UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Melissa Holyoak
Mark R. Meador

In the Matter of **Chevron Corporation,** **a corporation** **and** **Hess Corporation,** **a corporation.**	**DOCKET NO. C-4814**

ORDER GRANTING PETITION TO REOPEN AND SET ASIDE

This matter arises from Chevron Corporation's $53 billion acquisition of Hess Corporation. To settle the Commission's allegations that the acquisition would violate the antitrust laws, the two companies consented to an order that prohibits Chevron from appointing Hess CEO John B. Hess to Chevron's Board of Directors, or allowing him to serve in an advisory or consulting capacity to Chevron or its Board.[1] In a 3-2 vote on January 16, 2025, the Commission approved a final Complaint and the Decision and Order settling the allegations ("Order").[2]

Chevron and Hess[3] filed a petition on March 27, 2025, pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act")[4] and Commission Rule 2.51,[5] seeking to reopen and set aside the Order. The Petition argues that setting aside the order serves the public interest in the effective enforcement of the antitrust laws. For the reasons explained below, the Commission finds that the costs of maintaining the Order outweigh its trivial or nonexistent benefits to consumers. Further, maintaining the Order would damage the rule of law and undermine the Commission's credibility. Granting the Petition therefore is in the public interest. Accordingly, the Commission will grant the Petition, reopen the Order, and vacate it in its entirety.

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[1] Proposed Decision and Order, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008, at 3 (Sept. 30, 2024) ("Proposed Order").
[2] Complaint, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008 (Jan. 16, 2025) ("Complaint"); Decision and Order, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008, at 3 (Jan. 16, 2025) ("Order").
[3] As used in this Order, "Hess" refers to Hess Corporation and "Mr. Hess" refers to Hess CEO John B. Hess.
[4] 15 U.S.C. § 45(b).
[5] 16 C.F.R. § 2.51.

I. BACKGROUND

Chevron is a publicly traded, vertically integrated energy company involved in the production and refinement of crude oil and natural gas. Headquartered in Houston, Texas, Chevron has operations across the globe. Hess is a New York-based energy company also involved in oil and gas production, and has operations in North America, South America, and Southeast Asia. The two companies entered into an Agreement and Plan of Merger dated October 22, 2023 ("Merger Agreement"), by which Chevron agreed to acquire Hess. The terms of the Merger Agreement required Chevron to "take all actions necessary such that … John B. Hess [Hess's CEO] shall be appointed as a member of the Board of Directors of [Chevron]" upon the acquisition's consummation.[6]

The Commission issued a Complaint in this matter on September 30, 2024, in a 3-2 vote.[7] The Complaint alleged that Chevron's acquisition of Hess would violate Section 7 of the Clayton Act and Section 5 of the FTC Act.[8] The Complaint alleged neither that the acquisition would significantly increase market concentration, nor that it would eliminate substantial head-to-head competition between Chevron and Hess, nor any vertical theory of harm involving any upstream or downstream markets. Instead, the Complaint focused on coordinated effects and alleged that the acquisition would "meaningfully increase[e] the likelihood of industry coordination in the global market for the production and sale of oil."[9]

According to the Complaint, Mr. Hess purportedly communicated "supportive messaging to OPEC" that "encouraged high-level OPEC representatives in their stated mission to stabilize global oil markets."[10] Chevron's acquisition of Hess would violate Section 7, the Complaint reasoned, because "Mr. Hess's participation on Chevron's Board of Directors would amplify Mr. Hess's supportive messaging to OPEC and others, thereby meaningfully increasing the likelihood that Chevron would align its production with OPEC's output decisions to maintain higher prices."[11]

To settle the Commission's allegations, Chevron and Hess consented to an order that (1) prohibited Chevron from appointing Mr. Hess to Chevron's Board, and (2) allowed Mr. Hess "to serve in an advisory or consulting capacity to, or as a representative of, Chevron solely related to interactions and discussions with (a) Guyanese government officials about Hess's oil-related and health ministry-related activities in Guyana, and (b) the Salk Institute's Harnessing Plants Initiative."[12] The Order required annual reports for nine years detailing its compliance with the

