



Office of Commissioner
Alvaro M. Bedoya

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

**CONCURRING STATEMENT OF
COMMISSIONER ALVARO M. BEDOYA**

*In the Matter of ExxonMobil Co./Pioneer Natural Resource Co.
Commission File No. 2410004*

May 2, 2024

The Sherman Act owes its existence to an oilman with a singular talent for collusion.¹ And we owe the Clayton Act, the grounds for this suit, to a broad consensus that the courts had enfeebled the Sherman Act by reading it in a manner far too favorable to industry.²

This merger would have put an oilman of John Rockefeller’s persuasions on the board of a direct successor to Mr. Rockefeller’s oil company – which also happens to be the single largest company in the American oil industry.³ Our colleagues raise a finger to contend that “the merger does not place Mr. Sheffield on the board.” I fail to see how a written and executed “AGREEMENT AND PLAN OF MERGER” between the companies that stipulates that Exxon “shall take all necessary actions to cause Scott D. Sheffield... to be appointed to [its] board of directors... immediately following the Effective Time” of the merger somehow does not place Mr. Sheffield on that board as a result of the merger.⁴

Under section 7 of the Clayton Act, we are asked to determine whether we have reasonable grounds to believe that the effect of this merger “*may be* to substantially lessen

¹ See GREGORY J. WERDEN, THE FOUNDATIONS OF ANTITRUST 3 (2020) (“...without John D. Rockefeller and the Standard Oil Co., the United States would not have had competition law until later, and this field of the law would not be called ‘antitrust.’”); *see generally, id.* at 3-16 (documenting Standard Oil’s creation, growth, and eventual dominance in the American oil industry).

² See, e.g., EARL W. KINTNER, ED., LEGISLATIVE HISTORY OF THE FEDERAL ANTITRUST LAWS AND RELATED STATUTES 989-997 (1978) (“Based upon 24 years of practical experience under the Sherman Act, Congress sought in the Clayton Act to remedy certain perceived weaknesses in the existing law and to expand its coverage... Shortly after the Supreme Court’s announcement of its decision in the Standard Oil case in 1911, pressure to strengthen the Sherman Act revived and culminated initially in the introduction of [competing bills]... The facts surrounding the drafting and introduction of these proposals make clear that they constituted an integrated and coordinated legislative effort to strengthen and make more effective the existing antitrust law.”).

³ *Our History*, EXXONMOBILE (Feb. 9, 2023), <https://corporate.exxonmobil.com/who-we-are/our-global-organization/our-history> (“Over the past 140 years ExxonMobil has evolved from a regional marketer of kerosene in the U.S. to one of the largest publicly traded petroleum and petrochemical enterprises in the world.”); *id.* (“1972 - Jersey Standard officially changes its name to Exxon Corporation.”).

⁴ See Pioneer Nat. Res. Co., Exxon Mobil Corp., & SPQR, LLC, Agreement and Plan of Merger § 8.12(a), at 79 (Oct. 10, 2023). It should also be noted that Exxon’s filing to the Securities and Exchange Commission includes Mr. Sheffield’s appointment to the board in the long list of financial and other consideration to be provided by Exxon to Pioneer as part of the acquisition. See Exxon Mobil Corp., Amendment No. 1 to FORM S-4 Registration Statement 54 (Dec. 22, 2023).

competition” “in *any* line of commerce or in *any* activity affecting commerce in *any* section of the country.”⁵ I respect my colleagues’ opinion but fail to understand how we can answer that question with anything other than a “yes.”

⁵ See 15 U.S.C. § 18 (emphasis added).