

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

REPORTING PERIOD JANUARY-JUNE 2013

The Federal Trade Commission (“Commission” or “FTC”) is pleased to submit this report to the Congressional Appropriations Committees (“the Committees”) in response to the Report of the Senate Committee on Appropriations on the Financial Services and General Government Appropriations Bill for Fiscal Year 2012. That Report’s pertinent language was carried forward by Pub. L. No. 113-6. In the Report, the Committee expressed its concern “with the potential for market manipulation and anticompetitive behavior in the oil and natural gas industries,” encouraged the FTC “to continue its investigations and other activities related to these concerns,” and directed the agency “to keep the Committee apprised of findings made regarding fuel prices, as well as other planned activities and investigations regarding the oil and gas industries.”¹

Overview

The Commission undertook or continued a number of significant activities involving petroleum and natural gas during the first 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, possible 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 January 1, 2013, the Commission has received premerger filings under the Hart-Scott-Rodino Act for 33 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.

¹ Committee on Appropriations, United States Senate, Report 112-79, on the Financial Services and General Government Appropriations Bill, 2012, S. 1573, at 77 (Sept. 15, 2011), *available at* <http://www.gpo.gov/fdsys/pkg/CRPT-112srpt79/pdf/CRPT-112srpt79.pdf>. As the Commission noted in previous reports to the Appropriations 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.

The Commission investigated a number of mergers and acquisitions that raised significant competition issues. These investigations involved crude oil pipeline transportation; petroleum refineries; refined petroleum product terminals, pipelines, and bulk supply; crude oil and petroleum products merchant wholesaling; natural gas liquids; and natural gas exploration, production, transportation, storage, and distribution. A number of these matters involved the cooperation of state attorney general offices, which the Commission always welcomes.

For example, the Commission recently accepted a consent agreement to settle its investigation of Tesoro Corporation's acquisition of pipeline and terminal assets from Chevron Corporation. The Commission's complaint alleges that the acquisition, if consummated as originally proposed, would substantially lessen competition in terminaling services for light petroleum products in Boise, Idaho, and the surrounding area. Under the proposed order accepted by the Commission, the respondents must divest Tesoro's light products terminal in the Boise area within 180 days to an FTC-approved buyer. The settlement includes an Order to Maintain Assets to protect the competitive status quo pending the divestiture.²

The Commission's activities on the petroleum merger front also included a thorough investigation of Tesoro's proposal to acquire BP's oil refinery in Carson, California, and related assets. On May 17, 2013, the Commission announced the closing of the investigation and issued a statement setting forth why the proposed transaction was unlikely to lessen competition substantially.³

The Commission's enforcement activities also included examinations of possibly 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.⁴

² See <http://www.ftc.gov/opa/2013/06/tesoro.shtm>.

³ See <http://www.ftc.gov/opa/2013/05/tesorobp.shtm> (press release); http://www.ftc.gov/os/closings/comm/130517tesoro_bpstmtocomm.pdf (Commission statement).

⁴ 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/os/2011/06/110620petroleuminvestigation.pdf>. 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. When appropriate, the staff continued to work in cooperation with local law enforcement officials.

Further, the Commission has been active in other markets that have a bearing on the energy sector. For example, in an action that should help consumers avoid incurring excessive home energy costs, the Commission announced in January that it had obtained a federal court permanent injunction and \$350,000 in civil penalties against a home insulation marketer who made deceptive and unsubstantiated claims about his products' home insulation capabilities.⁵

The Commission published Federal Register notices early in 2013 to announce that it had amended certain energy-related labeling rules to ease burdens on businesses and facilitate consumer energy conservation. First, the Commission streamlined the reporting and testing provisions of its Appliance Labeling Rule with regard to major household appliances and other consumer products. This action included harmonizing FTC appliance labeling requirements with those promulgated by the U.S. Department of Energy. The Commission also proposed changes to the EnergyGuide labels for refrigerators and clothes washers to help consumers compare products.⁶ Second, the Commission issued changes to its Energy Labeling Rule to add regional information to the EnergyGuide labels in anticipation of future Department of Energy regional standards for residential furnaces and central air conditioners, in order to help consumers install equipment appropriate for their locations.⁷

On April 18, 2013, following the completion of an intensive review process, the Commission announced the issuance of an amended version of its rule entitled "Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles." The amendment – which took effect on May 31, 2013 – consolidated the labels that the FTC requires on alternative fueled vehicles (AFVs) with labels required by the Environmental Protection Agency, thus eliminating the need for two different labels and simplifying compliance with the rule. The amended rule also eliminated FTC labeling requirements for used AFVs.⁸

⁵ See <http://www.ftc.gov/opa/2013/01/sumpolec.shtm>.

