director, all of Albion, Illinois; a group acting in concert, to retain voting shares of Citizens Bancshares, Inc., and thereby indirectly retain voting shares of Citizens National Bank of Albion, both of Albion, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–22820 Filed 10–2–24; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 241 0008]

Chevron Corporation and Hess Corporation; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 4, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Chevron/Hess; File No. 241 0008'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex M), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Albert Teng (202–326–3272), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before November 4, 2024. Write ''Chevron/Hess; File No. 241 0008'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Chevron/Hess; File No. 241 0008'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex M), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before November 4, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

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 Chevron Corporation (''Chevron'') and Hess Corporation (''Hess''). Pursuant to an Agreement and Plan of Merger dated October 22, 2023 (''Merger Agreement''), Chevron has agreed to acquire Hess (''the Proposed Acquisition''). The purpose of the Consent Agreement is to remedy the anticompetitive effects that otherwise would result from the Proposed Acquisition.

Chevron and Hess compete with members of the Organization of Petroleum Exporting Countries (''OPEC'') and ten affiliated non-OPEC participating countries (collectively ''OPEC Oil Producers'') in the global

production and sale of crude oil. Hess Chief Executive Officer (''CEO'') John B. Hess (''Mr. Hess'') has communicated publicly and privately with OPEC representatives and oil ministers of OPEC member states about global output and other dimensions of crude oil market competition, including encouraging OPEC representatives in their stated mission to stabilize global oil markets. Mr. Hess has also made public statements praising OPEC for its role in stabilizing the oil market and oil prices.

Under the terms of the Merger Agreement, Chevron is required to take all actions necessary to appoint Mr. Hess as a member of the board of directors of Chevron. The appointment of Mr. Hess to Chevron's board as a result of the Proposed Acquisition would amplify the importance and likely effect of any such public or private communications, and therefore heighten the risk of harm to competition. In particular, Mr. Hess's post-merger appointment to Chevron's board would give him a larger platform from which to communicate on these issues, as well as decision-making input to one of the leading public integrated energy companies.

Under the terms of the proposed Decision and Order (''Order''), Chevron is prohibited from appointing Mr. Hess to its board or allowing him to serve in an advisory or consulting capacity to, or as a representative of, Chevron or the Chevron board, with a limited exception. Chevron may consult with Mr. Hess and allow him to serve in an advisory or consulting capacity to, or as a representative of, Chevron solely related to interactions and discussions with Guyanese government officials about Hess's oil-related and health ministry-related activities in Guyana, and with the Salk Institute's Harnessing Plants Initiative. Chevron is 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. Hess on the Chevron board would harm the competitive process.

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

Chevron is a public integrated energy company, with reported revenues in 2023 of $196.9 billion. Chevron has crude oil production operations in the United States and operates all around the world. Chevron is headquartered in San Ramon, California. Hess is a public multinational corporation headquartered in New York, New York, engaged in the exploration and production of crude oil with operations in the United States and other countries. In 2023, Hess reported $10.6 billion in revenue.

III. The Agreement and Plan of Merger

Pursuant to the Agreement and Plan of Merger between Chevron and Hess dated October 22, 2023, Chevron agreed to acquire Hess in an all-stock transaction valued at approximately $53 billion. Section 1.3(a) of the Merger Agreement states that Chevron and its board of directors shall, subject to Mr. Hess's acceptance, take all actions necessary to appoint Mr. Hess to the Chevron board of directors. The Commission's Complaint alleges that this effect—Mr. Hess's appointment to the Chevron board—of the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act and 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 purchasers generally cannot switch to alternative commodities without facing substantial costs. Chevron and Hess 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 including meaningfully increasing the risk of coordination among remaining firms in the relevant market. As stated in the Commission's Complaint, Mr. Hess's history of communications and supportive messaging to OPEC demonstrates encouragement of OPEC's output stabilizing agenda and may also signal how OPEC's decisions may be received by other market participants. Such encouragement reduces the unpredictability of the non-OPEC response to OPEC's output decisions. Because Chevron is substantially larger than Hess—Chevron is one of the world's ten largest oil enterprises by market capitalization and the fourth largest public, non-state-owned oil company—Mr. Hess's elevation to the Chevron board would amplify the importance and likely effect of any public or private communications on these issues, and meaningfully increase the risk of industry coordination.

