

Complaint

IN THE MATTER OF

**ENBRIDGE INC.
AND
SPECTRA ENERGY CORP.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT**

*Docket No. C-4604; File No. 161 0215
Complaint, March 22, 2017 – Decision, March 22, 2017*

This consent order addresses the \$28 billion acquisition by Enbridge Inc. of certain assets of Spectra Energy Corp. The complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for the transportation of natural gas from wells in certain natural gas producing areas in the Gulf of Mexico to processing plants or interconnects with other natural gas pipelines. The complaint further alleges that after the Merger, Enbridge will have access to competitively sensitive information of its competitor, the Discovery Pipeline, and gain voting rights over the Discovery Pipeline's significant capital expenditures, including expansions needed to connect to new wells. The consent order requires Enbridge to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline.

Participants

For the *Commission*: Keitha Clopper, Eric Cochran, and Holly Vedova.

For the *Respondents*: Joseph Matelis, Sullivan & Cromwell LLP; Nelson Fitts, Wachtell, Lipton, Rosen & Katz LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Enbridge Inc. ("Enbridge") has entered into a transaction with Respondent Spectra Energy Corp ("Spectra"), that such transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade

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Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTSEnbridge

1. Respondent Enbridge is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 425 1st Street S.W., Suite 200, Fifth Avenue Place, Calgary, Alberta Canada T2P 3L8. Enbridge's principal U.S. subsidiary, Enbridge Energy Partners, L.P., is a master limited partnership with its principal place of business located at 1100 Louisiana Street, Suite 3300, Houston, Texas 77002.

2. Respondent Enbridge is, and at all times relevant herein has been, engaged in, among other things, the gathering, processing, transportation, and storage of natural gas in the United States.

3. Respondent Enbridge and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

Spectra

4. Respondent Spectra is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 5400 Westheimer Court, Houston, Texas 77056.

5. Respondent Spectra is, and at all times relevant herein has been, engaged in, among other things, the gathering, processing, transportation, and storage of natural gas in the United States.

6. Respondent Spectra and the corporate entities under its control are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton

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Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED MERGER

7. Respondent Enbridge and affiliated companies under its control entered into a merger agreement (“Merger Agreement”) with Spectra, dated September 5, 2016, pursuant to which Sand Merger Sub, Inc., a newly created direct wholly owned subsidiary of Enbridge, will merge with and into Spectra, with Spectra surviving the merger (the “Merger”). On September 5, 2016, the Merger’s total estimated dollar value was \$28 billion.

8. The Merger is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

9. A relevant product market in which to analyze the effects of the Merger is natural gas pipeline transportation. Natural gas producers contract with natural gas pipelines to connect to and transport natural gas from wells to processing plants or interconnects with other natural gas pipelines.

10. Relevant geographic markets in which to analyze the effects of the Merger are no broader than the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico (collectively and individually referred to as “Gulf Producing Areas”). The Gulf Producing Areas are off the coast of Louisiana.

11. No economic or practical alternative to natural gas pipeline transportation from wells exists. Other natural gas delivery methods are significantly more costly, less reliable, and potentially more hazardous than pipeline transportation.

IV. MARKET STRUCTURE

12. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. The Walker Ridge Pipeline is a natural-gas offshore gathering and processing system that consists of 8-inch and 10-inch diameter pipelines that deliver

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natural gas north from or through portions of the Walker Ridge and Green Canyon natural gas producing areas to an interconnect at Ship Shoal 332A, a block in the Ship Shoal natural gas producing area.

13. Spectra has an indirect ownership interest in the Discovery Pipeline. The Discovery Pipeline is a natural-gas offshore gathering, transmission, and processing system that consists of a mainline pipeline ranging from 12 inches to 30 inches in diameter. The Discovery Pipeline includes the Keathley Canyon Connector, a 20-inch pipeline that delivers natural gas north from or through portions of the Keathley Canyon, Walker Ridge, and Green Canyon natural gas producing areas to an interconnect with the Discovery Pipeline. The Discovery Pipeline connects directly to shore.