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[6] Chevron Corp., Current Report (Form 8-K), Ex. 2.1 at 3 (Oct. 23, 2023).
[7] Complaint, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008 (Sept. 30, 2024).
[8] *Id*. at ¶¶ 51–53.
[9] *Id*. at ¶ 12.
[10] *Id*. at ¶ 5, 50
[11] *Id*. at ¶ 11. Although the Complaint also alleged that the acquisition would "facilitate an unfair method of competition in violation of Section 5 of the FTC Act," it did not allege an independent violation of Section 5. *Id*. ¶ 12. The Commission's complaint issued in connection with Exxon's acquisition of Pioneer, by contrast, alleged a Section 5 claim based on a board interlock. Complaint, *In re Exxon Mobil Corp.*, Matter No. 2410004, at ¶ 9 (Jan. 16, 2025).
[12] Proposed Order at 3.

Order.[13] Then-Commissioner Ferguson and Commissioner Holyoak dissented from the Commission's vote approving the order, asserting that the majority leveraged the Commission's power to extract a settlement without any evidence of an antitrust violation.[14] The Commission voted 3-2 to approve the settlement on January 16, 2025.

II. THE PETITION

On March 27, 2025, Chevron and Hess petitioned the Commission to reopen and vacate the Order under Section 5(b) of the FTC Act and Commission Rule 2.51. The Petition argues that "setting aside the Order serves the public interest in the effective enforcement of the antitrust laws, as the Complaint failed to state a cognizable theory of harm under Section 7 or Section 5."[15] The Petition explains that under the antitrust agencies' 2023 Merger Guidelines, the parties' combined market share "is far below the level at which a merger could be presumed to harm competition."[16] Quoting extensively from the dissenting statements of then-Commissioner Ferguson and Commissioner Holyoak, the Petition alleges numerous deficiencies in the Complaint's theory of harm.[17] According to the Petition, "the Ferguson Dissent rightly notes that this settlement 'does not vindicate the rule of law,' but rather serves to further reduce antitrust enforcement to a 'pay-for-peace racket inflict[ing] serious injury on the rule of law—and on the Commission's credibility.'"[18]

The Petition further asserts that setting aside the Order would serve the "significant public interest in continued investment in oil and gas supply."[19] The Petition claims that "Mr. Hess has spent his career advocating for such an increase in investment to grow oil and gas supply, for the benefit of consumers, workers, and U.S. energy security."[20] Setting aside the Order, according to the Petition, "will promote long-term capital investments to grow American oil and gas supplies."[21]

The Commission placed the Petition on the public record for a 30-day comment period, and it received 17 comments. The Petition is now ripe for disposition by the Commission.[22]

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13 *Id*. at 3–4.
14 Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008, 5–6 ("The Commission leveraged its Hart-Scott-Rodino Act authority by threatening to hold up Chevron and Hess's $53 billion dollar merger even though the lack of a plausible Section 7 theory had long been obvious.") ("Ferguson Chevron Dissent"); Dissenting Statement of Comm'r Melissa Holyoak, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008, at 11 (Sept. 30, 2024) ("the Majority has used its leverage in the HSR process to extract a consent from merging parties with *no reason* to believe the law has been violated.") (emphasis in original) ("Holyoak Chevron Dissent").
15 Petition at 4.
16 *Ibid*.
17 *Id*. at 5.
18 *Ibid.* (quoting Ferguson Chevron Dissent at 6–7).
19 *Id*. at 6.
20 *Ibid*.
21 *Id*. at 7.
22 Chevron and Hess may file this Petition under Commission Rule 2.51 because the two companies are parties to the Order they seek to reopen and therefore are "subject to" the Order as required by Rule 2.51(a). 16 C.F.R. § 2.51(a). The petition seeking to reopen the order issued in connection with Exxon's acquisition of Pioneer, by contrast, was filed solely by Pioneer's founder and former CEO Scott Sheffield, not by Exxon, and therefore was

III. STANDARDS FOR REOPENING AND MODIFICATION

Section 5(b) of the FTC Act provides that the Commission may reopen and modify an order when the Commission determines that "conditions of fact or of law have so changed as to require such action or if the public interest shall so require."[23] Commission rules require that a petition to modify an order must "contain a *satisfactory showing* that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part, or that the public interest so requires."[24] Chevron's petition argues that the petition should be granted based upon the public interest and not changed conditions.

