ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of EQT Corporation

File No. 221-0212, Docket No. C-

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from QEP Partners, LP, by itself and through the entities under its control (including Quantum Energy Partners VI, LP; Q-TH Appalachia (VI) Investment Partners, LLC) (collectively, "Quantum"), and EQT Corporation ("EQT," and together with Quantum, "Respondents"). EQT has proposed acquiring THQ Appalachia I, LLC ("Tug Hill") and THQ-XcL Holdings I, LLC ("XcL Midstream") from Quantum for approximately $5.2 billion: $2.6 billion in cash and up to 55 million shares of EQT stock ("Proposed Transaction"). In addition to this consideration, and in connection with Quantum's anticipated status as one of EQT's largest shareholders, EQT agreed to facilitate the appointment of Quantum's CEO, or another Quantum-designated individual, to EQT Board of Directors.

The Proposed Transaction raises several concerns. Specifically, both Quantum's anticipated position as one of EQT's largest shareholders and EQT's obligation to facilitate the appointment of a Quantum designee to the EQT board raise concerns that Quantum or EQT could have access to each other's competitively-significant, non-public information and could participate in, or have influence over, competitive decision-making at each firm. Under Section 8 of the Clayton Act, it is per se illegal for directors and officers to serve simultaneously on the boards of competitors (subject to limited exceptions), as would occur here absent the Consent Agreement with the appointment of Quantum's designee to the board of its competitor, EQT. In addition to these concerns, a pre-existing joint venture between EQT and Quantum, The Mineral Company ("TMC"), raises concerns with respect to the exchange of competitively sensitive business information regarding the acquisition of mineral rights within the Appalachian Basin.

The Consent Agreement is designed to remedy allegations in the Commission's Complaint that: (1) Quantum's proposed acquisition of up to 55 million shares of EQT stock, together with or separately from assurances that a Quantum-designee will be nominated for a seat on the EQT Board of Directors, would result in an illegal interlocking directorate in violation of Section 8 of the Clayton Act, 15 U.S.C. § 19, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 due to potential exchange of confidential, competitively sensitive information, and that (2) TMC, the pre-existing Quantum/EQT joint venture, is an unfair method of competition in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

The proposed settlement presents significant relief for these concerns. The Consent Agreement and proposed Decision and Order ("D&O") prohibit Quantum from occupying an EQT Board seat and require Quantum to divest its EQT shares by a non-public date certain, effectively imposing a structural fix to concerns about the influence and information access that arise from Quantum's sizable EQT shareholder position. The D&O contains provisions that incentivize Quantum's rapid sale of the EQT shares, coupled with provisions effectively rendering Quantum's ownership passive pending the sale of its EQT shares. The D&O also reduces opportunities for exchanging confidential and competitively significant information between the firms beyond Quantum's EQT share ownership, notably by requiring EQT and Quantum to unwind the TMC mineral rights acquisition joint venture. The D&O contemplates the appointment of a monitor to ensure compliance with the terms of the ten-year order.

The proposed D&O imposes effective and administrable relief, while setting important Commission precedent on the application of Section 8 of the Clayton Act, Section 5 of the FTC Act, and the use of structural remedies to address these theories of harm. By restricting future opportunities for the parties to engage in conduct that would result in Section 8 violations and other unfair methods of competition involving natural gas activities in the Appalachian Basin, the proposed D&O signals the antitrust risks of excessive influence and anticompetitive information exchange.

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

II. The Respondents

Respondent QEP Partners, LP is a limited partnership 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 in Houston, Texas. Respondent QEP Partners, LP controls Respondents Quantum Energy Partners VI, LP and Q-TH Appalachia (VI) Investment Partners, LLC. Through its private equity, investment, and structured finance funds, Quantum owns, controls, or has influence over entities producing natural gas in the Appalachian Basin and throughout the country. Quantum-owned entities include Tug Hill, a natural gas producer in the Appalachian Basin, and XcL Midstream, a natural gas gatherer and processor in the Appalachian Basin, two entities sought for purchase by Respondent EQT.

Respondent EQT is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located in Pittsburgh, Pennsylvania. EQT is the nation's largest producer of natural gas. EQT acquires mineral rights and produces natural gas and natural gas liquids primarily in the Appalachian Basin, including areas close to Quantum's Tug Hill/XcL Midstream operations. EQT markets natural gas within and outside the Appalachian Basin.

