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

REPORTING PERIOD JULY-DECEMBER 2010

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 2010. That Report expressed the Committee's 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's significant activities involving petroleum and natural gas during the second half of calendar 2010 demonstrate further that the FTC considers the protection of American consumers from potentially anticompetitive practices in the energy sector to be one of its major responsibilities. The Commission continued to pay close attention to the energy sector during this six-month period. The FTC and its staff focused on mergers and acquisitions, possible anticompetitive conduct, and other activities involving pricing or competition in the petroleum and natural gas industries. The Commission expects its vigorous activity to continue throughout 2011 and beyond.

Petroleum Market Manipulation Rule

Pursuant to the process that the Commission established in November 2009 to monitor compliance with the Petroleum Market Manipulation Rule[2] – which prohibits manipulation in wholesale markets for crude oil, gasoline, or petroleum distillates – staff in the Bureau of Competition's Office of Policy and Coordination examined the eight communications regarding

---

[1] Committee on Appropriations, United States Senate, Report 111-43, on the Financial Services and General Government Appropriations Bill, 2010, S. 1432, at 85 (July 9, 2009), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr043.111.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.

[2] 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.

the Rule received from the public since July 1, 2010.[3] Complaints that evidence a serious possibility of 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 Commodity Futures Trading Commission (through the FTC's working relationship with that agency), to ensure that consumers are protected against fraud and deception in whatever form they take.[4]

Law Enforcement Activities

The Commission's work in the oil and natural gas sector also involves the analysis of mergers and acquisitions. Since July 1, 2010, the Commission has received premerger filings under the Hart-Scott-Rodino Act for 45 proposed transactions in these industries. The agency reviewed each of these premerger filings, and also monitored the industry for nonreportable transactions that might raise antitrust concerns.

For transactions that raised significant competition issues, the Commission investigated further. During the relevant period, the Commission investigated more than a dozen transactions involving petroleum or natural gas, including acquisitions involving crude oil and natural gas exploration, production, and transportation; refined petroleum product pipelines and terminals; refined products wholesaling; retail gasoline and diesel fuel sales; liquefied petroleum gas (propane); natural gas storage facilities and pipelines; and natural gas liquids processing plants, fractionation plants, pipelines, and wholesaling.

For example, the Commission issued a final consent order stemming from Pilot Travel Center's acquisition of Flying J Inc.'s travel center business. To resolve the Commission's concern that the acquisition would have lessened competition in the over-the-road sale of diesel fuel to long-haul trucking fleets, Pilot agreed to sell 26 travel centers to Love's Travel Stops and Country Stores, allowing Love's to compete for long-haul customers who the Commission alleged otherwise would have been harmed by Pilot's acquisition of Flying J.[5]

The Commission also modified a consent order issued in 2001 against El Paso Energy Corporation and The Coastal Corporation. The original order, stemming from El Paso's acquisition of Coastal's ANR Pipeline in the Gulf of Mexico, required El Paso to divest the

---

[3] 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 – including an email address – to which the public may send complaints of possible Rule violations.

[4] As described in more detail below, FTC litigators and economists also continue to monitor prices and other activity in petroleum markets.

[5] *See* http://www.ftc.gov/opa/2010/11/flyingj.shtm for the FTC's press release announcing the final order.

Green Canyon and Tarpon pipelines to Williams Field Services and to maintain a $40 million "development fund" that Williams could use to build or extend pipelines or related facilities to serve natural gas producers in the Gulf. The Commission concluded that changed circumstances in the central Gulf of Mexico warranted the elimination of the requirement to maintain the development fund. Since it divested the Green Canyon and Tarpon pipelines, El Paso has sold the ANR Pipeline as well. Further, Williams has never tapped into the fund, in part because demand for natural gas from this portion of the Gulf has been declining. Thus, removing the fund obligation does not significantly reduce Williams's competitive role in the Gulf. Accordingly, the Commission reopened the order and eliminated the development fund provision.[6]

In addition to mergers and acquisitions, the Commission's enforcement activities have included the examination of possibly anticompetitive conduct by firms in the oil and natural gas industries, including an investigation of conduct in the propane business. Some inquiries concerning energy prices have involved close cooperation between the FTC staff and state attorney general offices. For example, the FTC staff evaluated concerns raised by one state attorney general concerning gasoline prices in a particular part of a state. The staff also investigated distributor marketing practices and a potential invitation to collude at the local marketing level within an individual state. (In addition, the staff has worked cooperatively with state attorneys general or local officials during the relevant period in investigating petroleum or natural gas mergers.)

<u>Gasoline and Diesel Price Monitoring</u>

During the relevant period, the FTC also continued a nearly 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 help detect possible anticompetitive activities and determine whether a law enforcement investigation is warranted. This project continues to track 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

---

[6] *See* http://www.ftc.gov/os/2010/10/101008elpasoorder.pdf for the order modification. In November 2010, the Commission also closed its intensive investigation of Aloha Petroleum's acquisition of Shell Oil Company's assets in Hawaii.

potential actions, including the opening of an investigation. The Commission expects to continue this important activity.