⁶ See <http://www.ftc.gov/opa/2012/12/energylabel.shtm>.

⁷ See <http://www.ftc.gov/opa/2013/01/energylabeling.shtm>.

⁸ See <http://www.ftc.gov/opa/2013/04/altfuels.shtm>.

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.”⁹ 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 first 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,¹⁰ which prohibits fraud or deception aimed at manipulating wholesale markets for crude oil, gasoline, or petroleum distillates. Since January 1, 2013, the FTC’s Bureau of Competition has received two communications from members of the public under the Rule. Neither of those communications contained information suggesting a violation of the Rule. In addition, the Commission’s close cooperation with other agencies included review of information received from another agency that pertained to the Rule. The Commission remains ready to examine closely any complaints or other communications that it receives regarding the Rule, and to take action as appropriate.¹¹

Oil and Gas Price Fraud Working Group

The work of the interagency Oil and Gas Price Fraud Working Group – established by the Attorney General in the midst of the spring 2011 oil and gasoline price increases – continued during the first half of 2013. As described in our recent semiannual reports, the Working Group

⁹ See <http://www.ftc.gov/opa/2011/04/ftccftc-mou.shtm> (press release); <http://www.ftc.gov/os/2011/04/110412ftccftc-mou.pdf> (text of the MOU).

¹⁰ 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.

¹¹ The “Guide to Complying with Petroleum Market Manipulation Regulations” that the Commission issued in November 2009 (<http://www.ftc.gov/os/2009/11/091113mmrguide.pdf>) provides addresses to which the public may send complaints of possible Rule violations. Complaints that evidence a Rule violation are referred to the FTC litigation units that specialize in maintaining competition in energy industries. Complaints that concern activity in futures markets are shared with the CFTC (through the FTC’s working relationship with that agency) to ensure that consumers are protected against fraud and deception in whatever form they take. Moreover, as described elsewhere in this report, FTC litigators and economists continue to employ additional techniques to monitor prices and other activity in petroleum markets.

consists of federal and state agencies with oversight of oil and gasoline markets. During the first half of 2013, the member agencies discussed developments and specific issues in the oil and gas sector and continued to share information and ideas about the sector. The Working Group has enhanced the possibilities for cooperative information-sharing among the member agencies, and various agencies' investigations in the petroleum sector – including those by the FTC – may benefit from information gleaned from the Working Group. As one of the co-chairs of the Working Group, the Commission helps ensure that American consumers are not harmed by unlawful conduct.

Gasoline and Diesel Price Monitoring

During the first half of 2013, the FTC also continued a decade-old project that has provided valuable information in connection with the agency's efforts to police conduct in the petroleum industry. Begun in 2002, the Gasoline and Diesel Price Monitoring Project involves monitoring by the Bureau of Economics of the wholesale and retail prices of gasoline and diesel fuel in order to track trends and developments in the pricing of gasoline and diesel fuel. The Monitoring Project is just one of a number of tools available to help detect possible anticompetitive activities and determine whether a law enforcement investigation is warranted. This project tracks retail gasoline and diesel prices in 360 cities across the nation and wholesale (terminal rack) prices in 20 major urban areas. The staff of the Bureau of Economics receives daily data from the Oil Price Information Service (except on Sundays) and reviews other relevant information that the Commission might receive directly from the public or from other government agencies or Members of Congress. The staff reviews the data and uses an econometric model to determine whether current retail and wholesale prices each week are anomalous in comparison with historical data. This alerts FTC staff to unusual changes in gasoline and diesel prices so that further inquiry can be undertaken expeditiously. When price increases do not appear to result from market-driven causes, the staff consults with the Energy Information Administration. FTC staff also contacts the offices of the appropriate state attorneys general to discuss the anomaly and appropriate potential actions, including the opening of an investigation.

Outer Continental Shelf Leasing

The FTC has an ongoing responsibility to conduct an antitrust review of proposed oil and natural gas leases on the Outer Continental Shelf, pursuant to the Outer Continental Shelf Lands Act Amendments of 1978. The Commission undertook one such review during the first half of 2013 and advised the Assistant Attorney General for Antitrust regarding its assessment of proposed Lease Sale 227 in the central Gulf of Mexico.

FTC Personnel Involved in Oil and Gas Activities

During the first 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 Bureau of Consumer Protection, the Office of Congressional Relations, the Office of Policy Planning, the Commissioners' offices, the FTC's Regional Offices, and other FTC organizations also contributed to oil and natural gas matters during the first half of the year.

Conclusion

The Commission continued its intensive antitrust and consumer protection scrutiny of the energy sector during the first 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.

¹² Additional Bureau of Competition offices whose staff participated in oil and gas matters during the first 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.