



Office of Commissioner
Melissa Holyoak

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Dissenting Statement of Commissioner Melissa Holyoak
Joined by Commissioner Andrew N. Ferguson**

*In the Matter of ExxonMobil/Pioneer Resources
Final Decision and Order
Commission File No. 2410004*

January 17, 2025

In the Majority’s Complaint challenging ExxonMobil Corporation’s acquisition of Pioneer Natural Resources Company, the Majority fabricated one of the most ludicrous theories of harm in its merger-enforcement history.¹ As my dissent explained when the Commission issued the Complaint, the Complaint butchered both the economics and law of coordinated effects, provided absolutely no reason to believe the law has been violated, and ignored the public interest by using its Complaint to obtain a consent agreement (“Cr e

Mr. Sheffield’s public comment somehow manages to make the Complaint—despite its many failings—even more embarrassing for the Commission than it appeared back in May of 2024. His comment alleges that the Majority relied upon a “false narrative”¹⁷ to condemn the proposed transaction and Mr. Sheffield personally. *First*, Mr. Sheffield argued that the Complaint misunderstood the meaning of “capital discipline” as used by Mr. Sheffield and the oil industry.¹⁸ Rather than some sort of nefarious output reduction, “capital discipline” refers to a strategy by Pioneer to attract and retain investors. “Pioneer reduced its operating and capital costs and changed its capital framework in 2019 so that it would return free cash flow to shareholders in the form of buybacks and dividends, which are themselves important differentiators in evaluating companies in capital markets, while still continuing to grow oil production.”¹⁹ Mr. Sheffield argues that this observation changes the context an

Lawful petitioning of one government agency *should not* be the basis of presuming that Mr. Sheffield is—and will continue to be—a lawless colluder under the antitrust laws. I find such reasoning nonsensical. The Majority’s letter also asserts that including Mr. Sheffield’s communications in the complaint does not violate his First Amendment rights.³⁷ This is entirely beside the point. Again, the concern is that the Majority uses past lawful conduct to presume lawless conduct will occur in the future.

Third, the Majority’s letter contends that Mr. Sheffield was not deprived of due process because he is not a party to the agreement, he had advance notice of the contents of the Complaint and chose not to engage, and the timing constraints were dictated by Exxon and Pioneer.³⁸ The Majority elevates form over substance. Mr. Sheffield’s name appears *47 times* in an *eight-page*

interests of an individual.⁴³ 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. In short, despite expressions otherwise, the Majority has revealed that they are willing to align with and support the interests of large companies—at the expense of individuals—when it allows them to coerce a consent that appeases political pressure.

As for the timing concerns, the Majority again relies upon Exxon as a scapegoat. No doubt, merger investigations move very quickly,⁴⁴ but the HSR Act dictates the speed at which merger investigations move and the Commission has been navigating statutory timelines for nearly 50 years for thousands of transactions per year.⁴⁵ Such timelines fail to excuse the Majority’s Complaint in this case.

The Majority’s Complaint was woefully inadequate. Mr. Sheffield’s comment illuminates the failings of the Complaint. There is no reason to believe that Section 7 has been violated, which invalidates any justification for the order. Today’s vote should vacate the order, but instead the Majority’s pre-inauguration swan song disregards the public interest. As the new administration replaces the old, the public interest considerations will be more than lip service, and the continuing viability of this order should be scrutinized.⁴⁶

Roots of America’s Market Power Problem, 127 YALE L. J. F. 960, 961 (2018) (“Dominant firms’ economic power allows them, in turn, to concentrate political power, which they then use to win favorable policies and further entrench their dominance”).

⁴³ The Majority’s letter makes much of the fact that Mr. Sheffield “voluntarily” relinquished his candidacy as a member of Exxon’s board. Letter to Sheffield at 2. Based upon my understanding, Mr. Sheffield did not “voluntarily” relinquish his right. And if his comment letter did not make this clear, my understanding of the facts suggests that any indication of voluntarily relinquishment preceded a complaint, consent order, and press release that maligned Mr. Sheffield. I also question to what extent the Majority’s posture and Mr. Sheffield’s fiduciary duties impacted any “voluntary” behavior.

⁴⁴ The speed certainly requires Commission staff to make strategy decisions based upon imperfect or asymmetrical information.

⁴⁵ Except for 2009, more than one thousand transactions have been reported under the HSR Act in every single year since 1982. *See, e.g.*, FED. TRADE COMM’N & U.S. DEP’T OF JUST., THIRTEENTH ANNUAL REPORT TO CONGRESS PURSUANT TO SECTION 201 OF THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976, at Appendix B (Fiscal Year 1990); FED. TRADE COMM’N & U.S. DEP’T OF JUST., HART-SCOTT-RODINO ANNUAL REPORT, at 1, Figure 1 (Fiscal Year 2014); FED. TRADE COMM’N & U.S. DEP’T OF JUST., HART-SCOTT-RODINO ANNUAL REPORT, at 1, Figure 1 (Fiscal Year 2023). There were 4,926 transactions reported in 2000, the highest number of filings in a fiscal year in the history of the HSR Act. FED. TRADE COMM’N & U.S. DEP’T OF JUST., ANNUAL REPORT TO CONGRESS FISCAL YEAR 2005, at 2 Figure 1 (2005).

⁴⁶ *See* 15 U.S.C. § 45(b) (“[T]he Commission may . . . reopen and alter, modify, or set aside, in whole or in part any report or order . . . , whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require . . .”).