For Release

Oil Companies to Pay Record FTC Gun-Jumping Fine for Antitrust Law Violation

XCL Resources, EP Energy, Verdun Oil to pay $5.6 million penalty for unlawful coordination that led to crude oil supply shortage for EP

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Tags: Competition | Bureau of Competition | Merger | dual enforcement/DOJ | exchange of pricing information | gasoline prices | Hart-Scott-Rodino Act (HSR) | oil and gas competition | Energy

Today, the Federal Trade Commission announced that crude oil producers XCL Resources Holdings, LLC (XCL), Verdun Oil Company II LLC (Verdun), and EP Energy LLC (EP) will pay a record $5.6 million civil penalty to settle allegations they engaged in illegal pre-merger coordination, known as gun jumping, in violation of the Hart-Scott-Rodino Act (HSR Act).

According to the complaint, Verdun, which was under common management with XCL at the time of the transaction, agreed to acquire EP in a $1.4 billion transaction that was subject to the HSR Act. The HSR Act requires merging parties to submit an HSR form to the federal antitrust agencies and observe a waiting period before completing a transaction. EP, however, allowed XCL and Verdun to assume operational and decision-making control over significant aspects of EP's day-to-day business operations prior to the transaction closing, in violation of the HSR Act's waiting period requirements, the complaint states.

The three companies' unlawful gun-jumping activities during the HSR waiting period included XCL and Verdun ordering a stoppage to EP's planned well-drilling and development activities; XCL and EP coordinating to manage EP's customer contracts, relationships, and deliveries in the Uinta Basin region of Utah; and Verdun and EP coordinating on prices for EP's customers in the Eagle Ford region of Texas. This led to a crude oil supply shortage for EP when the U.S. market was facing significant supply shortages and multi-year highs in oil prices, resulting in Americans paying skyrocketing prices at the pump, the complaint states.

The civil penalty settlement reached with XCL, Verdun, and EP provides for the largest dollar penalty ever imposed for a gun-jumping violation in U.S. history.

The HSR Act requires companies and individuals to report large transactions, including securities acquisitions, over a certain threshold to the FTC and DOJ so that the federal agencies can investigate the deals before they close. The agencies have 30 days after a transaction has been reported to conduct an initial investigation and issue a "second request" demand for additional information. It is generally illegal to finalize an acquisition during this investigatory period.

FTC Investigation

The waiting-period obligation for this transaction went into effect on July 26, 2021, the date XCL, Verdun, and EP executed their purchase agreement and began engaging in gun-jumping activities, according to the FTC's complaint.

The FTC's investigation of Verdun's acquisition of EP uncovered significant competitive concerns given that the deal, as originally structured, would have eliminated head-to-head competition between two of only four significant energy producers and would have harmed competition for the sale of Uinta Basin waxy crude oil to Salt Lake City refiners. To resolve those concerns, the FTC entered into a consent agreement with XCL, Verdun, and EP in March 2022 that required the divestiture of EP's entire business and assets in Utah.

XCL, Verdun, and EP's illegal gun-jumping conduct lasted through October 27, 2021, when they executed an amendment to the purchase agreement, which allowed EP to operate independently once again and in the ordinary course of business, without XCL's or Verdun's control over its day-to-day operations.

The HSR waiting period expired on March 25, 2022, which is the date the FTC accepted a consent agreement and granted termination of the waiting period. In total, XCL, Verdun, and EP were in violation of the HSR Act for 94 days.

The Commission vote to accept the settlement and refer the matter to the Department of Justice for filing was 4-0-1, with Commissioner Holyoak recused. The Department of Justice filed the complaint and proposed stipulated order on the FTC's behalf in the U.S. District Court for the District of Columbia.

As required by the Tunney Act, the proposed settlement, along with a competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the

proposed settlement during a 60-day comment period to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580 bccompliance@ftc.gov. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may approve the proposed settlement upon finding that it is in the public interest.

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Press Release Reference

FTC Requires ENCAP to Sell Off EP Energy Corp.'s Entire Utah Oil Business amid Concerns that Deal would Increase Pain at the Pump

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