

Before the Federal Trade Commission
Response to Sheffield Petition to Reopen; Docket No. C-4815
Written Comments from the American Economic Liberties Project¹
May 12, 2025

We submit this comment in opposition to the petition of Scott Sheffield,² the former CEO of Pioneer Natural Resources (Pioneer), to “set aside and vacate” the Federal Trade Commission (FTC or Commission)’s Decision and Order³ prohibiting ExxonMobil Corporation (Exxon) from appointing Mr. Sheffield or other Pioneer employees to Exxon’s Board, or otherwise retaining Mr. Sheffield to serve Exxon as an advisor, in light of Exxon’s acquisition of Pioneer.

Oil price-fixing schemes are estimated to have cost American families between \$2,000 to \$4,000 a year in 2021— a quarter of the increase in inflation that year.⁴ Although prices have declined from their pandemic-era peak, the need for continued vigilance in oil markets is underscored by the fact that the average nationwide price for a gallon of gas is five cents higher this month⁵ than it was when President Trump took office.⁶ Ensuring competitive oil markets is essential to fulfill the “cost-of-living crisis” executive order President Trump issued on his first day of office.⁷

¹ The American Economic Liberties Project is a nonpartisan, nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.

² Petition of Chevron Corp. & Hess Corp. to Reopen & Set Aside Order, 90 Fed. Reg. 16130 (Apr. 17, 2025) (petition to FTC, Docket No.C-4818), <https://www.federalregister.gov/documents/2025/04/17/2025-06562/petition-of-scott-sheffield-to-reopen-and-set-aside-order>. We are also submitting a separate comment to oppose the petition of John B. Hess seeking to set aside and vacate a similar order directed at Chevron Corporation with respect to its acquisition of Hess Corporation. It is highly concerning that two of the largest oil companies might both bring on board executives who have close connections with OPEC officials.

³ In re Exxon Mobil Corp., FTC Order, File No. 241-0004, https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerorderredacted.pdf.

⁴ Matt Stoller, *An Oil Price-Fixing Conspiracy Caused 27% of All Inflation Increases in 2021*, BIG by Matt Stoller (May 3, 2025), <https://www.thebignewsletter.com/p/an-oil-price-fixing-conspiracy-caused>.

⁵ *Quiet Week at the Pump as Gas Prices Fluctuate Slightly*, AAA Fuel Prices (May 3, 2025), <https://gasprices.aaa.com/quiet-week-at-the-pump-as-gas-prices-fluctuate-slightly/>.

⁶ *Gas Prices Stick to the Middle Lane with a Modest Jump at the Pump*, AAA Fuel Prices (Jan. 23, 2025), <https://gasprices.aaa.com/gas-prices-stick-to-the-middle-lane-with-a-modest-jump-at-the-pump/>.

⁷ *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis*, THE WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/> (quote cleaned up).

The FTC ordered⁸ Exxon to take prophylactic measures against collusion and board interlocks in connection with Exxon’s acquisition of Pioneer to avoid “meaningfully increasing the risk of coordination” in the crude oil market⁹– a market already rigged by hostile foreign actors. As explained in the 2023 Merger Guidelines– which Chair Andrew Ferguson affirmatively adopted upon his elevation to Chair¹⁰– even “[e]vidence of failed attempts at coordination in the relevant market suggest that successful coordination was not so difficult as to deter attempts, and a merger reducing the number of rivals may tend to make success more likely.”¹¹ The FTC’s order appropriately prevents one of the largest oil companies in the world from increasing its likelihood of collusion in an already collusion-prone market by bringing on a board member who has cozy relationships with collusive foreign actors.

Scott Sheffield has a demonstrated appetite for market coordination, and the Commission’s complaint details a variety of communications and meetings where Mr. Sheffield sought to align U.S. oil production with that of Organization of the Petroleum Exporting Countries (OPEC) and an expanded group of countries called OPEC+¹²– which would hike gas prices for millions of Americans. Approximately *half* of all global crude oil production is thus subject to foreign cartel coordination.¹³ And as Chair Ferguson wrote in a similar matter, “OPEC’s member states include some of America’s bitterest foes,” so American coordination with such state actors is particularly “disquieting.”¹⁴

⁸ In re Exxon Mobil, *supra* note 3,

https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerorderredacted.pdf; (Section II orders that: “A. Respondent shall not, directly or indirectly, nominate, designate, or appoint Scott Sheffield (i) to the Exxon Board or (ii) to serve in an advisory capacity in any way to the Exxon Board or to Respondent’s management. B. For a period of 5 years, Respondent shall not, directly or indirectly, nominate, designate, or appoint a Pioneer Representative to the Exxon Board. C. No person shall at the same time, serve as an Officer or Director of Exxon Mobil Corporation, and as an Officer or Director of another corporation if such interlock would be in violation of the terms of Section 8 of the Clayton Act, 15 U.S.C. § 19 with respect to Respondent.”). Under the terms of Exxon and Pioneer’s Merger Agreement, Exxon was required to take all necessary actions to appoint Mr. Sheffield to Exxon’s Board of Directors. *See* ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT, *In re Exxon Mobile Corp.*, File No. 241-0004, https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneraapc_0.pdf.

