UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of **Exxon Mobil Corporation,** **a corporation.**	**DOCKET NO. C-4815**

ORDER REOPENING AND SETTING ASIDE ORDER

On January 16, 2025, the outgoing Commission majority voted to approve a final Complaint and final Decision and Order ("Order") in connection with Exxon Mobil Corporation's ("Exxon") acquisition of Pioneer Natural Resources Company ("Pioneer").[1] The combined share of Exxon and Pioneer in the relevant market was in the low single digits, resulting in no meaningful increase in concentration.[2] Yet the Complaint alleged that Exxon violated the antitrust laws anyway. As a remedy for the alleged antitrust violations, the Order prohibited Exxon from appointing various individuals affiliated with Pioneer, including the company's founder and former CEO Scott Sheffield, to its Board of Directors.[3]

No court would ever hold that Exxon's acquisition of Pioneer violated the antitrust laws. Nor would any court remedy an anticompetitive acquisition by permitting the acquisition but banning an executive from employment. The outgoing majority's abuse of the merger review process has damaged the rule of law and the Commission's credibility. Mr. Sheffield has sued the Commission for several constitutional and statutory violations, forcing the Commission to defend the Order in federal court.[4] Maintaining the Order will divert even more of the Commission's resources away from matters worthy of investigation, obfuscating antitrust policy and undermining our mission.

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[1] Complaint, *In re Exxon Mobil Corp.*, Matter No. 2410004 (Jan. 16, 2025) ("Complaint"); Decision and Order, *In re Exxon Mobil Corp.*, Matter No. 2410004 (Jan. 16, 2025) ("Order").
[2] See Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 2 (Jan. 17, 2025) ("Exxon and Pioneer's combined share in the alleged global market—and market concentration metrics generally—falls way below any level of concentration that would be conducive to coordination") ("Holyoak Exxon Dissent").
[3] Order at 3.
[4] Complaint, *Sheffield v. FTC*, Case No. 4:25-cv-00048 (N.D. Tex. Jan. 21, 2025), Dkt. No. 1.

The Commission accordingly has determined that the public interest requires that the Order be reopened and set aside. Exxon has informed the Commission that it consents to vacating the Order and waives any rights it may have under Rule 3.72(b) of the Commission's Rules of Practice.[5] The Commission therefore is reopening and setting aside the Order without further process.

I. BACKGROUND

Exxon is a publicly traded, multinational, and vertically integrated producer and refiner of oil and gas headquartered in Spring, Texas. It operates refineries throughout the world. Pioneer, before its acquisition by Exxon, was a publicly traded, independent oil and gas company headquartered in Irving, Texas. It was the largest crude oil producer in the Permian Basin, a major oil field located in western Texas and southeastern New Mexico. The two companies entered into an Agreement and Plan of Merger dated October 10, 2023 ("Merger Agreement"), by which Exxon agreed to acquire Pioneer for $64.5 billion. The terms of the Merger Agreement required Exxon to "take all necessary actions to cause Scott D. Sheffield…. to be appointed to [Exxon's] board of directors" immediately following the acquisition's consummation.[6]

A. The Commission's Complaint and Order

The Commission issued a Complaint in this matter on May 1, 2024,[7] alleging that Exxon's proposed acquisition of Pioneer would violate Section 7 of the Clayton Act[8] and Section 5 of the Federal Trade Commission Act ("FTC Act").[9] The Complaint did not allege that the acquisition would significantly increase market concentration. It did not allege that the acquisition would eliminate substantial head-to-head competition between Exxon and Pioneer. Nor did it allege any vertical theories of harm involving any upstream or downstream markets. Instead, the Complaint alleged that the appointment of Mr. Sheffield to Exxon's Board "would meaningfully increase the likelihood of coordination, and thereby harm competition, in the market for development, production, and sale of crude oil."[10]

According to the Complaint, Mr. Sheffield purportedly sought to coordinate output levels with other crude oil producers to keep production artificially low.[11] The Complaint alleged that he made public and private communications aimed "to organize tacit (and potentially express) coordination of capital investment discipline and oil production levels in the Permian Basin and across the United States."[12] The Complaint further alleged that he communicated directly with officials from OPEC member states about curtailing oil production, and used his relationships with those officials "to encourage OPEC production controls and to discuss U.S. producers' efforts to maintain capital discipline in order to increase Pioneer's profits."[13] Mr. Sheffield's

