ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Exxon Mobil Corporation, File No. 241-0004

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Exxon Mobil Corporation ("Exxon"). Pursuant to an Agreement and Plan of Merger dated October 10, 2023 ("Merger Agreement"), Exxon and Pioneer Natural Resources Company ("Pioneer") intend to combine their businesses through a merger ("the Proposed Acquisition"). The Proposed Acquisition will further enlarge Exxon – already the largest multinational supermajor oil company – and make Exxon by far the largest producer of crude oil in the Permian Basin, the United States' top oil-producing region. The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the Proposed Acquisition.

Through public statements and private communications, Pioneer founder and former CEO Scott D. Sheffield has campaigned to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including the Organization of Petroleum Exporting Countries ("OPEC"), and a related cartel of other oil-producing countries known as OPEC+. Rather than seeking to compete against OPEC and OPEC+ through independent competitive decision-making, Mr. Sheffield's goal in recent years at Pioneer has been to align U.S. oil production with OPEC and OPEC+ country output agreements, thereby cementing the cartel's position and sharing in the spoils of its market power.

Under the terms of Exxon and Pioneer's Merger Agreement, Exxon is required to take all necessary actions to appoint Mr. Sheffield to Exxon's Board of Directors. Prior attempts to coordinate between Mr. Sheffield and firms representing a substantial share of the relevant market are highly informative as to the market's susceptibility to coordination. The appointment of Mr. Sheffield to Exxon's board as a result of the Proposed Acquisition will expand the scope of his reach to promote his anticompetitive messaging and therefore meaningfully increases the likelihood that these attempts at coordination will bear fruit. In particular, Mr. Sheffield's post-merger appointment to Exxon's board would give him a larger platform from which to advocate for greater industry-wide coordination as well as decision-making input on not only the largest producer in the Permian Basin, but also the largest multinational supermajor oil company. Under the terms of the proposed Decision and Order ("Order"), Exxon is prohibited from appointing Mr. Sheffield, current Pioneer employees, and certain other persons affiliated with Pioneer to its board, required to comply with Section 8 of the Clayton Act, 15 U.S.C. § 19, and required to attest on a regular basis that it is complying with the Order.

The Consent Agreement is thus designed to remedy allegations in the Commission's Complaint that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by meaningfully increasing the risk of coordination in the relevant market. Absent a

remedy, placing Mr. Sheffield on the Exxon board would harm the competitive process. The merger, if consummated, would also violate Section 5 of the FTC Act by creating a board interlock among competitors. Mr. Sheffield currently serves on the board of The Williams Companies, Inc. ("Williams"), which operates a host of natural gas pipelines; natural gas gathering, processing, and treating assets; natural gas and natural gas liquids processing assets; crude oil transportation assets; and crude oil and natural gas production. Exxon and Williams are competitors of each other.

The proposed Order presents significant relief for these concerns and imposes effective and administrable relief. By restricting Mr. Sheffield and other Pioneer representatives from Exxon's board, the proposed Order makes clear that signaling coordinated price, output, or other competitive terms between market participants, particularly in the oil and gas industry, may give rise to legal liability. This Consent Order remedies the harm from the agreement to place Mr. Sheffield on the Exxon board. The Commission will continue to investigate mergers and acquisitions activity in the oil and gas industry and its risks to competition, as well as problematic unilateral signaling and coordination and attempted coordination among market participants.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or finalize the proposed Order.

II. THE MERGING PARTIES

Exxon is a public multi-national vertically integrated refiner and oil and gas producer, with revenues of over $340 billion and operations in the United States and worldwide. Exxon is headquartered in Spring, Texas, and operates refineries throughout the world that produce transportation fuels and petrochemicals.

Pioneer is a public independent oil and gas company headquartered in Irving, Texas with revenues of nearly $20 billion. Pioneer produces crude oil and associated natural gas in the Permian Basin.

III. THE AGREEMENT AND PLAN OF MERGER

On October 10, 2023, Exxon and Pioneer entered into the Merger Agreement, pursuant to which Exxon agreed to acquire Pioneer for an enterprise value of approximately $64.5 billion. The terms of the Merger Agreement state that Exxon "shall take all necessary actions to cause Scott D. Sheffield . . . . to be appointed to the board of directors" immediately following the consummation of the Proposed Acquisition. The Commission's Complaint alleges that this effect – Mr. Sheffield's appointment to the Exxon board – of the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. Moreover, because Mr. Sheffield's appointment to Exxon's board would create a board interlock among competitors, the Proposed Acquisition, if consummated, would also violate Section 5 of the FTC Act.

IV. RELEVANT MARKET

A relevant product market in which to assess the Proposed Acquisition's anticompetitive effects is the development, production, and sale of crude oil. Crude oil is the main input to produce gasoline, diesel fuel, heating oil, and jet fuel. Crude oil purchasers generally cannot switch to alternative commodities without facing substantial costs. Exxon and Pioneer are engaged in the development, production, and sale of crude oil. A relevant geographic market in which to analyze the Proposed Acquisition is global.

V. EFFECTS OF THE PROPOSED ACQUISITION

The Commission's Complaint alleges that the Proposed Acquisition poses risks to competition by meaningfully increasing the risk of coordination among remaining firms in the relevant market. The 2023 Merger Guidelines identify three primary factors that indicate a merger may increase the risk of coordination, including the existence of prior actual or attempted attempts to coordinate in the market. If any of the three primary factors are met, the Agencies "may conclude that post-merger market conditions are susceptible to coordinated interaction and that the merger materially increases the risk of coordination."

Mr. Sheffield's history of attempting to coordinate with other oil industry participants suggests that the market is susceptible to anticompetitive coordination – a risk the Proposed Acquisition would only heighten. The Commission's Complaint lays out evidence, including from Mr. Sheffield's own public and private statements, of his campaign to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including OPEC and OPEC+. Much of this coordination has been with high-ranking OPEC representatives, thus indicating that firms with a substantial share of the relevant market have engaged in this conduct. By installing Mr. Sheffield on Exxon's Board, the Proposed Acquisition risks amplifying his public messaging and the effectiveness of his private contacts with OPEC, thereby meaningfully increasing the likelihood of coordination in the relevant market.

VI. THE PROPOSED ORDER

The proposed Order imposes several terms to remedy these concerns. First, the proposed Order prohibits Exxon from appointing Scott Sheffield to Exxon's board – as required by the Merger Agreement – or to serve in an advisory capacity to Exxon's board or Exxon's management. Second, for a period of five years, Exxon is also prohibited from appointing Pioneer's current employees and certain other persons affiliated with Pioneer to its board.

Third, the proposed Order prohibits Exxon's directors and officers from serving as a director or officer of another corporation if that interlock would violate Section 8 of the Clayton Act. The Order requires Exxon to comply with the provisions of Section 8 of the Clayton Act.

Fourth, the proposed Order contains provisions to ensure the effectiveness of the relief, including obtaining information from Exxon's officers and directors that they are complying with the Order; requiring Exxon to submit a yearly compliance report containing sufficient information and documentation to enable the Commission to determine independently whether

Exxon is in compliance with the Order; and requiring that Exxon maintain specific written communications. The proposed Order also requires Exxon to distribute the Order to each of its current and any new officers and directors.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.