The proposed Order presents significant relief for these concerns and imposes effective and administrable relief. The Commission's Complaint and the proposed Order make clear that communications by oil executives that support and encourage OPEC members and foreign oil ministers to stabilize oil output and prices can facilitate opportunities for other oil executives to act in support of these objectives and may give rise to legal liability. This proposed Order remedies the harm to competition from the agreement to place Mr. Hess on the Chevron board, including meaningfully increasing the risk of industry coordination. The Commission continues 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.

VI. The Proposed Order

The proposed Order imposes several terms to remedy these concerns. First, the proposed Order prohibits Chevron from appointing Mr. Hess to Chevron's board—as required by the Merger Agreement—or allowing him to serve in an advisory or consulting capacity to, or as a representative of, Chevron or the Chevron board. The proposed Order allows Chevron to consult with Mr. Hess and allows him to serve in an advisory or consulting capacity to, or as a representative of, Chevron solely related to interactions and discussions with Guyanese government officials about Hess's oil-related and health ministry-related activities in Guyana, and with the Salk Institute's Harnessing Plants Initiative.

The proposed Order also contains provisions to ensure the effectiveness of the relief, including obtaining information from Chevron that it is complying with the Order; requiring Chevron to submit a yearly compliance report containing sufficient information and documentation to enable the Commission to determine independently whether Chevron is in compliance with the Order; and requiring that Chevron maintain specific

written communications. The proposed Order also requires Chevron to distribute the Order to each of its officers and directors.

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.

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

Joel Christie,

Acting Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro Bedoya

The Organization of the Petroleum Exporting Countries (OPEC) is a cartel that, for decades, has enjoyed outsized control over oil prices in the United States. When OPEC and its allies, collectively known as OPEC+, decide to limit or cut back oil production, American consumers pay more at the pump and American businesses face higher costs. In the early 2010s, technological advances led to a surge in U.S. production—an increase that has let the United States emerge as the world's largest oil producer.[1] This development has positioned U.S. crude oil producers to serve as a competitive check on OPEC+, protecting Americans from the whims of a foreign cartel.

Greater production at home should mean Americans enjoy lower prices when filling their tanks or heating their homes. But when U.S. oil executives communicate privately and publicly with high-level OPEC representatives to support them in their stated mission to ''stabilize'' or limit global production, it threatens to replace the churn and dynamism of a competitive market with the ossification of a cartel. While this may boost the companies' bottom lines, it means Americans pay inflated prices.

Today's complaint identifies statements by Hess Corporation CEO John Hess that signaled support for efforts by OPEC+ to stabilize production.[2] The proposed order would prohibit Chevron Corporation from appointing Mr. Hess to its Board of Directors. This action builds on the Commission's action in *Exxon-Pioneer,* which surfaced troubling statements by Pioneer CEO Scott Sheffield that suggested efforts to coordinate with members of OPEC+.[3]

Commissioners Ferguson and Holyoak dissent from this matter, as they do not believe that a CEO communicating with a foreign cartel about output should be central to the antitrust analysis here.[4] Commissioner Ferguson writes, for example, that a sophisticated firm like Chevron would have a ''strong incentive to ensure that its officers and directors avoid risky conversations with OPEC representatives.'' [5] We are unaware of any research showing that sophisticated firms are less likely to violate the antitrust laws, or studies finding that the extent to which a firm complies with the law correlates with the size of its legal department. We do not believe that the Commission should use a firm's sophistication, or the elite credentials of its executives, as an input into our assessment of their likely behavior.

The Commission's actions in *Chevron-Hess* and *Exxon-Pioneer* mark an 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. Indeed, news outlets last week reported that OPEC+ and its members are preparing to *increase* oil production rates amid increasing supply from U.S. producers.[6] Rivals responding to one another by increasing production, rather than coordinating to hold it back, represents the type of competitive dynamic the antitrust laws were designed to protect.

Dissenting Statement of Commissioner Melissa Holyoak

For the second time in five months, the Majority has used its leverage in the HSR process to extract a consent from merging parties with no reason to believe the law has been violated.[1] To make it worse, once again, the consent targets an individual and deprives him of his contractual rights. I dissent.