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[5] 16 C.F.R. § 3.72(b).
[6] Exxon Mobil Corp., Current Report (Form 8-K), Ex. 2.1 at 79 (Oct. 11, 2023).
[7] Complaint, *In re Exxon Mobil Corp.*, Matter No. 2410004 (May 1, 2024) ("Initial Complaint").
[8] 15 U.S.C. § 18.
[9] *Id.* § 45.
[10] Initial Complaint ¶ 2.
[11] *Id.* ¶¶ 1, 5–7, 22, 26–43.
[12] *Id.* ¶ 22.
[13] *Id.* ¶ 34.

appointment to Exxon's board would cause the company's acquisition of Pioneer to violate Section 7, the Complaint reasoned, because he would have "a larger platform from which to advocate for greater industry-wide coordination[.]"[14]

The Complaint also alleged that Mr. Sheffield's appointment to Exxon's Board might constitute an unlawful interlocking directorate.[15] Mr. Sheffield serves on the Board of Directors of The Williams Companies, Inc. ("Williams"), a company focused primarily on natural gas transportation.[16] The Complaint did not allege that Mr. Sheffield's service on both boards would have violated Section 8 of the Clayton Act, which specifically prohibits interlocking directorates between "competitors," so long as the two companies' "competitive sales" surpass certain statutory thresholds.[17] Nor did the Complaint contain any specific allegations about the extent to which Exxon and Williams compete. It merely asserted that if Exxon were to place Mr. Sheffield on the Board, then the acquisition itself would have violated Section 5 of the FTC Act.[18]

To settle the Commission's allegations, Exxon consented to an order that prohibited Exxon from (1) appointing Mr. Sheffield, current Pioneer employees, and certain other persons affiliated with Pioneer to Exxon's Board; (2) appointing Mr. Sheffield to serve as an advisor to Exxon's Board or management; and (3) violating the prohibitions on interlocking directorates in Section 8 of the Clayton Act.[19] Exxon and Pioneer then consummated the acquisition.[20] Now-Chairman Ferguson and Commissioner Holyoak dissented from the Commission's vote approving the order, stating "[t]he Commission should not leverage its merger enforcement authority—or any authority—the way it does today."[21]

During the order's public comment period, Mr. Sheffield defended himself in a 23-page comment.[22] He alleged several deficiencies in the Commission's investigation, including that the former Commission majority did not engage with his counsel concerning the substance of the Complaint's allegations against him.[23] In addition, he provided context for his communications that were quoted in the Complaint, he pointed out claimed inaccuracies in the Complaint's allegations, and he asserted that the Commission's actions deprived him of due process.[24] But the

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14 *Id*. ¶ 44.
15 *Id*. ¶ 9.
16 See The Williams Companies, Inc., Annual Report for the Fiscal Year Ended Dec. 31, 2024 (Form 10-K), at 4 (Feb. 25, 2025) ("Williams is an energy company committed to being the leader in providing infrastructure that safely delivers natural gas products to reliably fuel the clean energy economy.").
17 15 U.S.C. § 19(a).
18 Initial Complaint ¶ 46.
19 Proposed Order at 3.
20 Press Release, ExxonMobil Completes Acquisition of Pioneer Natural Resources (May 3, 2024), https://corporate.exxonmobil.com/news/news-releases/2024/0503_exxonmobil-completes-acquisition-of-pioneer-natural-resources (last accessed July 16, 2025).
21 Joint Dissenting Statement of Comm'r Melissa Holyoak and Comm'r Andrew N. Ferguson, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 3 (May 2, 2024). ("Joint Exxon Dissent").
22 Comment on Behalf of Scott Sheffield, *In re Exxon Mobil Corp.*, Matter No. 2410004 (May 28, 2024), https://downloads.regulations.gov/FTC-2024-0027-0003/attachment_2.pdf.
23 *Id*. at 22.
24 *Id*. at 10–23.