Competition Advocacy and Consumer Alerts

As part of its competition advocacy program, the Commission provided advice on competitive issues raised by governmental initiatives in the oil and natural gas sector. In September, the FTC staff submitted a comment to New Jersey State Senator Raymond J. Lesniak in favor of New Jersey Senate Bill 484, which would modify state law to allow gasoline retailers to set prices below cost to meet competition.[7] A week later, the Commission filed a comment with the Environmental Protection Agency (EPA) regarding the need to maintain competition by protecting certain commercially sensitive data that companies must submit under the EPA's Mandatory Greenhouse Gas Reporting Rule.[8]

In July, the Commission issued a consumer alert prepared by its Bureau of Consumer Protection arising from the April 2010 Deepwater Horizon explosion and the ensuing oil spill in the Gulf of Mexico. The alert, entitled "FTC Warns of Oil Spill Job Scams," warned about scammers who prey on people eager to work on oil spill clean-up activities.[9]

Congressionally Mandated Reports

On November 30, 2010, the Commission approved the sixth annual *Report on Ethanol Market Concentration*. The Commission's ethanol reports, issued pursuant to Section 1501(a)(2) of the Energy Policy Act of 2005 (45 U.S.C. § 7545(o)), entail an analysis of ethanol industry concentration to determine whether there is sufficient competition among ethanol industry participants "to avoid price-setting and other anticompetitive behavior."[10]

---

[7] *See* http://www.ftc.gov/os/2010/09/100928gasolineretailers.pdf.

[8] *See* http://www.ftc.gov/os/2010/09/100930epagreenhouse.pdf.

[9] *See* http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt182.shtm.

[10] In its 2010 ethanol report, *available at* http://www.ftc.gov/os/2010/12/101203ethanolreport.pdf, the Commission concluded that "[e]thanol production has remained unconcentrated over the last year" and that "the trend toward decreasing concentration observed in previous years has generally continued in 2010." In light of this trend – and also in view of the new productive capacity that came online or was under construction in 2010, the potential entry of new firms, and the possibility of ethanol imports – the report concluded that it is "extremely unlikely that a single ethanol producer or marketer or a group of such firms could successfully exercise market power to engage in price-fixing or other anticompetitive behavior."

A number of reports prepared by the FTC or its staff that predate the period covered by the current report to Congress also demonstrate the Commission's commitment to delving

A further FTC activity in this sector arises from Section 750 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. The Chairman is participating in an interagency task force headed by the Commodity Futures Trading Commission to conduct a study on the oversight of existing and prospective markets for the trading of allowances to emit carbon dioxide associated with the production and consumption of energy. The goal is to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets. The task force has published a Federal Register notice calling for comment from the public and interested parties[11] and is working on a report expected to be released early in 2011.

FTC Personnel Involved in Oil and Gas Activities

During the second half of 2010, 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 also bore major responsibility for conducting competition analysis of pricing and

---

deeply into key competition and consumer issues in the energy sector and sharing its expertise with Congress and the public. *See*, *e.g.*, FEDERAL TRADE COMMISSION, REPORT ON SPRING/SUMMER 2006 NATIONWIDE GASOLINE PRICE INCREASES (2007), *available at* http://www.ftc.gov/reports/gasprices06/P040101Gas06increase.pdf; FEDERAL TRADE COMMISSION, REPORT ON GASOLINE PRICE MANIPULATION AND POST-KATRINA GASOLINE PRICE INCREASES (2006), *available at* http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf; FEDERAL TRADE COMMISSION, GASOLINE PRICE CHANGES: THE DYNAMIC OF SUPPLY, DEMAND, AND COMPETITION (2005), *available at* http://www.ftc.gov/reports/gasprices05/050705gaspricesrpt.pdf; FEDERAL TRADE COMMISSION, BUREAU OF ECONOMICS, THE PETROLEUM INDUSTRY: MERGERS, STRUCTURAL CHANGE, AND ANTITRUST ENFORCEMENT (2004), *available at* http://www.ftc.gov/os/2004/08/040813mergersinpetrolberpt.pdf.

[11] 75 Fed. Reg. 72816 (Nov. 26, 2010).

[12] Additional Bureau of Competition offices whose staff have participated in oil and gas matters during the second half of 2010 include the Office of the Director, the Division of Anticompetitive Practices, the Division of Compliance, the Office of Policy and Coordination, the Division of Operations, and the Office of Premerger Notification.

other competitive issues in the petroleum and natural gas industries.[13] Staff from the Commission's Office of the General Counsel, the Bureau of Consumer Protection, the Office of Congressional Relations, the Commissioners' offices, and other FTC organizations also contributed to oil and natural gas matters during the second half of 2010.

Conclusion

The Commission has maintained its intensive antitrust and consumer protection scrutiny of the energy sector during the second half of 2010. 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.

[13] The Bureau of Economics' Office of Accounting and Financial Analysis also devoted time during the relevant period to matters in the petroleum and natural gas industries.