UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

January 17, 2025

Anonymous

RE: ***In the Matter of Exxon Mobil Corporation, Docket No. C-4815***

Dear Commenter Anonymous:

Thank you for commenting on the Federal Trade Commission's proposed consent order in the above-referenced proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

The Commission took action because it had reason to believe that the proposed acquisition of Pioneer Natural Resources Company ("Pioneer") by Exxon Mobil Corporation ("Exxon") violated Section 7 of the Clayton Act. Specifically, the Commission had reason to believe that the proposed acquisition would have meaningfully increased the likelihood of coordination, and thereby harmed competition, in the market for the development, production, and sale of crude oil.

As part of the proposed acquisition, Exxon agreed to "take all necessary actions to cause Scott D. Sheffield … to be appointed to the board of directors" of Exxon after the proposed transaction closed. As alleged in the Complaint, the Commission had reason to believe that Mr. Sheffield had worked to organize anticompetitive output reductions between and among crude oil producers and production decisionmakers through public statements and private communications. This was a relevant to the proposed transaction because Mr. Sheffield's appointment to Exxon's board of directors would have provided him a larger platform from which to organize anticompetitive output reductions, and would give him decision-making input and access to competitively sensitive information of Exxon. Additionally, the Commission had reason to believe that Mr. Sheffield's appointment to Exxon's board of directors would violate Section 5 of the FTC Act by virtue of his position on the board of The Williams Companies, Inc.

To remedy the anticompetitive effects of the proposed transaction, the proposed order agreed to by the parties prohibits Exxon from appointing Mr. Sheffield, then-current employees of Pioneer, and certain other persons affiliated with Pioneer to its board, requires Exxon to comply with Section 8 of the Clayton Act, 15 U.S.C. § 19, and requires Exxon to attest on a regular basis that it is complying with the Order.

The Commission welcomes public input on competition and consumer protection issues, including the comments submitted in this matter. After carefully considering your comment, along with another submitted in this proceeding, we conclude that the public interest is best served by issuing the proposed order in this matter in final form without alteration. The final

Order and other relevant materials are available from the Commission's website at http://www.ftc.gov.

By direction of the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor
Secretary

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David I. Gelfand
Jeremy J. Calsyn
Nowell D. Bamberger
Joseph M. Kay
Washington, D.C.

RE: ***In the Matter of Exxon Mobil Corporation, Docket No. C-4815***

Dear Mr. Gelfand, Mr. Calsyn, Mr. Bamberger, and Mr. Kay:

Thank you for commenting on the Federal Trade Commission's proposed consent order ("proposed order") in the above-referenced proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

The Commission took action because it had reason to believe that the proposed acquisition of Pioneer Natural Resources Company ("Pioneer") by Exxon Mobil Corporation ("Exxon") violated Section 7 of the Clayton Act. Specifically, the Commission had reason to believe that the proposed acquisition may have meaningfully increased the likelihood of coordination, and thereby harmed competition, in the market for the development, production, and sale of crude oil.

As part of the proposed acquisition, Exxon agreed to "take all necessary actions to cause Scott D. Sheffield … to be appointed to the board of directors" of Exxon after the proposed transaction closed. As alleged in the complaint, the Commission had reason to believe that Mr. Sheffield had worked to organize anticompetitive output reductions between and among crude oil producers and production decisionmakers through public statements and private communications. According to the complaint, this was a relevant to the proposed transaction because Mr. Sheffield's appointment to Exxon's board of directors would have provided him a larger platform from which to organize anticompetitive output reductions, and would give him decision-making input and access to competitively sensitive information of Exxon. Additionally, the Commission had reason to believe that Mr. Sheffield's appointment to Exxon's board of directors would violate Section 5 of the FTC Act by virtue of his position on the board of a competitor, The Williams Companies, Inc.

To remedy the anticompetitive effects of the proposed transaction, the proposed order agreed to by the parties prohibits Exxon from appointing Mr. Sheffield, then-current employees of Pioneer, and certain other persons affiliated with Pioneer to its board, requires Exxon to

comply with Section 8 of the Clayton Act, 15 U.S.C. § 19, and requires Exxon to attest on a regular basis that it is complying with the proposed order.

As explained further below, we have considered your comments and conclude that the public interest is best served by issuing the proposed order in final form without modification.

First, we understand from your comment that Mr. Sheffield believes he was deprived of his appointment to Exxon's board of directors without due process. That is incorrect. As an initial matter, Mr. Sheffield is not a party to the proposed order, and the proposed order does not deprive Mr. Sheffield of anything to which he was entitled. In the proposed order, Exxon entered into an agreement with the Commission about the composition of its own corporate board. This appears to be a valid exercise of Exxon's rights under the merger agreement. Although Mr. Sheffield did not take this position before the proposed order was in place, Mr. Sheffield now suggests that he was entitled to an Exxon board seat in connection with the proposed transaction and may have been a "third party beneficiary" of the merger agreement. The merger agreement states the opposite: "no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns." Mr. Sheffield is not a party to the merger agreement.