A petition to reopen and modify must be supported by evidence that is credible and reliable.[25] The petition may not be merely conclusory.[26] Where a public interest basis is asserted, the petition must set forth specific facts demonstrating in detail the reasons why the public interest would be served by the modification.[27] The petitioner must demonstrate, for example, that the purposes of the order could be achieved more efficiently or effectively with a modification, or that granting the petition would clearly serve the public interest.[28] The public interest inquiry also assesses whether "the costs that the [order] imposes on respondent appear to outweigh any consumer benefits that it may confer,"[29] and whether the order prevents conduct that "is innocuous and may, in certain circumstances, be procompetitive."[30] The petitioner must include in the petition all information and material that the petitioner wishes the Commission to consider.[31]

If, after determining that the petitioner has made the required showing, the Commission decides to reopen the order, it will then consider and balance all the reasons for and against modification.[32] A decision to reopen an order does not oblige the Commission to modify it, and the burden remains on the petitioner in all cases to demonstrate why the order should be

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improper under Rule 2.51. Order Denying Petition to Reopen, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 6–7 (July 14, 2025).

[23] 15 U.S.C. § 45(b). Section 5(b) also requires the Commission to reopen an order to consider whether it should be modified if the petitioner "makes a satisfactory showing that changed conditions of law or fact" so require. *Id*. The Petition in this matter argues for reopening based only on the public interest.

[24] 16 C.F.R. § 2.51(b) (emphasis added); Order Reopening and Modifying Order, *In re Seven & i Holdings Co.*, Matter No. 2010108, at 2 (Jan. 24, 2023) ("Seven & i Holdings Order").

[25] Seven & i Holdings Order at 2; Order Reopening and Modifying Order, *In re DTE Energy Co.*, Matter No. 1910068, at 2 (Nov. 23, 2021).

[26] Seven & i Holdings Order at 2.

[27] 16 C.F.R. § 2.51(b)(1).

[28] Seven & i Holdings Order at 2; Order Reopening and Modifying Order, *In re Toys "R" Us Inc.*, Matter No. 8410040, at 3 (Apr. 11, 2014).

[29] Order Reopening the Proceeding and Modifying Cease and Desist Order, *In re The Readers' Digest Ass'n*, 102 F.T.C. 1268, 1971 WL 128725, at *2 (F.T.C. Sept. 30, 1983); Order Reopening and Modifying Final Order, *In re Am. Coll. of Obstetricians and Gynecologists*, 104 F.T.C. 524, 1984 WL 565347, at *1 (F.T.C. Aug. 28, 1984) (modifying order when "injury to [respondent] and the public that *outweighs any benefit* that may be derived from the restriction.") (emphasis added).

[30] Order Reopening and Vacating in Part and Modifying in Part, *In re Occidental Petroleum Corp.*, 101 F.T.C. 373, 1974 WL 175259, at *1 (F.T.C. Mar. 9, 1983).

[31] 16 C.F.R. § 2.51(b)(2).

[32] Seven & i Holdings Order at 3.

reopened and modified.[33] The petitioner's burden is not a light one in view of the public interest in the repose and finality of Commission orders.[34]

IV. ANALYSIS

Based on its review of the Petition and the public comments filed in response, the Commission has determined that the public interest requires that the Order be reopened and vacated in its entirety. Because the Complaint failed to plead sufficiently a violation of Section 7 or provide any reason to believe the acquisition would result in anticompetitive effects, the Order fails to provide any benefit to consumers and the public. Maintaining an order untethered from any cognizable legal theory undermines the Commission's antitrust enforcement mission and is not in the public interest.