14. Spectra's indirect ownership interest in the Discovery Pipeline stems from its ownership interest in DCP Midstream, LLC ("DCP"). Spectra and the Phillips 66 Company each own 50 percent interests in DCP. DCP has an effective 36.1 percent limited partner interest in DCP Midstream Partners, LP ("DPM"). DCP also owns (i) DCP Midstream GP, LP ("DPM's General Partner"), the entity that is the general partner of DPM and holds a 2 percent general partner interest in DPM, as well as all of DPM's incentive distribution rights; and (ii) DCP Midstream GP, LLC ("DPM GP LLC"), the entity that is the general partner of DPM's General Partner.

15. DPM owns a 40 percent interest in Discovery Product Services LLC. Williams Partners L.P. ("Williams") owns the remaining 60 percent. Discovery Product Services LLC is the sole member of Discovery Gas Transmission LLC, which is the sole owner of the Discovery Pipeline. Williams is the operator of the Discovery Pipeline. Through its indirect ownership interest in DPM, Spectra has access to competitively sensitive information of the Discovery Pipeline and significant voting rights.

16. The Walker Ridge Pipeline and the Discovery Pipeline are the closest two pipelines to wells drilled in certain blocks in the Gulf Producing Areas, including blocks that lie between the pipelines. The length of pipeline needed is a major factor in determining the overall cost for a pipeline to connect to a well.

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More distant pipelines likely face higher costs to connect to wells, resulting in higher natural gas pipeline transportation prices for natural gas producers. As such, the Walker Ridge Pipeline and the Discovery Pipeline are the two pipelines most likely to compete successfully for projects in certain blocks in the Gulf Producing Areas.

17. The Merger, if consummated, will result in Respondent Enbridge having ownership interests in the two closest and likely lowest-cost pipelines that provide or can provide natural gas pipeline transportation from blocks, or a subset of blocks, in the Gulf Producing Areas.

18. The Merger likely would reduce competition by allowing Respondent Enbridge and its affiliate that owns and operates the Walker Ridge Pipeline access to competitively sensitive information for the Discovery Pipeline. Respondent Enbridge may use this competitively sensitive information when competing with the Discovery Pipeline, increasing prices for natural gas producers. The exchange of information may also increase the likelihood of tacit or explicit coordination between the Walker Ridge Pipeline and the Discovery Pipeline.

19. The Merger likely would reduce competition by allowing Respondent Enbridge to exercise voting rights over the Discovery Pipeline's significant capital expenditures, including expansions needed to connect to wells. Respondent Enbridge will have the incentive and ability to reduce the competitiveness of the Discovery Pipeline by preventing DPM from participating in bids to connect to wells in competition with Enbridge's Walker Ridge Pipeline.

20. The Merger likely would reduce competition by facilitating coordination between the Walker Ridge Pipeline and the Discovery Pipeline.

V. BARRIERS TO ENTRY

21. There are substantial barriers to entering any Gulf Producing Areas. Building pipeline underwater is an expensive and lengthy process, often taking several years from the initial proposal to the end of construction. Entry into the relevant

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market would not be timely, likely, or sufficient in scope to deter or counteract the anticompetitive effects of the Merger.

VI. EFFECTS OF THE MERGER

22. The effects of the Merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:

- a. increasing the likelihood that Respondent Enbridge would unilaterally exercise market power in the relevant market; and
- b. increasing the likelihood of collusive or coordinated interaction between the remaining competitors in the relevant market.

VII. VIOLATIONS CHARGED

23. The Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

24. The Merger Agreement entered into by Respondents Enbridge and Spectra constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this twenty-second day of March, 2017, issues its complaint against Respondents.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed transaction involving Respondent Enbridge Inc. (“Enbridge”) and Respondent Spectra Energy Corp (“Spectra”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Enbridge Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its principal executive offices located at 425 – 1st Street S.W., Suite 200, Fifth Avenue Place, Calgary, Alberta, Canada, and its

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United States address for service of process and the Complaint and Decision and Order as follows: Corporate Secretary, Enbridge, 1100 Louisiana Street, Suite 3300, Houston, TX 77002.