The two largest mergers announced in 2023 were the $64.5 billion acquisition of Pioneer Natural Resources by Exxon Mobil Corporation and the $53 billion acquisition of Hess Corporation by Chevron Corporation.[2] Not only were they the two largest mergers of 2023, the mergers involved oil companies and attracted the ire of certain elected officials. In November of 2023, right after the mergers were announced, 23 senators wrote to the FTC expressing their ''concerns about two blockbuster oil-and-gas deals.'' [3] The letter urged the Commission to ''carefully consider all the possible anticompetitive harms'' from the proposed mergers because the ''Industry Is Already Too Concentrated'' [4] and ''The FTC Must Protect Americans from Big Oil.'' [5] The letter classified the Commission's efforts as ''[t]he fight against Big Oil'' and concluded that the Commission should be investigating ''to determine whether these energy giants should be broken up once again.'' [6] After the Commission published its complaint and order in *Exxon* back in May,[7] there was still significant opposition to the deal between Chevron and Hess Corporation.[8]

But herein lies the problem: no legitimate and factually supported theory of harm existed for the Commission's Majority to execute the bidding of the political left. Still, the fact that the Commission opted not to challenge the biggest merger of 2023 seems to have been lost on the press. So the Majority got what it wanted. And they are trying to repeat the play here. Rather than accept reality and any political blowback, the Majority creates a sequel to the fairy tale in *Exxon* where section 7 of the Clayton Act means whatever the Majority needs it to mean to appease political demands.

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[1] *United States produces more crude oil than any country, ever,* U.S. Energy Information Administration (Mar. 11, 2024), *https://www.eia.gov/todayinenergy/detail.php?id=61545#:~:text=The%20United%20States%20produced%20more,six%20years%20in%20a%20row.*

[2] *See, e.g.,* Compl. ¶¶ 25–49.

[3] Press Release, Fed. Trade Comm'n, FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal (May 2, 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal; see also* Statement of Chair Lina M. Khan in the Matter of Exxon Mobil Corporation, No. 241–0004 (May 2, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerlmkstmt1_0.pdf;* Concurring Statement of Comm'r Rebecca Kelly Slaughter in the Matter of ExxonMobil Co., No. 241–0004 (May 2, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonrksstmt_0.pdf;* Concurring Statement of Comm'r Alvaro M. Bedoya in the Matter of ExxonMobil Co./Pioneer Natural Resource Co., No. 241–0004 (May 2, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerambstmt_0.pdf.*

[4] *See* Dissenting Statement of Commissioner Andrew N. Ferguson in the Matter of Chevron Corporation and Hess Corporation, No. 241–0008 (Sep. 27, 2024); Dissenting Statement of Commissioner Melissa Holyoak in the Matter of Chevron Corporation and Hess Corporation, No. 241–0008 (Sep. 27, 2024).

[5] Dissenting Statement of Commissioner Andrew N. Ferguson in the Matter of Chevron Corporation and Hess Corporation, at 2.

[6] *See* Tom Wilson, *Saudi Arabia ready to abandon $100 crude target to take back market share,* Financial Times (Sep. 26, 2024), *https://www.ft.com/content/1d186f62-5941-4f9e-aef1-7d93a8a696cd.*

[1] 15 U.S.C. 53(b).

[2] *See* Devensoft, *The Top Mergers and Acquisitions of 2023—Meet the Power Players Behind the Year's Largest Deals* (Feb. 1, 2024), *https://www.devensoft.com/blog/the-top-mergers-and-acquisitions-of-2023/*; Press Release, Fed. Trade Comm'n, *FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal* (May 2, 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal* (listing $64.5 billion as the value of Exxon's acquisition of Pioneer); Compl., *In re Chevron Corp.,* No. 241–0008 at ¶ 17 (F.T.C. Sept. 26, 2024) (listing $53 billion as the value of Chevron's acquisition of Hess Corporation) [hereinafter Compl.].

[3] Letter from Charles E. Schumer, U.S. Senator, et al., to Lina Khan, Chair, Fed. Trade Comm'n, at 1 (Nov. 1, 2023) *https://www.democrats.senate.gov/imo/media/doc/Letter%20to%20FTC%20re%20Exxon-Pioneer.pdf.*

[4] *Id.*.

[5] *Id.* at 3.

[6] *Id.* at 4.