A. The Complaint Fails to Plead a Violation of Section 7

Section 7 of the Clayton Act prohibits acquisitions whose effect "may be substantially to lessen competition, or tend to create a monopoly."[35] To establish a prima facie case under Section 7, the Commission "'must (1) define a relevant market, and (2) show that the effect of the merger in that market is likely to be anticompetitive.'"[36] The Complaint defined the relevant market as the global market for the development, production, and sale of crude oil.[37] But it failed to allege facts demonstrating that the acquisition's effect in this market "is likely to be anticompetitive."[38]

To demonstrate anticompetitive effects, the Commission typically aims to "show that the merger would produce 'a firm controlling an undue percentage share of the relevant market, and would result in a significant increase in the concentration of firms in that market.'"[39] The Commission may also establish anticompetitive effects with other evidence, such as evidence of substantial head-to-head competition between the merging firms[40] or evidence that the merger may increase prices and reduce output.[41] The Complaint contains no factual allegations regarding the combined firm's market share or the extent of head-to-head competition between Chevron and Hess. Instead, the Complaint relies on a coordinated-effects theory. This theory holds that a merger may violate Section 7 "when it meaningfully increases the risk of

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[33] *Ibid.*; see also *United States v. La.-Pac. Corp.*, 967 F.2d 1372, 1376–77 (9th Cir. 1992) (reopening and modification are independent determinations).

[34] Seven & i Holdings Order at 3.

[35] 15 U.S.C. § 18.

[36] *FTC v. Tapestry, Inc.*, 755 F. Supp. 3d 386, 411 (S.D.N.Y. 2024) (quoting *FTC v. IQVIA Holdings Inc.*, 710 F. Supp. 3d 329, 352 (S.D.N.Y. 2024)).

[37] Complaint ¶¶ 19–20.

[38] *Tapestry*, 755 F. Supp. 3d at 411.

[39] *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001) (quoting *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 363 (1963)) (cleaned up).

[40] See Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.2 (Dec. 18, 2023) ("If evidence demonstrates substantial competition between the merging parties prior to the merger, that ordinarily suggests that the merger may substantially lessen competition.") ("2023 Merger Guidelines"); Opinion of the Commission, *In re Polypore Int'l, Inc.*, Matter No. 0810131, at 10 (Nov. 5, 2010) ("Indeed, qualitative evidence regarding pre-acquisition competition between the merging parties can in some cases be sufficient to create a *prima facie* case even without quantitative evidence of changes in market concentration.").

[41] *See* 2023 Merger Guidelines § 4.1.

coordination among the remaining firms in a relevant market or makes existing coordination more stable or effective."[42]

Coordinated effects are a valid concern under Section 7. The Commission has successfully challenged mergers that increase the potential for coordination.[43] In cases based on a coordinated-effects theory, "the ultimate issue is whether the challenged acquisition is likely to facilitate collusion."[44] But the Complaint contains no allegations that "the challenged acquisition" itself increases the potential for coordination. Instead, its allegations focus exclusively on the statements and communications from one individual: Mr. Hess. Mr. Hess's alleged statements by themselves do not establish that *this acquisition* will affect the potential for coordination in a way that substantially lessens competition, and, therefore, cannot support a coordinated effects case.[45]

Indeed, none of the allegations are sufficient to sustain a Section 7 claim premised on coordinated effects under the Merger Guidelines the Commission adopted less than two years ago. The 2023 Merger Guidelines provide that the Commission "may conclude that post-merger market conditions are susceptible to coordinated interaction and that the merger materially increases the risk of coordination" if (1) the merger "significantly increases concentration" in a "highly concentrated market"; (2) there is evidence that "firms representing a substantial share in the relevant market appear to have previously engaged in express or tacit coordination," or attempted to do so; or (3) the merger eliminated a "maverick," that is, "a firm with a disruptive presence in a market."[46] But the Complaint contains no allegations suggesting any of these three factors are present.[47]