III. The Agreements

On September 6, 2022, EQT and Quantum entered into a Purchase Agreement, under which EQT sought to acquire Tug Hill and XcL Midstream from Quantum for a total purchase price of approximately $5.2 billion. Roughly half of the consideration to Quantum would take the form of up to 55 million shares of EQT stock.[1] The Proposed Transaction would make Quantum one of EQT's largest shareholders. As additional consideration, EQT agreed to "take

---

[1] The number of shares ultimately due to Quantum is subject to customary purchase price adjustments, including adjustments for business proceeds and costs incurred during the interim period between signing and closing of the Proposed Transaction.

all necessary action to facilitate" the appointment of Quantum CEO Wil VanLoh, or another Quantum designee, "to be included in a slate of director nominees recommended by the [EQT] Board" for election as an EQT director.

The Commission's Complaint alleges that the Proposed Transaction, as structured, would violate Section 8 of the Clayton Act, 15 U.S.C. § 19, as an illegal interlocking directorate, and that the Proposed Transaction – the acquisition of up to 55 million EQT shares or EQT's obligation to use best efforts to nominate a Quantum director – also constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 due to risks of the exchange of competitively sensitive, non-public information.

In October 2020, EQT and a Quantum affiliate entered an agreement forming a joint venture, TMC. TMC served as a vehicle for EQT to purchase mineral rights in the Appalachian Basin, with funding largely supplied by Quantum. The TMC agreement requires EQT to offer a right of first refusal to TMC before EQT can purchase mineral rights within a specified geography. TMC receives forward-looking and competitively sensitive, non-public information about EQT's mineral rights acquisition plans, drilling plans, strategies, and operations. Quantum's participation in TMC management provided it with access to this information as well.

The Commission's Complaint alleges that the TMC joint venture is an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

IV. Line of Commerce

The production and sale of natural gas is a relevant line of commerce. Natural gas is a critical fuel source with highly varied uses in the United States and worldwide. Natural gas purchasers generally cannot switch to alternative fuels without substantial costs and delay.

The acquisition of mineral rights is also a relevant line of commerce. To produce natural gas, a firm must first purchase or lease mineral rights from landowners. The mineral rights held by a producer can indicate key aspects of the producer's future production plans, including the areas the producer may drill and the amount of drilling activity the producer anticipates within a reasonable timeframe.

The Appalachian Basin, consisting of the portions of West Virginia, Pennsylvania, Ohio, Maryland, Kentucky, and Virginia that lie in the Appalachian Mountains, is widely recognized as a major natural gas producing area in the United States, and one of the largest in the world. A current shortage of available pipeline capacity to transport natural gas from the Appalachian Basin to demand centers outside of the Basin is a distinguishing characteristic of the region. Stranded excess gas supply in the Basin has artificially depressed local prices relative to pricing locations outside the Basin. Given current pipeline constraints, customers located within the Appalachian Basin cannot economically purchase gas from outside the Basin.

V. Effects of the Agreements

The Commission's Complaint addresses two theories of harm. First, Quantum's acquisition of up to 55 million EQT shares would make Quantum – an EQT rival in the production and sale of natural gas in the Appalachian Basin – one of the largest shareholders of EQT. This shareholder position would provide Quantum with the ability to sway or influence EQT's competitive decision-making and to access EQT's competitively sensitive information.

As one of EQT's largest shareholders, Quantum would have the opportunity to communicate directly with EQT and could discuss confidential business information or direct or otherwise influence EQT's competitive actions or strategies. Knowledge gained via its relationship with EQT could also influence Quantum's own competitive decisions or development of new businesses involved in the production and sale of natural gas. The Commission's Complaint alleges these opportunities are particularly problematic given certain actions by the Respondents, including the TMC joint venture and other activities involving providing nonpublic information that restricted competition, the natural gas industry's history of encouraging the exchange of competitively sensitive information, and competitors publicly signaling their strategic moves to other competitors.

