Since July 1, 2013, the Commission has received premerger filings under the Hart-Scott-Rodino Act for 31 proposed transactions in these industries. The agency reviewed each of these premerger filings, and also monitored the energy sector for nonreportable transactions that might raise antitrust concerns.[2]

The Commission investigated a number of mergers and acquisitions that raised significant competition issues. These investigations involved crude oil pipeline transportation;

[1] As the Commission noted in previous reports to the Committees, because this is a public report, it is drafted to exclude sensitive details of ongoing investigations, which the Commission is prohibited by law from revealing.

[2] The Commission's previous report stated that the agency received 33 Hart-Scott-Rodino filings for transactions in the oil and natural gas industries during the first half of 2013. In fact, the Commission received two additional Hart-Scott-Rodino filings in these industries between the date on which that report was approved for submission to Congress and June 30, 2013, bringing to 35 the total number of relevant filings during the first half of 2013.

petroleum refineries; refined petroleum product pipelines and terminals; crude oil and petroleum products merchant wholesaling; natural gas liquids; and natural gas exploration, production, transportation, storage, and distribution. As always, the Commission welcomed the cooperation of state attorney general offices in certain investigations.

For example, the Commission issued a final consent order in August that stemmed from its investigation of Tesoro Corporation's acquisition of pipeline and terminal assets from Chevron Corporation. The Commission's complaint, issued in June 2013, alleged that the acquisition, if consummated as originally proposed, would have substantially lessened competition in terminaling services for light petroleum products in Boise, Idaho, and the surrounding area. The FTC's final order required the respondents to divest Tesoro's light products terminal in the Boise area within 180 days to an FTC-approved buyer. The settlement included an Order to Maintain Assets to protect the competitive status quo pending the divestiture.[3]

Other FTC oil and gas merger activities during the second half of 2013 included the modification of a previously issued consent order arising from Kinder Morgan, Inc.'s acquisition of El Paso Corporation. The modified consent order extends Kinder Morgan's Transition Services Agreement with Tallgrass Energy Partners, LP.[4] In addition, the Commission completed an intensive investigation of Magellan Midstream Partners' acquisition of certain refined petroleum product pipelines from Plains All American Pipeline.

The Commission's enforcement activities also included examinations of potentially anticompetitive conduct in the petroleum and natural gas industries. For instance, the Commission continued its investigation of whether certain oil producers, refiners, transporters, marketers, physical or financial traders, or others have engaged or are engaging in anticompetitive or manipulative practices or have provided any federal department or agency with false or misleading information related to the wholesale price of crude oil or petroleum products.[5]

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[3] *See* http://www.ftc.gov/opa/2013/08/chevron.shtm.

[4] *See* http://www.ftc.gov/opa/2013/10/kinder.shtm.

[5] For the Commission's announcement of the initiation of this investigation, *see* "Information To Be Publicly Disclosed Concerning the Commission Petroleum Industry Practices and Pricing Investigation," File No. 111 0183 (June 20, 2011), *available at* http://www.ftc.gov/public-statements/2011/06/information-be-publicly-disclosed-concerning-commission-petroleum-industry. The investigation (including the use of compulsory process) has focused on such issues as utilization and maintenance decisions, inventory holding decisions, product supply decisions, product margins and profitability, and capital planning.

The FTC also has continued to investigate other types of conduct by firms in the oil and gas industries, including investigations of possibly anticompetitive or possibly deceptive conduct involving products or services in or affecting the oil and gas sector. For example, the Commission announced a settlement in November under which marketers of a fuel additive called "EnviroTabs" will pay $800,000 for consumer redress and are prohibited from making false, misleading, or unsubstantiated claims that EnviroTabs, when added to any type of fuel, will increase fuel efficiency, reduce emissions, and save consumers money.[6]

Further, the Commission has remained active in other markets that have a bearing on the energy sector. In September, the Commission obtained a federal court order in *FTC v. Lights of America, Inc., et al.*, a case in which the agency alleged that defendants made false and unsubstantiated claims about the light output and lifetime of Lights of America's light-emitting diode ("LED") bulbs. The Commission's action to put an end to deceptive marketing practices in the growing market for LEDs makes it less likely that consumers will be discouraged from purchasing a product that promises to save the United States significant costs for electricity – much of it produced by gas-fired generators – in the years ahead.

Memorandum of Understanding with the CFTC

As discussed in our recent semiannual reports, the FTC and the Commodity Futures Trading Commission ("CFTC") signed a Memorandum of Understanding ("MOU") in 2011 designed "to foster further cooperation between the two agencies by helping them share nonpublic information."[7] By facilitating the sharing of such information in investigations of wholesale oil and gasoline markets, the MOU is meant to help each agency carry out its authority to detect and prevent manipulation in those markets. In furtherance of this goal, the FTC and the CFTC exchanged information pursuant to the MOU during the second half of 2013.

Petroleum Market Manipulation Rule

As mentioned in previous reports, the Commission established a process in November 2009 to monitor compliance with the Petroleum Market Manipulation Rule,[8] which prohibits fraud or deception aimed at manipulating wholesale markets for crude oil, gasoline, or petroleum distillates. Although the FTC's Bureau of Competition received no communications from the

[6] FTC Press Release, *Green Foot Global, L.L.C., et al*. (Nov. 22, 2013), *available at* http://www.ftc.gov/opa/2013/11/envirotabs.shtm.

[7] *See* http://www.ftc.gov/news-events/press-releases/2011/04/ftc-cftc-agree-share-information-energy-investigations (press release); http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-cftc-agree-share-information-energy-investigations/110412ftccftc-mou.pdf (text of the MOU).

[8] The Commission issued this Rule under the authority of Section 811 of the Energy Independence and Security Act of 2007, 42 U.S.C. § 17301.

public under the Rule since July 1, 2013, the Commission will examine closely any complaints, communications, or other informati gasoline and diesel prices so that further inquiry can be undertaken expeditiously. When price increases do not appear to result from market-d

FTC Personnel Involved in Oil and Gas Activities

During the second half of 2013, personnel from many parts of the Commission continued their involvement in the agency's activities in the oil and natural gas industries. The Commission's Associate General Counsel for Energy engaged in virtually all aspects of the agency's work in these industries. Personnel from the Mergers III division of the Bureau of Competition (which is devoted primarily to petroleum and natural gas issues) and from a number of other Bureau divisions have been involved in addressing oil and natural gas issues as well.[12] In addition to the Bureau of Competition, one division of the Commission's Bureau of Economics bore major responsibility for conducting economic analysis of pricing and other competition issues in the petroleum and natural gas industries. Staff from the Commission's Office of the General Counsel, the Office of Congressional Relations, the Bureau of Consumer Protection, the Commissioners' offices, the FTC's Regional Offices, and other FTC organizations also contributed to oil and natural gas matters during the second half of the year.

Conclusion

The Commission continued its intensive antitrust and consumer protection scrutiny of the energy sector during the second half of 2013. In view of the fundamental importance of oil, natural gas, and other energy resources to the overall vitality of the United States and world economy, we expect that FTC review and oversight of the oil and natural gas industries will remain a centerpiece of our work for years to come.

Refining's Acquisition of Giant Industries (Sept. 2013), *available at* http://www.ftc.gov/reports/merger-policy-margin-western-refinings-acquisition-giant-industries.

[12] Additional Bureau of Competition offices whose staff participated in oil and gas matters during the second half of 2013 include the Office of the Director, the Division of Anticompetitive Practices, the Division of Compliance, the Division of Technology and Information Management, the Division of Operations, and the Office of Premerger Notification.