UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. XCL RESOURCES HOLDINGS, LLC, VERDUN OIL COMPANY II LLC, and EP ENERGY LLC *Defendants.*	Civil Action No. 1:25-cv-00041-TSC

UNOPPOSED MOTION AND MEMORANDUM OF THE UNITED STATES IN SUPPORT OF ENTRY OF FINAL JUDGMENT

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed on January 7, 2025 (Dkt. No. 1-3). The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement ("CIS") filed by the United States on January 7, 2025 (Dkt. No. 1-4) explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance (attached as Exhibit 1) setting forth the steps taken by the parties to comply with the applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired, with one public comment having been received.

I. BACKGROUND

On January 7, 2025, the United States filed a Complaint against Defendants XCL Resources Holdings, LLC ("XCL"), Verdun Oil Company II LLC ("Verdun"), and EP Energy LLC ("EP") related to XCL and Verdun's acquisition of EP.

The Complaint alleges that the Defendants violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act requires certain acquiring and acquired parties to file pre-acquisition Notification and Report Forms with the U.S. Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies" or "agencies") and to observe a statutorily mandated waiting period before consummating their acquisition.[1] A fundamental purpose of the notification and waiting period is to allow the federal antitrust agencies an opportunity to conduct an antitrust review of proposed transactions that meet the HSR Act's jurisdictional thresholds before they are consummated.

Compliance with the HSR Act is critical to the federal antitrust agencies' ability to investigate large acquisitions before they are consummated and prevent acquisitions determined to be unlawful under Section 7 of the Clayton Act, 15 U.S.C. §18. Before Congress enacted the HSR Act, the federal antitrust agencies often were forced to investigate anticompetitive acquisitions that had already been consummated without public notice. In those situations, the agencies' only recourse was to sue to unwind the parties' merger. The combined entity usually had the incentive to delay litigation, and years often passed before the case was adjudicated and

[1] The HSR Act requires that "no person shall acquire, directly or indirectly, any voting securities of any person" exceeding certain thresholds until both have made premerger notification filings and the post-filing waiting period has expired. 15 U.S.C. § 18a(a). The post-filing waiting period is either 30 days after filing or, if the relevant federal antitrust agency requests additional information, 30 days after the parties comply with the agency's request. 15 U.S.C. § 18a(b). The agencies may grant early termination of the waiting period, 15 U.S.C. § 18a(b)(2).

relief was pursued or obtained. During this extended time, consumers were harmed by the reduction in competition between the merging parties and, even after the court's adjudication, effective relief was often impossible to achieve. Congress enacted the HSR Act to address these problems and to strengthen and improve antitrust enforcement by giving the agencies an opportunity to investigate certain large acquisitions before they are consummated.

As alleged in the Complaint, Defendants made the required pre-merger notification filing with the agencies in connection with their transaction but failed to satisfy their waiting-period obligations. Instead, immediately upon executing their Membership Interest Purchase Agreement ("Purchase Agreement") on July 26, 2021, EP allowed XCL and Verdun to assume operational and decision-making control over significant aspects of EP's day-to-day business operations. The rights provided by EP to XCL and Verdun in the Purchase Agreement, and XCL and Verdun's exercise of those rights in the period following signing the Purchase Agreement, transferred beneficial ownership of EP's business to XCL and Verdun before Defendants had fulfilled their obligations under the HSR Act. The Complaint alleges that Defendants were in continuous violation of the HSR Act from July 26, 2021, through October 27, 2021, when Defendants amended the Purchase Agreement and XCL and Verdun ceased exercising operational control over EP's business. *See* Dkt. No. 1-1. The Complaint seeks an adjudication that Defendants' conduct during the period beginning on July 26, 2021, through October 27, 2021, violated the HSR Act and asks the Court to award appropriate civil penalties and injunctive relief.

At the same time the Complaint was filed, the United States also filed a Stipulation, proposed Final Judgment, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation, which was agreed to by the parties, provides that

the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The terms of the proposed Final Judgment and imposition of injunctive relief and civil penalties of $5,684,377 are designed to address the violation alleged in the Complaint and deter Defendants' future HSR Act violations.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof. Unless it is extended, the Final Judgment will remain in effect for ten years from the date of its entry.

II. COMPLIANCE WITH THE APPA

The APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment, 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and CIS with the Court on January 7, 2025, and published the proposed Final Judgment and CIS in the *Federal Register* on January 21, 2025, *see* 90 Fed. Reg. 7159. Summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in *The Washington Post* for seven days, from January 15, 2025, through January 21, 2025. The 60-day period for public comment ended on March 24, 2025. The United States received one comment. Pursuant to 15 U.S.C. § 16(d), the United States filed a Response to Public Comments on May 6, 2025, 2025 (Dkt. No. 9) and published it and the public comment in the *Federal Register* on May 12, 2025, *see* 90 Fed. Reg.20190.

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the

public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)-(B). Section 16(e)(2) of the APPA states that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). In the CIS filed with the Court on January 7, 2025, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those portions of the CIS by reference.

IV. CONCLUSION

For the reasons set forth in this Motion and Memorandum and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. The United States respectfully requests that the Final Judgment, attached hereto as Exhibit 2, be entered at this time.

Dated: May 14, 2025

Respectfully Submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/ Kenneth A. Libby
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