

Purchase Agreement Drafting and Interim Compliance Considerations Following the FTC's Record-Breaking HSR Penalty for Gun-Jumping

February 19, 2025 Hugh Tucker, Jeremy Kennedy, John Craven, Jennifer Wisinski, Will Johnson, Sam Richards, Hannah Shoss

PRACTICES Energy, Power and Natural Resources, Oil and Gas

In connection with a recent civil antitrust action pursued by the United States of America against XCL Resources Holdings, LLC (XCL), XCL's subsidiary, Verdun Oil Company II, LLC (Verdun) and EP Energy LLC ("EP" and together with XCL and Verdun, the "Defendants,"), the Defendants have agreed to a record-breaking \$5.6 million settlement stemming from allegations that they violated the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the HSR Act) by engaging in "gun-jumping" with respect to actions taken during the interim period between the signing of their Membership Interest Purchase Agreement on July 26, 2021 (the Purchase Agreement), and the closing of the transaction. Gun-jumping refers to activities by the parties to a proposed transaction that violate the waiting period obligations of the HSR Act by integrating the parties' businesses or otherwise coordinating their commercial behavior in a way that effectively transfers "beneficial ownership" of the target company before the end of the waiting period. This case highlights the dangers of "gun-jumping" under the HSR Act and, notably, involved the oil and gas industry – an industry that historically has not drawn much attention from the Federal Trade Commission (the FTC) and the Department of Justice (the DOJ), which are jointly responsible for enforcing U.S. antitrust laws.

The acquisition contemplated by the Purchase Agreement, under which Verdun agreed to acquire EP and its crude oil production operations in the Uinta Basin area of Utah and the Eagle Ford area of Texas for approximately \$1.4 billion, triggered the HSR Act's notification and waiting period requirements, and ultimately resulted in an investigation by the FTC into the expected competitive consequences of the acquisition on development and production in the Uinta Basin. In the course of its investigation, the FTC became aware of actions by the Defendants that constituted "gun-jumping" under the HSR Act. Ultimately, the DOJ filed a complaint on January 7, 2025 (the Complaint), alleging that from the execution of the Purchase Agreement, the Defendants improperly engaged in operational and decision-making control over significant aspects of EP's day-to-day business operations. The Complaint sets forth several specific examples of conduct that the DOJ alleges violated the HSR Act and offers valuable guidance to parties contemplating a transaction subject to the HSR Act.

[Read the full article here.](#)

For more information or assistance with upstream or midstream acquisitions and divestitures, HSR Act compliance, or antitrust laws, please contact one of the Haynes Boone lawyers below.