

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

## **REPORTING PERIOD JULY-DECEMBER 2012**

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 the continuing resolution under which the Commission currently operates. 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.”<sup>1</sup>

### Overview

The Commission pursued a number of significant activities involving petroleum and natural gas during the second half of calendar 2012, pursuant to the FTC’s enduring commitment to protect American consumers from potentially anticompetitive and anti-consumer practices in the energy sector. 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 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, 2012, the Commission has received premerger filings under the Hart-Scott-Rodino Act for 48 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.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> The Commission’s previous report stated that the agency received 36 Hart-Scott-Rodino filings for transactions in the oil and natural gas industries during the first half of 2012. In fact,

After issuing a consent order in January 2012 stemming from AmeriGas L.P.'s proposed acquisition of Energy Transfer Partners L.P.'s Heritage Propane business,<sup>3</sup> in June the Commission announced approval of Energy Transfer Partners' proposal to sell the Heritage Propane Express business to JP Energy Partners, LP.<sup>4</sup> The Commission took these actions in order to maintain competition in the market for propane exchange cylinders (used for such purposes as fueling barbecue grills and patio heaters). Pertinent activity since July 1 involved the respondent's discharge of its divestiture obligation.

The Commission also was active in examining transactions in the natural gas industry. As recounted in our most recent report, the Commission issued a consent order last June that required Kinder Morgan, Inc., one of the nation's largest transporters of natural gas and other energy products, to divest three natural gas pipelines and other related assets in the Rocky Mountain region. This order was designed to alleviate the likely anticompetitive effects of Kinder Morgan's acquisition of El Paso Corporation, which threatened harm to competition in markets for pipeline transportation and processing of natural gas.

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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, 2012, bringing to 38 the total number of relevant filings during the first half of 2012.

<sup>3</sup> See <http://www.ftc.gov/opa/2012/01/amerigas.shtm>.

<sup>4</sup> See <http://www.ftc.gov/opa/2012/06/amerigas.shtm>.

<sup>5</sup> See <http://www.ftc.gov/opa/2012/05/elpaso.shtm>;  
<http://www.ftc.gov/opa/2012/06/kindermorgan.shtm>.

<sup>6</sup> See <http://www.ftc.gov/opa/2012/11/kinder.shtm>.

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<sup>7</sup> Notwithstanding antitrust concerns over the effects of the Hilcorp/Marathon transaction in the Cook Inlet area of Alaska, the Commission exercised its prosecutorial discretion and closed its investigation once the Alaska Attorney General’s office filed its own consent decree. As the Commission said in a public statement issued in connection with the closing of this investigation: “In these unique circumstances, where the effects of the proposed acquisition are confined to consumers in Alaska, the state has concluded that the consent agreement substantially allays the potential competitive concerns arising from the proposed transaction, and the state has concluded that the transaction will mitigate energy security concerns, the Commission has decided to exercise its prosecutorial discretion and defer to the state’s resolution of this matter.” See <http://www.ftc.gov/opa/2012/11/hilcorp.shtm> (press release, Nov. 7, 2012); <http://www.f>

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such energy commodities as heating oil and natural gas. In August 2012, the Commission followed up by warning 14 window manufacturers and one window glass maker that they may be making unsupported energy savings claims for replacement windows. *See* <http://www.ftc.gov/opa/2012/08/windows>.

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<sup>12</sup> 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. 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 CFTC through

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<sup>15</sup> Additional Bureau of Competition offices whose staff participated in oil and gas matters during the second half of 2012 include the Office of the Director, the Division of Compliance, other litigation divisions, the Division of Technology