Moreover, the Proposed Transaction explicitly contemplated Quantum CEO Wil VanLoh's appointment to EQT's Board of Directors. In addition to his role as CEO, Mr. VanLoh is the Chair of the Investment Committee for Quantum Energy Partners, Quantum's private equity subsidiary and the entity that oversees the investment decisions of Respondent Quantum Energy Partners VI, LP and its subsidiaries. Mr. VanLoh was previously a member of the Tug Hill Board of Directors and also sits on the Board of Directors of another natural gas company in which Quantum invests. As a result, Mr. VanLoh's appointment to EQT's Board of Directors while simultaneously serving as CEO of Quantum and Chair of Quantum's Investment Committee would create an illegal interlocking directorate between EQT and Quantum. Any other director appointed by Quantum would be, by virtue of the appointment, an agent of Quantum and under its control. Thus, appointing a Quantum-designated director (other than Mr. VanLoh) to EQT's Board of Directors would similarly create an illegal interlock between EQT and Quantum. The Complaint alleges that the above concerns violate both Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The Complaint's second theory of harm addresses the TMC joint venture specifically, as well as information exchange more generally. The TMC joint venture creates additional opportunities for sharing competitively sensitive business information. Respondents already may use TMC as a vehicle for information exchange, either with respect to competition for the purchase of mineral rights or in connection with EQT's future drilling plans. Via the TMC joint venture, EQT and Quantum (through portfolio companies involved in the acquisition of mineral rights and production and sale of natural gas in the Appalachian Basin) each can inform the other where it intends to procure mineral rights for future productions and how much it plans to bid. This information is forward-looking, non-public, and competitively sensitive, and its exchange among rivals, coupled with the non-compete agreements in place within the joint venture, harms competition in the acquisition of mineral rights. The Complaint also alleges that the TMC joint venture violates Section 5 of the Federal Trade Commission Act.

VI. The Proposed Order

The proposed Order imposes several terms to remedy these concerns. First, the Order requires Quantum to forego its right to a seat on EQT's Board. Quantum shall not, directly or indirectly, appoint any persons to EQT's Board, seek or obtain representation on EQT's Board, or have any of its agents or representatives serve simultaneously as an officer or director of EQT or in a decision-making capacity of any EQT entity. EQT, conversely, shall not, directly or indirectly, have any of its representatives serve simultaneously in any management capacity within Quantum, any operating entity controlled by Quantum, or any investment fund managed by Quantum. This Order provision makes it clear that Quantum is subject to the prohibition on interlocking directors and officers under Section 8 of the Clayton Act, despite Quantum's limited liability and limited partnership corporate structure.

Second, absent prior Commission approval, the proposed Order prohibits Quantum from serving on the Board of any of the top seven Appalachian Basin natural gas producers, accounting for a substantial majority of the market.

Third, Quantum shall sell its EQT shares by a non-public date certain. Failure to sell by that date will result in the transfer of the shares to a trustee empowered to liquidate the shares unilaterally. Quantum cannot knowingly divest these shares to an entity that is one of the top seven natural gas producers in the Appalachian Basin without prior Commission approval. Quantum is also prohibited from sharing with EQT any non-public information regarding its stock position or intent to sell or hold any of the EQT shares.

Fourth, during the period when Quantum owns EQT shares, the shares will be held in a voting trust, and any votes will be carried out by the trustee pro rata with all other EQT shareholders. The proposed Order prohibits Quantum from engaging in the solicitation of proxies in connection with its EQT shareholder position, and further prohibits Quantum from directly or indirectly influencing EQT's Board of Directors, management, or operations. Together, these provisions effectively render Quantum's shares a passive investment until the shares are sold.

Fifth, for the duration of the proposed ten-year Order, Quantum is prohibited from acquiring additional EQT shares absent prior Commission approval. During the period when Quantum owns EQT shares, however, prior approval is not needed for shares acquired indirectly as consideration for EQT's acquisition of a Quantum business that is subject to a premerger notification under the Hart-Scott-Rodino Act. Prior approval is also not required during a period when Quantum no longer owns EQT shares for shares acquired indirectly as consideration for EQT's acquisition of a Quantum business.

Sixth, the proposed Order also requires Quantum and EQT to unwind TMC, including any noncompete provisions.

Seventh, the proposed Order imposes further limitations on future entanglements between EQT and Quantum. For example, as noted above, the proposed Order prohibits any of EQT's directors, officers, agents, or representatives from serving simultaneously in any management capacity within Quantum, any operating entity controlled by Quantum, or any investment fund managed by Quantum. The proposed Order also prohibits Quantum and EQT from entering into any noncompete agreements other than those in connection with and ancillary to the sale of a business, assets, or company.

Eighth, the proposed Order contains additional provisions designed to ensure the effectiveness of the relief. A monitor will be appointed to track compliance, and both Respondents must provide regular compliance reports. Provisions of the proposed Order that do not end upon the sale of EQT shares will last up to ten years.

And finally, the proposed Order requires EQT and Quantum to distribute the Order to each of their respective board members, officers, and directors, and to design, maintain, and operate an antitrust compliance program.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.