2. Respondent Spectra Energy Corp is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 5400 Westheimer Court, Houston, TX 77056.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Enbridge” means Enbridge Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Enbridge Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Merger, Enbridge shall include Spectra.
- B. “Spectra” means Spectra Energy Corp, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Spectra Energy Corp, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; *provided, however*, that for purposes of this Order, Spectra does not include the Firewalled

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Entities. After the Merger, Spectra shall be included within Enbridge.

- C. “Respondents” means Enbridge and Spectra, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Board” means any board of directors or board of managers of a specified entity.
- F. “Closing Date” means the date on which the proposed transaction between Respondent Spectra and Respondent Enbridge closes, as defined in the Merger Agreement.
- G. “Confidential Business Information” means any information that is not in the public domain. The term “Confidential Business Information”:
 - 1. Includes, but is not limited to, all operating, financial or other documents, information, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, papers, instruments, and all other materials, whether located, stored, or maintained in paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: bid proposals and all related documents, data, and materials, including initial bid terms, final bid terms, documents that support cost and rate structures underlying the bids; term sheets, responses to requests for proposals or other solicitation for bids; customer files and records; customer contracts; customer lists; customer product specifications; customer purchasing histories; customer service and support materials; customer approvals and related information; price lists; credit records and information; correspondence; referral sources; vendor and

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supplier agreements; vendor and supplier files and lists; advertising, promotional and marketing materials, including website content; sales materials; marketing methods; research and development data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; pipeline operation, management, and maintenance records; cost information; expansion and other plans and projects; proprietary design and engineering standards; construction cost estimates; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind; and

2. Excludes the following:
 - a. Information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Merger and relating to any United States, state, or foreign antitrust or competition law; or
 - b. Information that Respondents demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:
 - i. Was or becomes generally available to the public other than as a result of disclosure by Respondents;
 - ii. Is necessary to be included in Respondents' mandatory regulatory filings; *provided, however,* that Respondents shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 - iii. Was available, or becomes available, to Respondent Enbridge in the ordinary course

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of its business (*e.g.*, information shared by a customer during commercial negotiations, information provided by an industry analyst, and other information of the kind that Enbridge used to compete with DPS and DGT before the Merger), but only if, to the knowledge of Respondent Enbridge, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;

- iv. Is information the disclosure of which is consented to by Williams;
 - v. Is necessary to be exchanged in the course of consummating the Merger;
 - vi. Is disclosed in complying with this Order;
 - vii. Is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities;
 - viii. Is disclosed in obtaining legal advice; or
 - ix. Is shared in connection with collaborative activity that is of the kind that would have occurred in the absence of the Merger (*e.g.*, potential future pipeline interconnections).
- H. “DCP” means DCP Midstream, LLC, a limited liability company, organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 370 17th Street, Denver, CO 80202; *provided, however*, that for purposes of the prohibitions and requirements of this Order, DCP does not include any Firewalled Individuals except as

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expressly permitted by this Order. DCP is a joint venture between Respondent Spectra and Phillips 66. Among other things, DCP holds a minority limited partnership interest in DPM, which owns a minority interest in DPS.

- I. “DGT” means Discovery Gas Transmission LLC, a limited liability company, organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 2800 Post Oak Boulevard, Houston, TX 77056.
- J. “Director” means an individual who is elected or appointed by, or who is an agent or representative of, a specified Person to serve on a Board of a specified entity.
- K. “Discovery Confidential Business Information” means all Confidential Business Information relating to DPS, DGT and the Discovery Pipeline, including, but not limited to, their Natural Gas Pipeline Business.
- L. “Discovery Pipeline” means the natural-gas offshore gathering, transmission, processing, and fractionation system owned by DPS and DGT and operated by Williams, including, but not limited to, the Keathley Canyon Connector.
- M. “DPM” means DCP Midstream, LP (formerly known as DCP Midstream Partners, L.P.), a limited partnership organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 370 17th Street, Denver, CO 80202; *provided, however*, that for purposes of the prohibitions and requirements of this Order, DPM does not include any Firewalled Individuals except as expressly permitted by this Order. DPM includes: DCP Midstream GP, LP, which is DPM’s general partner and which conducts, directs, and manages all activities of DPM; and DCP Midstream GP, LLC,

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which is the general partner of DPM's general partner, and which conducts, directs, and manages all activities of DPM's general partner.