- The Complaint contains no allegations regarding the transaction's effect on concentration. To the contrary, the transaction would leave overall concentration levels virtually unchanged, as further evidenced by the fact that the merged entity's combined share of the global crude oil market would be minuscule.[48]

- The Complaint does not allege that that either of the merging companies themselves had a history of collusion or were part of any attempts to collude.[49] In addition to the fact that

42 2023 Merger Guidelines § 2.3; see also Phillip Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application ¶ 916 (rev. ed. 2024) ("Today the most orthodox and probably the commonly asserted rationale for challenging mergers is that under appropriate circumstances they can facilitate express collusion or oligopoly interaction among the various firms in the post-merger market, including both those that participated in the merger and those that did not."). By contrast, "[t]he competitive harm from the elimination of competition between the merging firms, without considering the risk of coordination, is sometimes referred to as unilateral effects." 2023 Merger Guidelines § 2.2 n. 17.
43 E.g., *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986) (Posner, J.).
44 *Ibid*.
45 Holyoak Chevron Dissent at 2–4.
46 2023 Merger Guidelines § 2.3.A.
47 Holyoak Chevron Dissent at 3 ("The complaint alleges none of these factors.").
48 Ferguson Chevron Dissent at 1 (stating that "Chevron and Hess together have a two percent share of the relevant market" based on public information); Holyoak Chevron Dissent at 2 ("… post-merger Chevron would have a low single-digit share of the world market for oil and natural gas.").
49 Holyoak Chevron Dissent at 4 ("Taking the allegations and the implications against Mr. Hess as true, neither he nor Hess Corporation ever coordinated or attempted to coordinate with Hess Corporation's rivals.").

Chevron and Hess have minuscule market shares in the global crude oil market, the Complaint contains no allegations that either company previously agreed, or would have incentives to agree in the future, to restrain output.[50]

- The Complaint does not allege that Hess was a maverick firm.[51]

- The Complaint does not allege Mr. Hess's statements constitute an unlawful invitation to collude or illegal collusion in violation of Section 5 of the FTC Act.

The Complaint attempted to obfuscate these deficiencies by pointing to statements by Mr. Hess and alleging that the acquisition would "amplify" his ability to coordinate.[52] But no such speculations obviate the need to satisfy the principles outlined in the Merger Guidelines or put forward allegations that address why the acquisition would make coordination more likely. The Complaint alleges no facts supporting the proposition that Mr. Hess's ability to coordinate would be greater as one of twelve or more Chevron board members rather than as the CEO of Hess.[53] And the Complaint alleges no facts supporting the proposition that any firm in the market would have a greater incentive to coordinate should Mr. Hess join Chevron's Board. In short, the Complaint fails to show that the effect of *this transaction* may be substantially to lessen competition.

B. The Order Is Contrary to the Public Interest Because It Derives from a Complaint that Does Not Allege Competitive Harm

The Commission's Complaint that justified the Order lacked any and all basis to conclude that the effect of the acquisition "may be substantially to lessen competition."[54] By statute, the Commission may issue an administrative complaint only when it has "reason to believe" that the law has been violated.[55] Lacking a viable theory under Section 7, the Complaint provides no "reason to believe" that Chevron's acquisition of Hess would violate any provision of the antitrust laws.[56] Without any evidence—or even allegations—to support harm to competition, the Order itself remedied nothing. The Order therefore provided none of the benefits that Congress intended to secure when it adopted Section 7, while simultaneously imposing costs and burdens upon Chevron despite the effect of its merger being "innocuous" or "procompetitive."[57] Thus any benefits are easily outweighed by the costs. Accordingly, the Complaint and Order never should have been issued.

