
FTC Prohibits Interlocking Directorate and Enforces Standalone Violation of Section 5 of the FTC Act

Date: 08/30/23

For the first time in 40 years, the Federal Trade Commission (“FTC”) has enforced Section 8 of the Clayton Act, which prohibits interlocking directorates. In the same matter, the FTC also asserted an alleged standalone violation of Section 5 of the FTC Act, which prohibits unfair methods of competition, for the first time in decades. On August 16, 2023, the FTC approved a consent order settling charges that a proposed transaction between private equity firm Quantum Energy Partners (“Quantum”) and natural gas producer EQT Corporation (“EQT”, and together, “the entities”) violated the antitrust laws. The proposed transaction would have given Quantum the right to appoint an EQT board member in connection with EQT’s \$5.2 billion cash-and-stock acquisition of two Quantum entities. Quantum would have also received 55 million shares of EQT stock, in addition to the cash consideration. The FTC charged that Quantum and EQT are competitors in the production and sale of natural gas in the Appalachian Basin. The FTC alleged that:

- the board appointment right violated Section 8’s per se prohibition on directors and officers serving simultaneously on the board of directors of competitors;
- the potential for the entities to exchange competitively-significant, non-public information or influence competitive decision-making violated Section 5’s prohibition on unfair methods of competition; and
- a preexisting joint venture between the entities independently violated Section 5.

The consent order attempts to remedy the FTC’s concerns – and allows the acquisitions to proceed – by prohibiting Quantum from appointing any individual to the EQT board, obligating Quantum to divest EQT shares received from the acquisitions, and ordering the unwinding of the preexisting joint venture, among other requirements.