⁹ *See* ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT, *In re Exxon Mobile Corp.*, File No. 241-0004,

https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneraapc_0.pdf.

¹⁰ Memorandum of Chair Ferguson, *In re Merger Guidelines*, (FTC, Feb. 18, 2025),

https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-memo-re-merger-guidelines.pdf.

¹¹ U.S. Dep’t of Justice & Fed. Trade Comm’n, 2023 Merger Guidelines (Dec. 18, 2023),

https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

¹² *In re Exxon Mobile Corp.*, *supra* note 3,

(https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneercomplaintredacted.pdf).

¹³ Compl., *In re Chevron Corp. & Hess Corp.* (FTC, Docket No. C-4814, Jan. 16, 2025),

https://www.ftc.gov/system/files/ftc_gov/pdf/2410008c4814chevronhesscomplaintpublic.pdf.

¹⁴ Dissenting Statement of Commissioner Ferguson, *In re Chevron Corp. & Hess Corp.*, File No. 241-0008 (Sept. 30, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/chevron-hess-ferguson-statement_0930.pdf.

Mr. Sheffield did not hide his views on suppressing production, lamenting that operators had “produced too much oil” in the past and boasting to the business press that “[a]ll the shareholders that I’ve talked to said that if anybody goes back to growth, they will punish those companies.”¹⁵ But he did not stop at public celebration of “disciplined” output. According to the complaint, after dining privately with OPEC’s General Counsel in 2017, Mr. Sheffield cultivated ongoing relationships with OPEC officials for years.¹⁶ Although Mr. Sheffield’s petition to set aside the FTC’s order claims that “almost all” of his private WhatsApp messages to senior OPEC officials consisted of publicly available news, the petition does not deny that some messages contained non-public information, nor does it deny that Mr. Sheffield had private contacts that were not memorialized in writing.¹⁷ Even in redacted form, the complaint clearly indicates that Mr. Sheffield had the means, motive, and opportunity to collude. As then-Chair Lina Khan explained, “[w]hen market actors speak and act as if they can collude, we should not ignore this direct evidence or subordinate it to less direct indicators of market realities.”¹⁸

While the FTC’s complaint provides a sufficient basis for a consent decree pursuant to Section 7 of the Clayton Act,¹⁹ we note that the complaint also alleged a cause of action under Section 5 of the Commission’s authorizing statute, the FTC Act.²⁰ This provides an additional statutory foundation for preventing Exxon from placing Mr. Sheffield on its board.²¹ Section 5 provides broader authority than the Clayton Act does to address conduct that does not result in an actual

¹⁵ Derek Bower & David Sheppard, *US shale drillers cannot contain oil price rise, Pioneer boss says*, FINANCIAL TIMES (Oct. 3, 2021), <https://www.ft.com/content/c21eb656-8d09-45ce-a13a-7d8419426b05>.

¹⁶ Compl., *In re Exxon Mobile Corp.*, (FTC 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneercomplaintredacted.pdf.

¹⁷ Petition Of Scott Sheffield To Reopen And Modify Or Set Aside Decision And Order, *In re Exxon Mobile Corp.*, (FTC Docket No. C-4815), https://www.ftc.gov/system/files/ftc_gov/pdf/C4815PETITIONOFSCOTTSSHEFFIELDTOREOPENANMODIFYORSETASIDEDECISIONANDORDERPUBLIC.pdf.

¹⁸ Statement of Chair Khan, *In re Exxon Mobil Corp.*, File No. 241-0004 (May 2, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerlmkstmt1_0.pdf. Where direct evidence exists, there is no need to resort to indirect evidence such as market shares. *See, e.g.*, 2023 Merger Guidelines at 18 (“the Agencies first assess whether one of the merging firms has a dominant position based on direct evidence **or** market shares showing durable market power.”) (bold added).

¹⁹ For a textualist interpretation of the Clayton Act, *see* Basel Musharbash & Daniel A. Hanley, *Toward a Merger Enforcement Policy That Enforces the Law: The Original Meaning and Purpose of Section 7 of the Clayton Act*, 63 DUQUESNE L. R. 1, (2025), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4745310.

²⁰ Compl., *In re Exxon Mobile Corp.*, (FTC 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneercomplaintredacted.pdf.