Commission dismissed Mr. Sheffield's concerns[25] and voted to finalize the Complaint and Order on January 16, 2025.[26]

Now-Chairman Ferguson and Commissioner Holyoak again dissented from the Commission's action. Commissioner Holyoak explained in a dissent joined by Now-Chairman Ferguson that the Commission had "fabricated one of the most ludicrous theories of harm in its merger-enforcement history."[27] She concluded that the Order "disregards the public interest," and called on the Commission to scrutinize "the continuing viability of this order."[28]

B. Subsequent Developments

Given the extraordinary nature of the Complaint and Order, the Commission now finds itself embroiled in litigation. Mr. Sheffield sued the Commission in the United States District Court for the Northern District of Texas seeking to have the Order vacated.[29] His complaint alleged that the Commission violated the U.S. Constitution, the Administrative Procedure Act, and the FTC Act, and that, if given the opportunity, he would have been able to challenge the substance of the Commission's allegations against him.[30] Mr. Sheffield's litigation against the Commission is still ongoing, and has been on hold pending the Commission's internal resolution of the matter.

On March 14, 2025, Mr. Sheffield filed a petition under Commission Rule 2.51 to reopen and vacate the Order.[31] Mr. Sheffield's Petition asserted that the public interest requires that the Order be set aside and vacated in its entirety.[32] His Petition advanced three principal arguments: (1) Exxon's acquisition of Pioneer could not be challenged on any established theory of antitrust law; (2) vacating the Order would conserve resources by resolving Mr. Sheffield's pending litigation against the Commission; and (3) the Complaint and Order have numerous defects.[33] The Petition also asserted that, in issuing the Complaint and Order, the Commission violated Mr. Sheffield's First Amendment and due process rights.[34] The Petition received nearly three thousand comments.

Following its review of the Petition, the Commission determined that Mr. Sheffield is ineligible to file a petition to reopen the Order under Section 5(b) of the FTC Act.[35] Section 5(b) provides that only the "person, partnership, or corporation" that is ordered to cease and desist

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[25] Letter from April J. Tabor, Secretary, Fed. Trade Comm'n, to David I. Gelfand, Jeremy J. Calsyn et al. (Jan. 17, 2025).
[26] Press Release, FTC Approves Final Order in Exxon-Pioneer Deal, https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-approves-final-order-exxon-pioneer-deal (Jan. 17, 2025).
[27] Holyoak Exxon Dissent at 1.
[28] *Id*. at 6.
[29] Complaint, *Sheffield v. FTC*, Case No. 4:25-cv-00048 (N.D. Tex. Jan. 21, 2025), Dkt. No. 1.
[30] *Id*. ¶¶ 10–12.
[31] Petition of Scott Sheffield to Reopen and Modify or Set Aside Decision and Order, *In re Exxon Mobil Corp.*, Matter No. 2410004 (Mar. 14, 2025) ("Petition").
[32] *Id*. at 1.
[33] *Id*. at 3–4.
[34] *Id*. at 6–7.
[35] Order Denying Petition to Reopen, *In re Exxon Mobil Corp.*, Matter No. 2410004 (July 14, 2025).

from violating the laws has standing to petition the Commission to reopen a proceeding.[36] Although the Order affects Mr. Sheffield, it binds only Exxon. The Commission therefore concluded that Mr. Sheffield cannot petition to reopen the Order, and accordingly denied his Petition.[37] In so doing, however, the Commission stated that it would consider Mr. Sheffield's arguments in support of reopening and vacating the Order on its own initiative.[38]

II. STANDARDS FOR REOPENING

The Commission may vacate a prior order on its own initiative when it determines the order is contrary to the public interest. The Supreme Court has ruled that "the Commission exercises a broad discretion" in determining what is in the public interest.[39] The Commission's decision to reopen an order is not subject to any "higher standard of public interest" than its initial decision.[40] Instead, "[t]he Commission makes a sufficient showing to re-open a prior order if it shows reasonable grounds to believe that the public interest at the present time would be served by the re-opening."[41]

Section 5(b) of the FTC Act authorizes the Commission to, after notice and opportunity for hearing, modify a prior order whenever it believes: (a) that conditions of fact or of law have changed so as to require such action; or (b) if the public interest so requires.[42] Commission Rule of Practice 3.72(b) sets out the process for the Commission to initiate a proceeding to modify an order.[43] The Rule explains that, whenever the Commission is of the opinion that changed conditions of fact or law or the public interest may require an order to be altered, modified, or set aside, the Commission must serve upon the person subject to the order an order to show cause, stating the changes it proposes to make and the reasons they are deemed necessary.[44] Within thirty days after service of such order to show cause, the respondent may file an answer.[45] If the order is not opposed, or is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause and answer.[46] Exxon has informed the Commission that it consents to vacating the Order and waives any rights it may have under Rule 3.72(b), including the right to file an answer, if the Commission finds it otherwise appropriate to set the Order aside. Accordingly, the Commission may now reopen and set aside the Order, if it determines that the public interest so requires, without serving Exxon with an order to show cause and providing it with a thirty-day period to submit an answer.