- N. "DPS" means Discovery Producer Services LLC, a limited liability company, organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 2800 Post Oak Boulevard, Houston, TX 77056. DPS is a natural gas gathering, processing, and marketing company, and the sole member of DGT. DPS is jointly owned by DPM and Williams, where DPM is the minority owner and Williams is the majority owner.
- O. "Firewalled Entity(ies)" means DCP, DPM, and DPS, individually and collectively; *provided, however*, the Firewalled Entities do not include Williams, Phillips 66, or the Phillips 66 Board Members.
- P. "Firewalled Individuals" means the following:
1. All Persons appointed by or who otherwise represent the Respondents as Directors on any Board of DCP;
 2. All Persons appointed by or who otherwise represent the Respondents as Directors on any Board of DPM; and
 3. Any Director, officer, executive, or senior manager of Respondents who possesses or had access to Discovery Confidential Business Information.
- Q. "Government Entity(ies)" means any federal, state, local, or non-U.S. government entity, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- R. "Merger" means the proposed transaction involving Respondent Spectra and Respondent Enbridge as

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contemplated by and described in the Merger Agreement.

- S. “Merger Agreement” means the Agreement and Plan of Merger among Spectra, Enbridge, and Sand Merger Sub, Inc., dated September 5, 2016, and any amendments, exhibits, or schedules attached thereto.
- T. “Monitor” means any Person appointed pursuant to Paragraph III of this Order.
- U. “Monitor Agreement” means any Monitor Agreement entered into pursuant to Paragraph III of this Order, including the Monitor Agreement attached to this Order as Public Appendix A.
- V. “Natural Gas Pipeline Business” means the business of providing natural gas gathering and transmission services and any related natural gas processing, treatment, fractionation, storage, and pipeline operating services.
- W. “Ownership Interest” means any and all rights, title and interest, present or contingent, to own or hold any of the following: (1) any voting or non-voting stock, share capital, equity, membership interest, general or limited partnership interest, or any other interest(s) in a specified entity; or (2) any notes or options convertible into any voting or non-voting stock in a specified entity.
- X. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents.
- Y. “Phillips 66” means Phillips 66, a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 3010 Briarpark Drive, Houston, TX 77042.

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- Z. “Phillips 66 Board Members” means:
1. All Persons appointed by or who otherwise represent Phillips 66 as Directors on any Board of DCP; and
 2. All Persons appointed by or who otherwise represent Phillips 66 as Directors on any Board of DPM.
- AA. “Relevant Gulf Producing Areas” means the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico located off the coast of Louisiana.
- BB. “Walker Ridge Pipeline” means that natural-gas offshore gathering and transmission system owned and operated by Respondent Enbridge that extends southward from Ship Shoal 332A into parts of the Ship Shoal, Ewing Banks, Green Canyon, and Walker Ridge protraction areas of the Gulf of Mexico.
- CC. “Walker Ridge Pipeline Confidential Business Information” means all Confidential Business Information relating to the Walker Ridge Pipeline, including, but not limited to, its Natural Gas Pipeline Business.
- DD. “Williams” means Williams Partners L.P., a limited partnership, organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at One Williams Center, Tulsa, OK 74172. Williams includes, among other things, DGT and DPS.
- EE. “Williams Confidential Business Information” means all Confidential Business Information that (1) Williams has shared or will share with DPM in connection with the operation of DPS and is not otherwise known to Respondents (*e.g.*, through other collaborations with Williams) and (2) relates to

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Williams' Natural Gas Pipeline Business in the Relevant Gulf Producing Areas.