²¹ Statement of Chair Khan, joined by Commissioners Bedoya & Slaughter, On the Adoption of the Statement of Enforcement Policy Regarding Unfair Methods of Competition Under Section 5 of the FTC Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Section5PolicyStmtKhanSlaughterBedoyaStmt.pdf. As Chair Ferguson has aptly observed elsewhere, “the Constitution does not permit the Executive Branch to suspend the enforcement of a law on policy grounds.” *See*, Dissenting Statement of Commissioner Ferguson, *In re Southern Glazer’s Wine and Spirits*, LLC Matter No. 211-0155 (Dec. 12, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-southernglazers-statement.pdf.

agreement or conspiracy,²² but which nonetheless constitutes a unilateral invitation to collude. Even if Mr. Sheffield's invitation via text message to OPEC officials to collude was unsuccessful, and regardless of how frequently they were in touch, such an invitation may still violate Section 5.²³

Moreover, the complaint addressed Mr. Sheffield's concurrent service on the board of The Williams Companies, Inc. (Williams). Serving on the board of Williams, which operates in sectors that overlap with Exxon's business, raises additional concerns about potential conflicts of interest and violations of Section 8 of the Clayton Act, which prohibits an officer or director of one firm from simultaneously serving as an officer or director of a competing firm, as well as Section 5 of the FTC Act. Even if Mr. Sheffield were to resign from Williams to join Exxon's board, that would not fully resolve competition concerns. As the FTC has explained in another tribunal, "if companies use interlocking directors to exchange competitively sensitive information... they may frustrate competition so long as the information remains sensitive and in their possession."²⁴

The FTC's decision to bar Exxon from putting on its Board a member who would meaningfully increase the likelihood of industry collusion was critical to protect American consumers from potential price-fixing, uphold competitive integrity in the oil and gas industry and serve as a deterrent to future would-be price colluders.²⁵ As the majority explained, this order "mark[s] an

²² See, e.g., *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1196 (9th Cir. 2015) ("[U]nlike § 1 of the Sherman Act, a violation of § 5 of the FTC Act does not require allegation and proof of a contract, combination, or conspiracy.").

²³ See, e.g., *In re Valassis Commc'ns, Inc.*, 141 F.T.C. 247, 272 (2006) (consent order for attempted tacit collusion, with no finding that defendant successfully reached agreement with competitor); *In re U-Haul Intl., Inc.*, 149 F.T.C. 1, 37 (2010) (same). Moreover, public statements can establish collusion. See, e.g., *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 733 F. Supp. 2d 1348, 1360 (N.D. Ga. 2010) ("Plaintiffs need not allege the existence of collusive communications in 'smoke-filled rooms' in order to state a § 1 Sherman Act claim. Rather, such collusive communications . . . occur in speeches at industry conferences, announcements of future prices, statements on earnings calls, and in other public ways."); *In re Coordinated Pretrial Proceedings in Petrol. Prod. Antitrust Litig.*, 906 F.2d 432, 447 (9th Cir. 1990) ("[T]he form of the exchange—whether through a trade association, through private exchange . . . or through public announcements of price changes—should not be determinative of its legality." (quoting RICHARD A. POSNER, *ANTITRUST LAW: AN ECONOMIC PERSPECTIVE* 146 (1976))). Empirical evidence confirms that price fixing is accomplished through public statements about output "discipline." See, e.g., Gaurab Aryal, Federico Ciliberto & Benjamin T. Leyden, *Public Communication and Collusion in the Airline Industry* 3-6 (Becker Friedman Inst. for Resch. in Econ., Working Paper No. 2018-11, 2021) (finding that when airlines discuss "capacity discipline" on earnings calls, they subsequently reduce supply).

²³ See, e.g., *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1196 (9th Cir. 2015) ("[U]nlike § 1 of the Sherman Act, a violation of § 5 of the FTC Act does not require allegation and proof of a contract, combination, or conspiracy.").

²⁴ Statement of Interest of the U.S. & Fed. Trade Comm'n, https://www.ftc.gov/system/files/ftc_gov/pdf/2323044openaimuskvaltmanamicusbrief.pdf (page 9).

²⁵ Mr. Sheffield's hyperbolic assertion in his petition that his "rights" were "trampled upon" by the FTC's order is contradicted by his admission that he was not even a party to the merger agreement between Exxon and Pioneer.

important step towards ensuring that U.S. oil producers are serving as a competitive check on OPEC+ rather than subordinating their independent decision-making to the goals set by a cartel.”²⁶

For the foregoing reasons, we urge the FTC to deny Mr. Sheffield’s petition, uphold its original decision, and continue to enforce measures that prevent anti-competitive practices in our energy markets. We also urge the FTC to open an investigation into Mr. Sheffield’s apparent collusion.

Sincerely,

American Economic Liberties Project

Nor does he assert that he was a third-party beneficiary of the agreement. Mr. Sheffield has neither a contractual nor a Constitutional right to an anticompetitive Board seat.

²⁶ Statement of Chair Khan, joined by Commissioners Bedoya & Slaughter, *In re Chevron Corp. & Hess Corp.*, FTC File No. 241-0008 (Sept. 30, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/statement-of-chair-lina-m-khan-joined-by-commr-rebecca-kelly-slaughter-and-commr-alvaro-bedoya-in-the-matter-of-chevron-corporation-hess-corporation.pdf.