[7] *See* Press Release, Fed. Trade Comm'n, *FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal* (May 2, 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal*; Joint Dissenting Statement of Commissioners Melissa Holyoak and Andrew N. Ferguson in the Matter of Exxon Mobil Corporation, Commission File No. 241–0004 (May 2, 2024), *https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/joint-dissenting-statement-commissioners-melissa-holyoak-andrew-n-ferguson-matter-exxon-mobil* [hereinafter Exxon Dissent].

[8] *See e.g.,* @SenSchumer, X (May 12, 2024, 4:07 p.m.), *https://x.com/SenSchumer/status/1789749253956399528.*

Unfortunately for Mr. Hess, the CEO of Hess Corporation, the author of every fairy tale must also fabricate a villain, and today's action unjustifiably gave him that label.

To violate section 7 of the Clayton Act, Chevron must ''acquire . . . assets . . . where . . . the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.'' [9] But the Majority's complaint does not take issue with Chevron's acquisition of Hess Corporation's assets. Nor could it. There is no evidence to suggest Chevron, post-merger, could diminish competition in the global market for oil. Even if one were to accept the Majority's fetish with concentration levels, post-merger Chevron would have a low single-digit share of the world market for oil and natural gas. And the delta in concentration from the merger is miniscule. Thus, the tangible and intangible assets of Hess Corporation have nothing to do with the violation of law—it's all about the acquisition of Mr. Hess. Of course, I assume the Majority is not endorsing a view that Mr. Hess is an asset or transferrable human chattel. Certainly no court would endorse such a view—further highlighting the farcical nature of today's complaint.

Even if one were to accept *arguendo* the outlandish antitrust theory of harm the Majority puts forward, the facts and arguments alleged in the complaint to justify the theory are no less ridiculous. Section 7 requires a ''probable anticompetitive effect'' that is based on ''reasonable probabilit[ies],'' not ''ephemeral possibilities.'' [10] The Majority's complaint does not reach even ephemeral possibilities. And as the Majority surely knows, if it were litigated, the complaint would not survive a motion to dismiss.[11] Nothing in the complaint alleges that Mr. Hess has ever attempted to, or coordinated with, a rival.[12] At most, the complaint alleges that he was a cheerleader for OPEC's efforts. And yet somehow Chevron, despite its low share of the market, has violated the law by agreeing to make efforts to appoint Mr. Hess as one of Chevron's twelve board members.[13] Such a theory of coordinated effects is so bizarre that no court—or even scholarly work—has endorsed it or even discussed it.[14]

The implausibility of the alleged theory is heightened by a few additional observations. First, under section 7 the harm must result from the merger. But the merger transitions Mr. Hess from the role as Chief Executive Officer of a company to a role as one of 12 board members of another company. Pre-merger, Hess Corporation has an infinitesimally small share of the global market for oil, and post-merger Chevron will still only have low single digits. It strains credulity to argue that Mr. Hess will have more power or ability to orchestrate coordination while serving as one of twelve board members than he had while serving as a CEO for the last several decades. If anything, it seems more plausible that a CEO is better equipped to orchestrate coordination than the same individual serving as one of twelve board members.

Second, coordinated effects normally manifest when one firm buys, and thereby removes, a maverick who has undermined the ability to coordinate.[15] But Mr. Hess is the alleged coordinator, not the maverick, and his firm is the one being acquired. Thus, Chevron's acquisition does not remove an impediment to successful coordination, making this situation very different from the normal manifestation of merger-specific coordinated effects.

Third, the complaint does not allege that the firms in the alleged market will have the post-merger incentive to engage in coordinated behavior. Focusing merely on an individual's conduct—without allegations about the incentives of Chevron and all the other firms in the industry—does not amount to a plausible pleading of coordinated effects.[16]

An appeal to the Majority's own 2023 Merger Guidelines [17] would not provide refuge from a motion to dismiss either. According to the Guidelines, three primary factors are used to ''assess the extent to which a merger may increase the likelihood, stability, or effectiveness of coordination:'' [18] (1) highly concentrated market, (2) prior actual or attempted attempts to coordinate; and (3) elimination of a maverick.[19] The complaint alleges none of these factors. It avoids making allegations of concentration because the combined share of the two firms in the alleged global market would not exceed low single digits, the HHI is very low, and the delta is miniscule. Taking the allegations and the implications against Mr. Hess as true, neither he nor Hess Corporation ever coordinated or attempted to coordinate with Hess Corporation's rivals.[20] Nor does the complaint allege that Hess Corporation is a maverick eliminated by the merger. The Guidelines also include a list of six secondary factors used to assess coordinated effects,[21] but again, the complaint does not rely upon any of them.