In any case, the Commission undertook a substantial investigation and process relating to the proposed transaction prior to the entry of the proposed order, and Mr. Sheffield was involved in that process. After learning of the Commission's concerns, Exxon determined it was in Exxon's interest not to seat Mr. Sheffield on Exxon's board. Commission officials held a videoconference with Mr. Sheffield's counsel to discuss the facts and proceedings before Exxon entered the proposed order. Consistent with Commission practice, Exxon and Pioneer reviewed and provided comments on drafts of the Commission's complaint and proposed order, prior to the Commission's vote to issue them for public comment. Counsel for Mr. Sheffield has acknowledged that Mr. Sheffield also received a copy of the draft complaint and proposed order prior to the Commission's vote to issue them for public comment. Mr. Sheffield, through his counsel, therefore had notice and opportunity to respond—or to ask Pioneer to provide the Commission with additional time to allow Mr. Sheffield to address statements and communications described in the Commission's complaint—before the Commission issued the complaint and proposed order for public comment.

Mr. Sheffield did not avail himself of the opportunity to respond to those allegations before the proposed order was entered, nor did he request further engagement with the Commission. However, circumstances show that Mr. Sheffield was coordinating with the merging parties in that period. For example, counsel for the parties informed the Bureau of Competition that Mr. Sheffield was willing to irrevocably withdraw his candidacy as a member of Exxon's board to complete the transaction; in fact, Mr. Sheffield had offered to do so voluntarily, as Mr. Sheffield's counsel later acknowledged. In short, even assuming the proposed order—entered into by a third party, Exxon—could be the basis for a due process

violation, because Mr. Sheffield had notice and an opportunity to raise his concerns, the Commission did not deprive him of due process.

As you know, the time available for Commission action was limited by the time periods provided under the Hart-Scott-Rodino Act. Exxon and Pioneer controlled the timing of consummation of their transaction and could have provided the Commission with additional time for investigation. Yet neither Exxon, Pioneer, nor Mr. Sheffield requested or offered additional time to advocate or provide explanations for Mr. Sheffield's communications that served as a basis for the Commission's complaint and proposed order. In fact, the parties refused Commission requests to materially lengthen the time for investigation and engagement. We also understand that Mr. Sheffield has concerns that the Commission included purportedly First Amendment-protected speech in its complaint. The Commission finds that Mr. Sheffield's speech and actions can support the Commission's complaint and proposed order and their inclusion in the complaint does not violate Mr. Sheffield's First Amendment rights.

Second, we understand from your comment that Mr. Sheffield has a number of other concerns about the proposed order, including that it restricts Exxon from taking certain actions without Commission approval in the future. We also understand from your comment that Mr. Sheffield believes that the allegations in the complaint, as well as the complaint's overarching narrative, are untrue. We understand that Mr. Sheffield believes that the proposed order is beyond the scope of the Commission's authority. We also understand that Mr. Sheffield had concerns that the proposed order was overly broad in restricting Exxon from appointing certain other former Pioneer employees and directors to the Exxon board. Through your comment, we understand that Mr. Sheffield requests the Commission withdraw the complaint and vacate the proposed order without further action.

After a careful review of the evidentiary record, as well as your comment's claims about the facts and information you shared in your meetings with Commissioners, we find that the record in this case supports the complaint's allegation that Mr. Sheffield, through various public statements and private communications, has worked to organize anticompetitive output reductions between and among crude oil producers and production decisionmakers. We note that the facts set forth in your letter are not always consistent with Mr. Sheffield's written communications during the relevant time period. We further note that your comment selectively reveals certain material that the Commission was statutorily obligated to redact in the public version of its complaint. For example, you have declined to un-redact the underlying materials in paragraph 5 of the public version of the complaint and the communication redacted in paragraph 36 of the public version of the complaint. We believe those communications and the broader materials produced by the parties, when read in context, support the conclusion that Mr. Sheffield worked to organize anticompetitive output reductions between and among crude oil producers and production decisionmakers through public statements and private communications, and therefore the Commission had reason to believe that his appointment to Exxon's board would have violated Section 7 of the Clayton Act.

As a consequence, the Commission sought to remedy the anticompetitive effects of the proposed transaction by prohibiting Exxon from appointing Mr. Sheffield, then-current Pioneer employees, and certain other persons affiliated with Pioneer to its board, requiring Exxon to comply with Section 8 of the Clayton Act, 15 U.S.C. § 19, and requiring Exxon to attest on a regular basis that it is complying with the order.

The Commission welcomes public input on competition and consumer protection issues, including the comments submitted in this matter. After carefully considering your comment, along with another submitted in this proceeding, we conclude that the public interest is best served by issuing the proposed order in this matter in final form without alteration. The final Order and other relevant materials are available from the Commission's website at http://www.ftc.gov.

By direction of the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor
Secretary