

Coal Crunch

Massive Mining Layoffs Hit WV

During the summer of 2014, three major coal mining companies announced plans to lay off a total of 1,800 employees in West Virginia.

The largest announcements came from Bristol, Va.-based Alpha Natural Resources. In late July and early August, the company put 1,129 employees on notice at various subsidiaries in the southern half of the state, where mine productivity is low compared with other U.S. coal-producing regions.

The company cited several reasons for reducing its West Virginia operations, including persistently weak demand for coal, competition from lower-cost operators in other regions, competition from natural gas as an alternative to coal for power generation, and new regulations from the Environmental Protection Agency.

(For more on the prospects for West Virginia coal, see “The Future of Coal,” *Econ Focus*, Fourth Quarter 2013.)

“EPA’s new MATS (mercury and air toxics standards) air emissions rule alone is expected to take more coal-fired power generation offline next year than in the previous three years combined,” the company predicted. “Much of that is in markets historically supplied by Central Appalachian mines.”

Other major layoff announcements during the summer came from Cliffs Natural Resources of Cleveland (397 employees) and Coal River Energy of Alum Creek, W.Va. (280 workers). Coal River Energy blamed its pending layoffs on “weak coal demand and government regulations,” while Cliffs Natural Resources cited poor market conditions for metallurgical coal (coal used to make steel).

The summer’s total number of announced layoffs represents 9.5 percent of the state’s jobs in coal mining and coal mining support, but the industry’s employment will not decline 9.5 percent because hiring will offset some of the layoffs. The net loss of jobs during the past two years, however, has accelerated a downward trend that began in 2012. Coal mining employment in West Virginia, including support positions, has plummeted from an 18-year high of 24,928 jobs in 2011 to a 10-year low of 19,040 jobs in the first quarter of 2014. The most recent wave of layoff announcements suggests that the number will continue to decline rapidly for at least the rest of the year.

—KARL RHODES



Open-pit mining in Wyoming is far more efficient than underground mining in West Virginia.

PHOTOGRAPHY: UNITED MINE WORKERS OF AMERICA

In for a Dollar

Discount stores engage in a high-price bidding war

The Charlotte area-based retailer Family Dollar has been targeted for takeover by two of its competitors. In July, the company announced it was being acquired by Dollar Tree, which is headquartered in Chesapeake, Va., for \$8.5 billion, or \$74.50 per share. In August, rival Dollar General offered to pay \$78.50 per share, an offer that Family Dollar’s board of directors rejected on the grounds that the Federal Trade Commission (FTC) would be unlikely to approve the deal. Dollar General upped its bid to \$80 per share, or \$9.1 billion, but Family Dollar spurned that offer as well. On Sept. 10, five days after being rebuffed the second time, Dollar General launched a hostile take-

over bid. Family Dollar’s board is recommending that shareholders reject Dollar General’s tender offer. The shareholder vote is scheduled for December 11.

The three chains are the major players in the “super discount” retail sector, which grew significantly during the Great Recession and has continued to expand. Dollar General is the largest of the three, with more than 11,000 stores in 40 states. Family Dollar has about 8,000 locations, and Dollar Tree has about 5,000 locations in the United States and Canada. By comparison, Wal-Mart has around 4,200 U.S. locations.

Despite the moniker “dollar store,” both Family Dollar and Dollar General sell goods at a range of

prices, and Family Dollar says that proximity to a Dollar General is a major factor in its pricing decisions. According to Family Dollar's board of directors, it's thus likely the FTC would block the deal on antitrust grounds, or at the very least require a protracted review process. "The government wants to prevent mergers that transform the structure of a market in a way that raises prices and thus injures consumers in that market," says Alan Meese, an antitrust expert at William & Mary Law School and former antitrust litigator.

Invoking antitrust concerns is a common tactic for companies that don't want to be bought, according to Meese. "Raising antitrust concerns to thwart a more generous bid can raise suspicions about the motives of the target's board." Still, the Dollar Tree deal may be more likely to pass muster with the FTC; Dollar Tree caps its prices at \$1 and has promised to divest itself of as many stores as necessary to win regulatory approval. Dollar General has agreed to sell up to 1,500 stores, but so far it is unwilling to promise more. "In this context Family Dollar's directors have a fiduciary duty to obtain the best deal for shareholders," says Meese. "If they

have a well-informed good faith belief that the FTC will block the more lucrative transaction, they should recommend shareholders approve the sure thing."

Just how much monopoly power a combined Dollar General-Family Dollar would actually be able to exercise depends on how the relevant market is defined. The dollar stores' \$48 billion market is only a tiny slice of the total market for fast-moving consumer goods, such as groceries and toiletries; Walmart's U.S. sales alone were more than \$279 billion in fiscal year 2014. And an analysis of shopping data for about 80,000 households by the company InfoScout suggests that consumers have plenty of other options. In any given month, nearly 93 percent of households also shopped at a supercenter such as Walmart or Target, and when asked, 81 percent of Family Dollar shoppers said Walmart was a good substitute for Family Dollar.

Regardless of which company ultimately wins over Family Dollar's shareholders, the deal will come under close FTC scrutiny to ensure that consumers can stretch their dollars as far as they did before.

—JESSIE ROMERO

It's All Business

NC expands the role of its business court with new law

North Carolina's business court has been in existence since 1995, but it recently got quite the facelift. On Aug. 6, Gov. Pat McCrory signed into law an act aimed at modernizing and streamlining the state's specialized business court. Proponents believe these changes will make the state more business-friendly by establishing clear precedents and definitive case law.

Business courts are specialized courts that hear only designated business cases. They currently exist in varying forms in 20 states, with Delaware's Court of Chancery being the longest-running and most prestigious.

But the makeup of business courts differs greatly from state to state in several respects. For instance, North Carolina and Delaware have specialized business courts, while some other states only have business divisions within their existing general courts; some business courts are statewide and some are limited to metro areas, such as Pittsburgh and Chicago; and the criteria for qualifying for business court is different in every location. Despite this wide variety, each state with a business court system generally creates it with the goal of improving efficiency and predictability in business litigation.

The new North Carolina law was spearheaded by Republican state senators Tamara Barringer and Bob Rucho, who told the *Charlotte News & Observer* in June that their goal was to enhance the existing court and "make the state more attractive to businesses, including

out-of-state companies looking to relocate."

One of the ways that North Carolina hopes the law will help it to compete is through new rules on holding company reorganizations — that is, when a new corporation becomes the sole shareholder of an existing corporation through a merger. In a page taken from Delaware's playbook, an entirely new section was added that permits holding companies to reorganize without shareholder approval as long as certain requirements are met. Once the merger is complete, the shareholders will maintain the same rights in the new holding company.

Other sections in the law deal directly with the operation of the business court. Business court appeals will now go directly to the state Supreme Court, rather than through the Court of Appeals. The law also creates a category of mandatory complex business cases that are required to be tried in business court: Cases valued at more than \$5 million involving corporate law, intellectual property law, and certain other areas fall under this designation, as do business contract disputes worth more than \$1 million when all parties consent to the designation.

While the law does not create any new judgeships, the 2014 Appropriations Act does call for two new business court judges in 2015, bringing the total to five.

The updated law applies only to cases brought to the court after Oct. 1, 2014, and most provisions of the new law went into effect on this date.

—LISA KENNEY