Setting aside the dubious section 7 claim, the hypocrisy of the process is apparent from the Majority's express willingness in today's order to allow Mr. Hess to consult with Chevron on projects that align with the climate agenda of the political left.[22] For the Majority, Mr. Hess is too dangerous to be allowed to participate as a board member or generally ''in an advisory or consulting capacity.'' [23] But Mr. Hess ceases to be dangerous if his services further climate change-related activity.

Today's case is the most recent example of the Majority's unfortunate proclivity to ignore statutory text to reach politically beneficial outcomes.[24] And they appear even more comfortable when embracing indefensible positions in the context of settlements [25]—knowing very well that the substance of their pleadings will never be litigated. Today's approach, which is becoming increasingly common, allows the Majority to coerce concessions from parties without pleading facts that satisfy what the statute requires.[26] Because so many of the Commission's cases settle without litigation, the Majority has the luxury of advancing

[9] 15 U.S.C. 18.

[10] *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 323, 325 (1962).

[11] *See* Fed. R. Civ. P. 12(b)(6); *see generally Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009); *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007).

[12] My analysis is limited to whether his conduct is sufficient to create anticompetitive coordinated effects that may substantially lessen competition under section 7 of the Clayton Act.

[13] Chevron Leadership, *https://www.chevron.com/who-we-are/leadership#boardofdirectors* (last visited Sep. 16, 2024) (listing the company's twelve board members); Compl. ¶ 10.

[14] To my knowledge, the only other circumstance where such a novel theory has been advanced was in the Commission's complaint against Exxon and Pioneer. *See* Compl., *In the Matter of Exxon Mobil Corp.,* No. 241–0004 (F.T.C. May 1, 2024).

[15] *See, e.g., F.T.C.* v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109, 146 (D.D.C. 2004), *case dismissed,* No. 04–5291, 2004 WL 2066879 (D.C. Cir. Sept. 15, 2004) (''An important consideration when analyzing possible anticompetitive effects is whether the acquisition would result in the elimination of a particularly aggressive competitor in a highly concentrated market. . . . The loss of a firm that does not behave as a maverick is unlikely to lead to increased coordination.'' (citations, ellipses, and internal quotation marks omitted); U.S. Dept. of Just. & Fed. Trade Comm'n, Horizontal Merger Guidelines at section 7.1 (Aug. 19, 2010) (''An acquisition eliminating a maverick firm . . . in a market vulnerable to coordinated conduct is likely to cause adverse coordinated effects.'').

[16] *See, e.g., F.T.C.* v. *H.J. Heinz Co.,* 246 F.3d 708, 724–25 (D.C. Cir. 2001) (''Where rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels. The creation of a durable duopoly affords both the opportunity and incentive for both firms to coordinate to increase prices.'' (brackets, citations, and internal quotation marks omitted)); U.S. Dept. of Just. & Fed. Trade Comm'n, Horizontal Merger Guidelines at section 7.1 (Aug. 19, 2010) (''The Agencies seek to identify how a merger might significantly weaken competitive incentives through an increase in the strength, extent, or likelihood of coordinated conduct.'').

[17] U.S. Dept. of Just. & Fed. Trade Comm'n, Merger Guidelines (Dec. 18, 2023).

[18] *Id.* at section 2.3.

[19] *Id.* at section 2.3.A.

[20] *See supra* note 7.

[21] *Id.* at section 2.3.B.

[22] The order allows Mr. Hess to consult with Chevron as long as his consulting services are ''solely related to interactions and discussions with (a) Guyanese government officials about Hess's oil-related and health ministry-related activities in Guyana, and (b) the Salk Institute's Harnessing Plants Initiative.'' Decision & Order, *In re Chevron Corp.,* No. 241–0008 at section II.B. (F.T.C. Sept. 26, 2024).