II.**IT IS FURTHER ORDERED** that:

- A. Beginning on the Closing Date, Respondents and the Firewalled Individuals shall not, except as expressly permitted by or as necessary to comply with this Order:
1. Possess or control any Discovery Confidential Business Information or any Williams Confidential Business Information as of no later than twenty (20) days after the Closing Date;
 2. Request, solicit, seek, receive, obtain, or otherwise have access to, directly or indirectly, any Discovery Confidential Business Information or any Williams Confidential Business Information from any Person(s), including, but not limited to, the Firewalled Entities;
 3. Disclose, provide, share, convey, discuss, exchange, circulate, or otherwise grant access to, directly or indirectly, any Discovery Confidential Business Information or any Williams Confidential Business Information to or with any Person(s); or
 4. Use, directly or indirectly, any Discovery Confidential Business Information or any Williams Confidential Business Information for any purpose, including, but not limited to:
 - a. Assisting or informing Respondents' employees who are involved in any way with Respondent Enbridge's Natural Gas Pipeline Business related to the Walker Ridge Pipeline;
 - b. Interfering with any suppliers, distributors, resellers, or customers of Williams;

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- c. Interfering with any contracts affiliated with the Discovery Pipeline; or
- d. Interfering in any way with Williams' Natural Gas Pipeline Business;

provided, however, that this provision is not intended to inhibit the opportunity of employees of Williams from seeking employment with Respondents.

- B. Beginning on the Closing Date, Respondents and the Firewalled Individuals shall not provide, disclose, or otherwise make available, directly or indirectly, any Walker Ridge Pipeline Confidential Business Information to: (1) Phillips 66; (2) DCP; (3) DPM; (4) Williams; (5) DPS; (6) DGT; or (7) any Phillips 66 Board Members.
- C. Beginning on the Closing Date, Respondents shall: (1) take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, Discovery Confidential Business Information or Williams Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such Confidential Business Information pursuant to the terms of this Order; and (2) with the advice and assistance of the Monitor, develop and implement procedures and requirements with respect to such Confidential Business Information to ensure that:
 - 1. The Firewalled Entities do not provide, disclose, or otherwise make available any Discovery Confidential Business Information or Williams Confidential Business Information to the Respondents or the Firewalled Individuals, and are in compliance with the requirements of this Order;
 - 2. The Firewalled Individuals are:
 - a. In compliance with the requirements of this Order;

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- b. Prohibited from, directly or indirectly, influencing or attempting to influence or participate in any vote of the DCP Board or the DPM Board pertaining to the Discovery Pipeline; and
 - c. Prohibited from participating in any discussions or communications with DCP, DPM, Williams, DPS, DGT, Phillips 66 or the Phillips 66 Board Members relating to the Discovery Pipeline or the Walker Ridge Pipeline;
3. Respondents' employees:
- a. Who have access to Discovery Confidential Business Information or Williams Confidential Business Information, including, but not limited to, the Firewalled Individuals, are prohibited from providing, disclosing, using, or otherwise making available such Discovery Confidential Business Information or Williams Confidential Business Information in violation of the provisions of this Order; and
 - b. Associated with the Walker Ridge Pipeline or Respondent Enbridge's Natural Gas Pipeline Business are prohibited from soliciting, obtaining, accessing, disclosing, or using any Discovery Confidential Business Information or Williams Confidential Business Information in violation of the provisions of this Order;

provided, however, that: (i) with respect to any action by the Board of DPM or the Board of DCP pertaining to the Discovery Pipeline that requires the vote of one or more of the Firewalled Individuals, then such Firewalled Individual(s) shall cast their votes in an amount and manner proportional to all of the votes cast by the Phillips 66 Board Members (*e.g.*, in the same way as the majority of the Phillips 66 Board Members have cast their votes); and (ii) the Firewalled

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Individuals are permitted to receive information about, advocate on behalf of, and participate in voting and cast their vote in connection with: (a) actions relating to an expansion of services by DGT, DPS, or the Discovery Pipeline, completely outside the Natural Gas Pipeline Business in the Gulf of Mexico; and (b) any change in DPM's Ownership Interest in DPS or any material change in the ownership of its underlying assets.

