ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of EnCap Investments L.P.
File No. 211-

III. The Transaction

Pursuant to the Membership Interest Purchase Agreement dated July 26, 2021, EnCap, through Verdun, has agreed to acquire EP Energy's crude oil and natural gas production operations in the Uinta Basin in Utah and in the Eagle Ford Shale in Texas (the "Transaction").

The Commission's Complaint alleges that the Transaction violates Section 7 of the refiner to purchase Uinta Basin waxy crude delivered to refineries located outside the Salt Lake City area.

The Transaction would substantially lessen competition in this market. Four producers — EP Energy, XCL, Ovintiv, and Uinta Wax/Finley Resources (Uinta Wax is a joint venture between Finley Resources and CH4 Energy Six) — account for over 80 percent of all Uinta Basin production. No other producer accounts for a significant amount of Uinta Basin development and production.

The Transaction, if consummated, would eliminate substantial head-to-head competition between EnCap and EP Energy for the development, production, and sale of Uinta Basin waxy crude to targeted Salt Lake City area refiners. By dramatically increasing the size of EnCap's Uinta Basin waxy crude business and taking the market from four significant players to three, the Transaction would increase the incentive and ability of EnCap to reduce supply to these refiners and increase prices.

Producers recognize that consolidation with in-basin peers materially enhances their leverage with refiners in the Salt Lake City area. Historically, Uinta Basin producers have received higher realized prices when Uinta Basin waxy crude production falls short of demand from Salt Lake refiners. Post-closing, EnCap could increase prices for Salt Lake City area refiners by slowing development and production, and by reducing the quantity of waxy crude available to the Salt Lake City area refineries through strategic export of waxy crude to Gulf Coast area refineries.

The Transaction would also eliminate EP Energy's head-to-head competition with EnCap and other large waxy crude producers and increase the risk of coordination. Today, EP Energy competes aggressively with other Uinta Basin waxy crude producers. Post-Transaction, the smaller number of Uinta Basin waxy crude producers could more easily coordinate rail exports, production plans, and contract terms to increase waxy crude prices for Salt Lake City area refiners.

XCL's internal, high-level analysis and strategy documents acknowledged the likely competitive effects from the Transaction from the beginning of the process up to and including during the Commission's investigation. During a January 15, 2021 meeting, an XCL Board member noted that a combination with EPE would create $35-75 million in marketing synergies and that it was a "[d]efensive move with EP currently communicating 20+ wells per year to SLC refiners. Go from 14% of wax supply to 40%."[1] A May 18, 2021 XCL Technical Meeting presentation, attended by most of the XCL Board members, stated that the Transaction would result in "Increasing Scale in our Basin – taking out 1 of 4 major producers, 40%+ of Wax Market, Driver's seat."[2] An August 25, 2021 memorandum to the Advisory Board of EnCap XI similarly emphasized the small number of significant players, stating that the "… the Uinta is … largely controlled by three operators."[3] XCL's strategy is simply expressed in its July 2021 cartoon below.[4]

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[1] ENC-FTC-200034640 (Jan. 17, 2021); see also EnCap 4(c)-1 (Jan. 15, 2021).
[2] EnCap 4(c)-8 at 63 (May 18, 2021); EnCap Resp. to VRL Req. 12 (Feb. 21, 2022).
[3] ENC-FTC-201680452, at ENC-FTC-201680453 (Aug. 25, 2021).
[4] ENC-FTC-200689720, at slide 2, XCL, Utah Expansion Strategy and CCS Hub (July 2021).

V. The Proposed Order and the Order to Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Transaction's likely anticompetitive effects by requiring EnCap to divest the entirety of EP Energy business and assets in or relating to the state of Utah, including the business of oil and gas exploration, counties that encompass the Uinta Basin (Duchesne, Uintah, Utah, Grand, Emery, Carbon, and Wasatch) over the next ten years.

The proposed Order also requires Crescent to obtain prior approval from the Commission before transferring all or substantially all of the divested assets to any buyer for the first three years after Crescent acquires the divestiture assets. For the seven years following the initial three year period, the proposed Order requires Crescent to obtain prior approval from the Commission before transferring all or substantially all of the divested assets to a buyer engaged in the development, production, or sale of waxy crude in the Uinta Basin

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.