[23] *Id.*

[24] *See, e.g.,* Dissenting Statement of Commissioner Melissa Holyoak, Joined by Commissioner Andrew N. Ferguson, *In the Matter of the Non-Compete Clause Rule,* Matter Number P201200 (June 28, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf; cf. generally* Dissenting Statement of Commissioner Melissa Holyoak, Joined by Commissioner Andrew Ferguson, *Health Breach Notification Rule,* File No. P205405 (Apr. 26, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/p205405_hbnr_mhstmt_0.pdf.*

[25] *See, e.g.,* Exxon Dissent, *supra* note 7, at 1, 3.

[26] *See, e.g., id.* at 1, 3 (explaining that ''the Commission is leveraging its merger enforcement authority to extract a consent from Exxon'' and that ''[t]he Commission should not leverage its merger enforcement authority—or any authority—the way it does today'').

unsound legal theories below the radar.[27] However the Majority wants to move the law, it cannot do so by manufacturing change through some fictitious body of extracted settlements.

Dissenting Statement of Commissioner Andrew N. Ferguson

The Commission today authorizes the filing of an administrative complaint and proposed decision and order against Chevron Corporation and Hess Corporation. The Complaint alleges that Chevron's proposed $53 billion acquisition of Hess Corporation would violate section 7 of the Clayton Act.[28] The Complaint does not plead a traditional section 7 theory because the Commission has none. Chevron and Hess together have a two percent share of the relevant market.[29] No court has ever blocked a merger between companies with such small shares. The aggressive new Merger Guidelines presume that a merger would harm competition when it combines companies with market shares of over thirty percent.[30] A two percent market share does not raise any competitive concerns at all.

The Complaint instead alleges that adding John Hess—Hess Corporation's CEO—to Chevron's twelve-member board of directors turns an unobjectionable merger into a section 7 violation. The Commission's Complaint alleges that while serving as Hess Corporation's CEO, Mr. Hess ''communicated publicly and privately with OPEC representatives . . . about global output and other dimensions of crude oil market competition.'' [31] This conduct, the Commission suggests, is dangerous to competition. The Commission then contends that Mr. Hess's position on Chevron's board would give him even more power to harm competition in global oil markets than he currently wields as Hess Corporation's CEO and as a member of its board.[32] This increase in power, the Commission claims, would ''substantially lessen competition, or tend to create a monopoly'' in the global market for crude oil.[33] Because the increase in power is a function of Chevron's acquisition of Hess Corporation, the Commission reasons that the acquisition therefore violates section 7 of the Clayton Act.

The Commission's section 7 theory does not hold water. It rests on a series of implausible and unsupported assumptions that fall well short of pleading a violation of the Clayton Act. But it does satisfy a constituency important to the Commission majority—Democratic politicians who have repeatedly and publicly urged the Commission to block this merger in order to advance their climate agenda.[34] Bending section 7 to political pressure is incompatible with the rule of law. I therefore dissent from the filing of the Complaint.

First, the majority necessarily assumes that Mr. Hess would continue his communications with OPEC representatives after joining Chevron's board. If that were not the case, then the transaction would be at worst competitively neutral or even pro-competitive insofar that Mr. Hess's previous communications were injurious to competition.[35] This assumption is utterly implausible. Discussing output with representatives of Hess Corporation's competitors at OPEC is obviously risky.[36] Mr. Hess's past communications with OPEC officials have landed him and Hess Corporation in hot water. The statements to which the majority objects attracted the attention of government regulators and formed the basis of several private class-action lawsuits pending against Hess Corporation.[37] It is unreasonable to assume that Mr. Hess would continue his OPEC discussions unabated in light of the consequences those statements have generated.

Even if Mr. Hess could not appreciate the risk of discussing output with OPEC officials, Chevron has a strong incentive to ensure that its officers and directors avoid risky conversations with OPEC representatives. The Complaint does not allege that any current Chevron officer or director had any potentially unlawful discussions with OPEC officials. In fact, one private lawsuit against Hess Corporation specifically alleges that Chevron rejected OPEC's calls for constrained output in favor of increased production.[38] But for the proposed order, Mr. Hess would become a director of Chevron. He would then be subject to Chevron's direction, and Chevron's incentive to prevent its officers and directors from cavorting with OPEC officials would apply to Mr. Hess. The Commission's assumption that Mr. Hess's behavior as a Chevron board member would be identical to his behavior as Hess Corporation's CEO is not only implausible; the only plausible inference is precisely the opposite.