- D. As part of the procedures and requirements described in Paragraph II.C. of this Order, Respondents shall:
1. Within ten (10) days after the Closing Date, require all Respondents' employees who have access to Discovery Confidential Business Information or Williams Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided, however*, for Respondents' employees with access to Discovery Confidential Business Information or Williams Confidential Business Information who have information technology or clerical positions but no operational or commercial responsibilities, Respondents may send an appropriate notification regarding the prohibitions and confidentiality requirements of this Order by e-mail with return receipt requested or other similar transmission, and shall keep a file of such return receipts for one (1) year; and
 2. Within ten (10) days after the Closing Date, send a copy of the Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or by hand delivery (with signed confirmation) to:
 - a. Phillips 66 Board Members; and
 - b. Williams;

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3. Require and enforce compliance with appropriate remedial action in the event of non-compliant access, use, or disclosure of Discovery Confidential Business Information or Williams Confidential Business Information in violation of this Order;
 4. Distribute information and provide training regarding the procedures to all relevant employees referenced in Paragraph II.D.1 of this Order, at least annually; and
 5. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's prohibitions and requirements.
- E. No later than thirty (30) days after the Closing Date, Respondents shall submit to the Commission a copy of written procedures and guidelines that will be instituted by Respondents pursuant to Paragraph II.C. of this Order.
- F. The purpose of Paragraph II of this Order is to ensure that the Discovery Pipeline and the Walker Ridge Pipeline continue to be operated independently of, and in competition with, each other, and to remedy the lessening of competition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order. The Commission hereby appoints Robert E. Ogle ("Mr. Ogle") as the Monitor and approves the Monitor Agreement between Mr.

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Ogle and Respondents, attached to this Order as Public Appendix A.

- B. Not later than ten (10) days after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of this Order in a manner consistent with the purposes of the Order.
- C. The Monitor shall serve for a period of five (5) years after the Closing Date; *provided, however*, the Commission may extend or modify this period, and direct that the Monitor be reinstated, as may be necessary to accomplish the purposes of this Order.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission or Commission staff, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order; and
 - b. Assuring that Discovery Confidential Business Information or Williams Confidential Business Information is not obtained, disclosed, or used by Respondents, except as permitted by this Order.

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2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims,

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damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III, the term “Monitor” shall include all Persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order.

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents’ obligations under this Order.
 8. Within thirty (30) days from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents’ of their obligations under this Order.
 9. Respondents may require the Monitor and each of the Monitor’s consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor’s duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.

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- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Order in a manner consistent with the purposes of this Order.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, Respondents shall not acquire, directly or indirectly, through subsidiaries or otherwise, any Ownership Interest, in whole or in part, in any Person engaged in a Natural Gas Pipeline Business in the Relevant Gulf Producing Areas, without providing advance written notice to the Commission including, but not limited to, any increase in DPM's Ownership Interest in the Discovery Pipeline.

The prior notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification; Notification shall be filed with the Secretary of the

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Commission; Notification need not be made to the Department of Justice; and Notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide two (2) complete copies (with all attachments and exhibits) of the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereafter referred to as the “First Waiting Period”). If, within the First Waiting Period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. §802.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested by Respondents and, where appropriate, granted by a letter from the Commission’s Bureau of Competition; *provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days after the Closing Date, Respondents shall submit to the Commission a letter certifying the date on which the Merger occurred, and specifying Respondents’ Ownership Interests in each of the Firewalled Entities as of the Closing Date.
- B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
 - 1. Within thirty (30) days after the date this Order becomes final; and
 - 2. Every thirty (30) days thereafter until Respondents have fully complied with the requirements of Paragraphs II.C. and II.D.1 & 2 of this Order;

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3. One (1) year from the date this Order is issued and annually thereafter until this Order terminates; and
4. At such other times as the Commission may request.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

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- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on March 22, 2037.

By the Commission.

PUBLIC APPENDIX A**MONITOR AGREEMENT****ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Enbridge Inc. ("Enbridge") and Spectra Energy Corp ("Spectra"). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Enbridge's proposed merger with Spectra (the "Merger").