We therefore conclude that the public interest requires vacating the Order. In determining whether to set aside an order on public interest grounds, the "affirmative need to modify the

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[50] *Id*. at 3 ("the complaint does not allege that the firms in the alleged market will have the post-merger incentive to engage in coordinated behavior.").
[51] *Ibid*. ("Mr. Hess is the alleged coordinator, not the maverick, and his firm is the one being acquired.").
[52] Complaint ¶ 11.
[53] Ferguson Chevron Dissent at 3–4; Holyoak Chevron Dissent at 2–4.
[54] 15 U.S.C. § 18.
[55] 15 U.S.C. § 45(b).
[56] *Id*.; Holyoak Chevron Dissent at 1.
[57] Order Reopening and Vacating in Part and Modifying in Part, *In re Occidental Petroleum Corp.*, 101 F.T.C. 373, 1974 WL 175259, at *1 (F.T.C. Mar. 9, 1983).

order must be weighed against the need for continuing the order."[58] We cannot conceive of any need to continue the Order. It was not based on any cognizable violation of the antitrust laws or loss of competition. It does nothing to protect competition or otherwise guard against coordinated reductions in crude oil output. It thus does not secure to the public any of the benefits Congress intended to confer in Section 7. The costs that the Order imposes on Chevron and Hess outweigh any "need for continuing the [O]rder."[59] Given these circumstances, the Commission's precedent supports reopening the Order.[60]

The need to set aside the Order is great. The Commission must be committed to the rule of law.[61] Effective enforcement of the antitrust laws depends on it. The Commission does not approve or forbid mergers; it must sue to block them in court under Section 7 of the Clayton Act or Section 5 of the FTC Act.[62] For the Commission to prevail in court and prevent anticompetitive mergers, courts must treat the Commission's cases as credible. The Commission undermines that credibility by filing patently indefensible complaints, even when the merging parties are willing to settle. Any complaint the Commission files necessarily is the Commission's statement about what Section 7 means.[63] By issuing this Complaint and Order, the former Commission majority took the indefensible position that allegations of market concentration and future harm are unnecessary for filing a complaint under Section 7, ignoring decades of precedent to the contrary. Such disregard for the facts and the law will only hurt the Commission in court and frustrate its mission.[64]

The Complaint and Order also jeopardize the Commission's ability to shape the development of U.S. antitrust law. Courts treat the Merger Guidelines, which the Commission publishes with the U.S. Department of Justice, as "highly persuasive authorities" in cases brought under the Clayton Act.[65] But as we explain above, the Complaint alleges none of the facts necessary to sustain a coordinated-effects theory under the Guidelines. They allege nothing

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[58] Order Reopening and Setting Aside Order, *In re Albertson's, Inc.*, 110 F.T.C. 1, 1987 WL 874631, at *2 (F.T.C. July 1, 1987).
[59] *Ibid*.
[60] E.g., *ibid*.; Order Reopening the Proceeding and Modifying Cease and Desist Order, *In re The Readers' Digest Ass'n*, 102 F.T.C. 1268, 1971 WL 128725, at *2 (F.T.C. Sept. 30, 1983) (concluding that "the public interest requires eliminating" a provision where "the costs that the [provision] imposes on respondent appear to outweigh any consumer benefits [that it] may confer").
[61] Statement of Chairman Andrew N. Ferguson, *In re Non-Alcoholic Beverages Price Discrimination Investigation*, Matter No. 2210158, at 1 (May 22, 2025) ("The guiding principle of *this* Commission is the rule of law.") (emphasis in original).
[62] Ferguson Chevron Dissent at 6.
[63] *Id*. at 5 ("The Complaint is the Commission's statement of what Section 7 means.").
[64] Disregarding the law when issuing complaints in merger investigations may also expose the Commission to unwanted litigation. See Complaint, *Sheffield v. FTC*, Case No. 4:25-cv-00048 (N.D. Tex. Jan. 21, 2025), Dkt. No. 1 (litigation against the Commission alleging violations of the U.S. Constitution, the Administrative Procedure Act, and the FTC Act). This concern significantly outweighs any risk that vacating the Order will encourage excessive litigation over other orders, a risk that is in any event is alleviated by the fact that, as discussed above, the Complaint was entirely without basis in law. Moreover, given the absence of any cognizable legal theory supporting the Order, there is no basis for any suggestion that the *vacatur* of the Order somehow reflects improper considerations.
[65] *Chi. Bridge & Iron Co. v. FTC*, 534 F.3d 410, 434 n.13. (5th Cir. 2008); see also *Steves & Sons, Inc. v. Jeld-Wen, Inc.*, 988 F.3d 690, 704 (4th Cir. 2021) (describing prior versions of the Guidelines as "'a helpful tool, in view of the many years of thoughtful analysis they represent, for analyzing . . . mergers.'") (quoting *United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017)).