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[36] 15 U.S.C. § 45(b); see also 16 C.F.R. §2.51(a) (limiting scope to "[a]ny person, partnership, or corporation *subject to* a Commission decision containing a rule or order") (emphasis added).
[37] Order Denying Petition to Reopen, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 6–7 (July 14, 2025).
[38] *Id*. at 7.
[39] *FTC v. Klesner*, 280 U.S. 19, 28 (1929).
[40] *Elmo Co. v. FTC*, 389 F.2d 550, 552 (D.D.C. 1967).
[41] *Ibid*.
[42] 15 U.S.C. § 45(b).
[43] 16 C.F.R. § 3.72(b).
[44] *Id*. § 3.72(b)(1).
[45] *Ibid*.
[46] *Id*. § 3.72(b)(2).

III. THE ORDER IS CONTRARY TO THE PUBLIC INTEREST

The public interest compels the Commission to revisit the Order. Neither Section 7 of the Clayton Act nor Section 5 of the FTC Act support the Commission's issuance of the Complaint and the associated Order. Because the Complaint failed to plead sufficiently a violation of the antitrust laws 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."[47] 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.'"[48] The Complaint defined the relevant market as the global market for the development, production, and sale of crude oil.[49] But it failed to allege facts demonstrating that the acquisition's effect in this market "is likely to be anticompetitive."[50]

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.'"[51] The Commission may also establish anticompetitive effects with other evidence, such as evidence of substantial head-to-head competition between the merging firms[52] or evidence that the merger may increase prices and reduce output.[53] The Complaint contains no factual allegations regarding the combined firm's market share or the extent of head-to-head competition between Exxon and Pioneer. 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 coordination among the remaining firms in a relevant market or makes existing coordination more stable or effective."[54]

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[47] 15 U.S.C. § 18.
[48] *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)).
[49] Complaint ¶¶ 16–17.
[50] *Tapestry*, 755 F. Supp. 3d at 411.
[51] *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).
[52] 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.").
[53] See 2023 Merger Guidelines § 4.1.
[54] 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

Coordinated effects are a valid concern under Section 7. The Commission has successfully challenged mergers that increase the potential for coordination.[55] In cases based on a coordinated-effects theory, "the ultimate issue is whether the challenged acquisition is likely to facilitate collusion."[56] 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. Sheffield. Mr. Sheffield'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.[57]

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.[58] 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."[59] But the Complaint contains no allegations suggesting any of these three factors are present.[60]

- 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.[61]

- 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. In addition to the fact that Exxon and Pioneer had 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.[62]

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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.

[55] E.g., *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986) (Posner, J.).

[56] *Ibid*.

[57] Joint Exxon Dissent at 1–2.

[58] *Ibid*.

[59] 2023 Merger Guidelines § 2.3.A.

[60] Joint Exxon Dissent at 2 ("Even assuming [these primary factors] accurately summarize the state of the law, they are not satisfied here.").

[61] *Ibid.* ("… the post-merger firm's share in the alleged market will not be substantial. The concentration in this market, and thus, the likelihood of successful coordination post-merger, are virtually unchanged by the proposed acquisition.").

[62] See Holyoak Exxon Dissent at 2 ("nothing in the Complaint suggests a post-merger change in incentives that would make the global market conducive to coordination….").

- The Complaint does not allege that Pioneer was a maverick firm.[63]
- The Complaint does not allege Mr. Sheffield'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. Sheffield and alleging that the acquisition would give Mr. Sheffield a "larger platform from which to advocate for greater industry-wide coordination."[64] 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.[65] The Complaint alleges no facts supporting the proposition that Mr. Sheffield's ability to coordinate would be greater as one of twelve or more Exxon board members rather than as the CEO of Pioneer.[66] And the Complaint alleges no facts supporting the proposition that any firm in the market would have a greater incentive to coordinate should Mr. Sheffield join Exxon's Board. In short, the Complaint fails to show that the effect of *this transaction* may be substantially to lessen competition.