The Merger, if consummated, will result in Respondent Enbridge having ownership interests in the two closest and likely

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lowest-cost pipelines that provide or can provide natural gas pipeline transportation from many Deepwater Outer Continental Shelf oil and gas leasing and exploration blocks (“blocks”) in certain natural gas producing areas in the Gulf of Mexico. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra has an indirect, minority ownership interest in the Discovery Pipeline. The Complaint alleges that, resulting from the Merger, Enbridge will have access to competitively sensitive information of its competitor, the Discovery Pipeline, and gain voting rights over the Discovery Pipeline’s significant capital expenditures, including expansions needed to connect to new wells. Without adequate safeguards, Enbridge could misuse that information and its voting rights, leading to anticompetitive conduct that would make the Discovery Pipeline a less effective competitor or would facilitate coordination in the industry. To remedy these concerns, under the terms of the Proposed Decision and Order (“Order”) contained in the Consent Agreement, Enbridge is required to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline. In addition, all board members appointed by Enbridge or Spectra to the boards of directors overseeing the Discovery Pipeline must recuse themselves from any vote pertaining to the Discovery Pipeline, with limited exceptions.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. The Parties**A. Enbridge**

Enbridge is an energy delivery company that operates primarily in the United States and Canada. Its primary business is in pipeline transportation of crude oil; however, it also has significant natural gas gathering, processing, transportation, and storage assets. Enbridge owns several interconnected natural gas

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pipelines that export natural gas from the Gulf of Mexico to processing plants in Louisiana.

B. Spectra

Spectra is one of the largest North American pipeline and midstream companies. Spectra predominately focuses on natural gas, providing natural gas gathering, storage, and transportation in the southeastern and northeastern United States and in southeastern Canada. Through a joint venture with Phillips 66 (“Phillips”), Spectra owns an indirect minority interest in the Discovery Pipeline, a natural gas pipeline that transports natural gas from Deepwater areas in the Gulf of Mexico to processing plants in Louisiana.

III. The Proposed Merger

Respondent Enbridge and affiliated companies under its control entered into a merger agreement with Spectra, dated September 5, 2016, pursuant to which Sand Merger Sub, Inc., a newly created direct wholly owned subsidiary of Enbridge, will merge with and into Spectra, with Spectra surviving the Merger. The combined entity will be the largest energy infrastructure company in North America, with a geographically diverse asset portfolio used in the gathering, processing, storage, and transportation of natural gas and the pipeline transportation of crude oil.

The Commission’s Complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the transportation of natural gas from wells in certain natural gas producing areas in the Gulf of Mexico, to processing plants or interconnects with other natural gas pipelines.

IV. The Relevant Markets

The Commission’s Complaint alleges that the relevant product market within which to analyze the Merger is natural gas pipeline transportation. Natural gas producers contract with natural gas

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pipelines to connect to and transport natural gas from wells to processing plants or interconnects with other natural gas pipelines. Even if pipeline transportation rates increased slightly, shippers would continue to use pipelines as no economic or practical alternative to natural gas pipeline transportation exists.

The Commission's Complaint alleges that the relevant geographic markets within which to analyze the Merger are no broader than the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico off the coast of Louisiana (collectively and individually referred to as "Gulf Producing Areas"). Other transportation methods for natural gas in the Gulf Producing Area are significantly more costly, less reliable, and potentially more hazardous than the parties' pipelines.

V. Market Structure

The Commission's Complaint alleges that Enbridge and Spectra own interests in the two pipelines closest to wells drilled in certain blocks in the Gulf Producing Areas, including blocks that lie between the pipelines. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra holds an indirect minority ownership interest in the Discovery Pipeline, via its 50-50 joint venture with Phillips (DCP Midstream, LLC ("DCP")), which in turn has an effective 36.1 percent limited partner interest in DCP Midstream Partners, LP ("DPM"). DPM owns a 40 percent interest in the Discovery Pipeline; Williams Partners L.P. owns the majority interest (60 percent) in the Discovery Pipeline and is its operator.

The Commission's Complaint alleges that the length of pipeline needed to connect an existing pipeline to a well is a major factor in determining the overall cost for the pipeline to connect to the well. Thus, more distant pipelines likely face higher costs to connect to wells, resulting in higher natural gas pipeline transportation prices for natural gas producers. Where the Walker Ridge Pipeline and the Discovery Pipeline are a producer's nearest options – as they are for many blocks in the Gulf Producing Areas – they each likely could expand to connect to the producer's well for the lowest costs. As such, the Walker Ridge Pipeline and the Discovery Pipeline are the two pipelines

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most likely to compete successfully for projects in certain blocks in the Gulf Producing Areas.