about market concentration, about the merger's effect on concentration, about past collusion or attempted collusion by the merging companies themselves, or about Hess's status as a maverick. We cannot ask courts to rely on the Merger Guidelines if we so casually discard them in our own enforcement decisions.

Furthermore, refusing to follow the law will impair the Commission's merger investigations. Our merger investigations often depend on some degree of cooperation by the merging parties. The Commission encourages merging parties to make voluntary submissions, negotiate Second Requests, and offer timing agreements that give staff sufficient time to complete their analyses.[66] But when the Commission abuses its authority by turning HSR review into an extortion racket, as it did here, merging companies will be far less likely to cooperate.[67] The Commission obtained this settlement from Chevron and Hess by threatening, based on legal theories with no prospect of success in court, to hold up their merger if they refused it; the companies were willing to sacrifice Mr. Hess's potential board appointment to close their deal.[68] But in the future, merging companies may decide at the outset of an investigation that they will be better off if they refuse to cooperate. We cannot ask merging companies to work with staff in good faith if our decision to file a complaint is divorced from the law.

In determining to reopen and vacate the Order, we recognize OPEC is no friend to the United States. Its express goal is to manage crude oil production and raise prices. There may be cases where communications with OPEC member states could be challenged as an independent antitrust violation. But a merger enforcement matter is not an opportunity to target individuals for their public and private statements. And the Commission had no reason to believe the law had been violated in a market as unconcentrated as the oil market solely on the basis of Mr. Hess's alleged statements. We should not use Section 7's prohibition on anticompetitive mergers as an opportunity to address an individual's conduct where that conduct does not itself make the merger unlawful.

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We do not take this decision to reopen and vacate the Order lightly. We recognize "the public interest in the repose and finality of Commission orders."[69] But the purpose of finality and repose in our orders is to make antitrust enforcement stable and predictable: "Maintaining the integrity of the Commission's orders … serves the public interest by ensuring that purchasing, marketing, and other competitive, strategic or consumer decisions can be made against a relatively stable and predictable background of applicable law and rules."[70] Maintaining this Order, however, would do more damage than undoing it. It would signal that even in transactions that do not harm competition, companies could be subject to orders that impose costs on society

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[66] Federal Trade Comm'n, Best Practices for Merger Investigations (Aug. 2015), https://www.ftc.gov/system/files/attachments/merger-review/best_practices_for_merger_investigations_august_2015.pdf.
[67] Ferguson Chevron Dissent at 7 ("But reducing antitrust enforcement to a pay-for-peace racket inflicts serious injury on the rule of law—and on the Commission's credibility.")
[68] *Id*. ("They pay the toll because the Commission has threatened to make their lives difficult if they do not, and they have concluded that it is easier to pay than to resist.").
[69] Requests to Reopen, 65 Fed. Reg. 50636, 50637 n. 11 (Aug. 21, 2000).
[70] *Id*.

without providing any benefits to competition. Vacating this Order best fulfills the Commission's overarching objective of stable and predictable antitrust enforcement.

V. CONCLUSION

The allegations contained in the complaint were far from sufficient to establish that Chevron's acquisition of Hess may result in a substantial lessening of competition. The resulting order therefore did nothing to protect competition or benefit society, but imposed costs, including damaging the rule of law and the Commission's credibility. Continuing to maintain the Order would only add to that damage. We therefore grant the Petition and vacate the Order in its entirety.

Accordingly,

IT IS ORDERED that the Order in Docket C-4814 be, and hereby is, reopened; and

IT IS FURTHER ORDERED that the Order be, and hereby is, vacated in its entirety.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: July 17, 2025