B. The Complaint Fails to Plead a Violation of Section 5

Section 5 of the FTC Act prohibits "unfair methods of competition in or affecting commerce."[67] No matter how Section 5 is interpreted, the Complaint fails to state a Section 5 claim. The only Section 5 claim put forward is that Mr. Sheffield's appointment to Exxon's Board would create an interlocking directorate because Mr. Sheffield currently is a director of Williams, a company focused primarily on natural gas transportation.[68] But the Complaint provides no supporting allegations that Exxon and Williams compete. The Complaint contains no allegations about the nature or extent of competition between Exxon and Williams and no allegations regarding their competitive sales. Lacking this information, the Complaint fails to establish that Mr. Sheffield's appointment to Exxon's Board would create an improper board interlock that violates Section 5.

C. 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."[69] By statute, the

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[63] *Id*. at 2 n. 10 ("Sheffield was the alleged coordinator and not the maverick being removed by the acquisition.").
[64] Complaint ¶ 44.
[65] See Joint Exxon Dissent at 3 ("Further, we are especially concerned with the Complaint's focus on Sheffield's past conduct at Pioneer as an indicator of Exxon's future actions, without any discussion of whether Exxon has incentives to engage in the same behavior.").
[66] Holyoak Exxon Dissent at 2 ("one of twelve board members will likely be less able to orchestrate coordination than could that same individual when he was a chief executive officer (and never coordinated the market)."); see also Dissenting Statement of Comm'r Andrew N. Ferguson, *In re Chevron Corp. and Hess Corp.*, Matter No. 2410008, at 3–4 (Sept. 30, 2024) ("Ferguson Chevron Dissent").
[67] 15 U.S.C. § 45(a)(2).
[68] See The Williams Companies, Inc., Annual Report for the Fiscal Year Ended Dec. 31, 2024 (Form 10-K), at 4 (Feb. 25, 2025) ("Williams is an energy company committed to being the leader in providing infrastructure that safely delivers natural gas products to reliably fuel the clean energy economy.").
[69] 15 U.S.C. § 18.

Commission may issue an administrative complaint only when it has "reason to believe" that the law has been violated.[70] Lacking a viable theory under Section 7, the Complaint provides no "reason to believe" that Exxon's acquisition of Pioneer violated any provision of the antitrust laws.[71] 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 Exxon despite the effect of its merger being "innocuous" or "procompetitive."[72] 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 order must be weighed against the need for continuing the order."[73] 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 Exxon outweigh any "need for continuing the [O]rder."[74] Given these circumstances, the Commission's precedent supports reopening the Order.[75]

The need to set aside the Order is great. The Commission must be committed to the rule of law.[76] 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.[77] 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.[78] 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.

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[70] 15 U.S.C. § 45(b).

[71] *Ibid.*; Joint Exxon Dissent at 1; Holyoak Exxon Dissent at 2.

[72] 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).

[73] 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).

[74] *Ibid*.

[75] 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").

[76] 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).

[77] Ferguson Chevron Dissent at 6.

[78] *Id*. at 5 ("The Complaint is the Commission's statement of what Section 7 means.").

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.[79] 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 about market concentration, about the merger's effect on concentration, about past collusion or attempted collusion by the merging companies themselves, or about Pioneer'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.[80] 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.[81] The Commission obtained this settlement from Exxon by threatening, based on legal theories with no prospect of success in court, to hold up their merger if they refused it; Exxon was willing to sacrifice Mr. Sheffield's potential board appointment to close its deal.[82] 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 take seriously the conduct in which Mr. Sheffield allegedly engaged. 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. Sheffield'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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[79] *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)).

[80] 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.

[81] 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.")

[82] Holyoak Exxon Dissent at 6 ("Exxon and its shareholders, rightfully so, had revealed incentives to close its $64.5 billion transaction. These incentives likely far outweighed Exxon's incentives to protect Mr. Sheffield, a mere potential Exxon board member from another *much* smaller company.") (emphasis in original).

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."[83] 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."[84] 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 without providing any benefits to competition. Vacating this Order best fulfills the Commission's overarching objective of stable and predictable antitrust enforcement.

IV. ORDER

Based on the record detailed above, and in light of Exxon's consent to setting aside the Order and waiver of its Rule 3.72 rights, the Commission has determined that the public interest requires that its January 16, 2025 Decision and Order in this proceeding be vacated in its entirety.

Accordingly, **IT IS ORDERED** that the Decision and Order be, and hereby is, reopened and set aside.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: July 17, 2025

[83] Requests to Reopen, 65 Fed. Reg. 50636, 50637 n. 11 (Aug. 21, 2000).
[84] *Id*.