VI. Effects of the Merger

While Spectra does not outright own the Discovery Pipeline or hold a majority interest in it (or operate it), through its indirect, minority ownership interest in DPM, Spectra has access to competitively sensitive information of the Discovery Pipeline and significant voting rights. This relationship creates two primary competitive concerns after the Merger. First, Enbridge-appointed directors will vote on the Discovery Pipeline's significant capital expenditures, which likely will include future expansions needed to connect to wells. Enbridge will have the incentive and ability to reduce the competitiveness of Discovery Pipeline bids for projects for which the parties' pipeline are the closest and lowest-cost options.

Second, Enbridge will have access to the Discovery Pipeline's competitively sensitive information. When its Walker Ridge Pipeline competes with the Discovery Pipeline, Enbridge may use this competitively sensitive information to raise transportation costs for natural gas producers. The exchange of information also may increase the likelihood of tacit or explicit coordination between the Walker Ridge Pipeline and the Discovery Pipeline.

VII. Entry Conditions

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Merger. Barriers to entry are significant. Building pipeline underwater is an expensive and lengthy process, often taking several years from the initial proposal to the end of construction.

VIII. The Agreement Containing Consent Order

The proposed Order resolves the anticompetitive concerns described above by requiring that (1) Enbridge erect firewalls to limit its access to non-public information relating to the Discovery Pipeline, and (2) all representatives appointed by Enbridge or Spectra to the DCP or DPM boards of directors recuse themselves

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from any vote pertaining to the Discovery Pipeline, with two limited exceptions. First, Enbridge's representatives may vote on initiatives to expand the Discovery Pipeline beyond natural gas pipeline services in the Gulf of Mexico. This provision ensures that Enbridge does not have to participate in business ventures unrelated to the Discovery Pipeline's current business. Second, Enbridge's representatives may participate in votes to change DPM's ownership interest in the Discovery Pipeline. The use of firewalls and recusal provisions is appropriate because the competitive concerns arise from a discrete overlap that constitutes a relatively small portion of DCP's and DPM's overall physical footprints and business portfolios.

The proposed Order allows the Commission to appoint a monitor. The Commission has appointed Robert Ogle, who currently is associated with Claro Group LLC. Mr. Ogle will help ensure the effectiveness of the firewall provisions and ongoing compliance with the Order. The Commission routinely appoints monitors for orders involving firewall provisions. Mr. Ogle will serve for a 5-year term, but the Commission may extend or modify the term as appropriate. The Order will have a term of 20 years.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

VIR2US, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4609; File No. 162 3248
Complaint, March 29, 2017 – Decision, March 29, 2017

This consent order addresses Vir2us, Inc.’s alleged false representations made to consumers concerning its participation in the Asia-Pacific Economic Cooperation (“APEC”) Cross Border Privacy Rules (“CBPR”) system. The complaint alleges that Vir2us falsely represented that it was a participant in the APEC CBPR system when, in fact, it never sought or obtained certification. The consent order prohibits Vir2us from making misrepresentations about its participation in any privacy or security program sponsored by a government or any self-regulatory or standard-setting organization, including, but not limited to, the APEC CBPR system.

Participants

For the *Commission*: Monique F. Einhorn.

For the *Respondent*: Mary Hildebrand, Lowenstein Sandler.

COMPLAINT

The Federal Trade Commission (“Commission” or “FTC”), having reason to believe that Vir2us, Inc., a corporation, has violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Vir2us, Inc. is a California corporation with its principal office or place of business at 755 Baywood Drive, Petaluma, CA 94954.
2. Respondent provides cybersecurity software, including Xeropass – an identity authenticator solution – and distributes or promotes its Xeropass solution at www.xeropass.com, www.vr2sinternational.com, and on the Mozilla browser add-on page <https://addons.mozilla.org/en-US/firefox/addon/xeropass/?src=cb-dl-updated>.