Second, the majority must also assume that Mr. Hess's post-merger behavior would have a sufficiently major effect on global oil markets ''substantially to lessen competition or tend to create a monopoly.'' [39] No other aspect of this transaction poses any risk at all of substantially lessening competition or tending to create a monopoly. The Commission's entire theory rests on a prediction about the competitive effects of Mr. Hess's conduct.

The proposition that Mr. Hess's comments could move global oil markets is laughable. The Complaint does not allege that Mr. Hess encouraged other U.S. producers to reduce output. Instead, the Complaint's primary theory of harm is that ''Mr. Hess's supportive messaging to OPEC encourages OPEC's output stabilizing agenda, and . . . reduces the unpredictability of the non-OPEC response to OPEC's output decisions.'' [40] The

[27] *Cf.* Dissenting Statement of Commissioner William E. Kovacic, *In the Matter of Negotiated Data Solutions, LLC,* File No. 051–0094 (Jan. 23, 2008) (''The prospect of a settlement can lead one to relax the analytical standards that ordinarily would discipline the decision to prosecute if the litigation of asserted claims was certain or likely.''), *https://www.ftc.gov/sites/default/files/documents/cases/2008/01/080122kovacic.pdf.*

[28] Compl. ¶ 50, *In re Chevron Corp. and Hess Corp.,* FTC File No. 241–0008 (Sept. 26, 2024) (''Complaint'') (citing 15 U.S.C. 18).

[29] *See* BP Statistical Review of World Energy (2023); Chevron 2022 10–K; Hess 2022 10–K.

[30] Dep't. of Justice & Fed. Trade Comm'n, Merger Guidelines, section 2.1 (Dec. 18, 2023); *see also United States* v. *Philadelphia Nat'l Bank,* 374 U.S. 321, 364 (1963) (establishing a rebuttable presumption that a merger resulting in a single firm's control of at least thirty percent of the relevant market violates section 7).

[31] Compl. at ¶ 4.

[32] *Id.* at ¶ 50.

[33] *Ibid.* (citing 15 U.S.C. 18).

[34] *See, e.g.,* Letter from U.S. Senator Charles E. Schumer, Representative Ro Khanna, et al., to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 6, 2024) (''We write concerning the wave of oil-and-gas consolidation, building on top of a longstanding trend, that threatens competition in the industry . . . In just the most recent months . . . Chevron moved to acquire Hess. Many of us warned in a November letter that [this] mega-deal[ ] could provoke a wave of mergers and acquisitions in the energy sector and trigger a new 'consolidation trend' to the detriment of industry competition and American consumers. . . . We applaud the FTC for opening investigations of the . . . Chevron-Hess . . . acquisition[ ] . . . [W]e urge the FTC to extend its current investigations. . . .''); Letter from U.S. Senator Charles E. Schumer, U.S. Senator Amy Klobuchar, et al. to Lina Khan, Chair, Fed. Trade Comm'n (Nov. 1, 2023) (''We write regarding our concerns about two blockbuster oil-and-gas deals announced in October: ExxonMobil's (Exxon) proposed $60 billion acquisition of Pioneer Natural Resources (Pioneer) and Chevron's proposed $53 billion acquisition of Hess Corporation (Hess)—two of the largest oil-and-gas deals of the 21st century. By allowing Exxon and Chevron to further integrate their extensive operations into important oil-and-gas fields, these deals are likely to harm competition, risking increased consumer prices and reduced output throughout the United States.'').

[35] Section 7 is a forward-looking statute, intended to prevent future harm to competition, not punish past conduct. *See United States* v. *Baker Hughes Inc.,* 908 F.2d 981, 991 (D.C. Cir. 1990) (Thomas, J.) (''By focusing on the future, section 7 gives a court the uncertain task of assessing probabilities''); Deborah Feinstein, then-FTC Director of the Bureau of Competition, The Forward-Looking Nature of Merger Analysis, Advanced Antitrust U.S., 3 (2014) (''In markets, the past is not always prologue. For example, the Commission recently closed its investigation of the Office Depot/OfficeMax transaction without action, 17 years after obtaining an injunction to block the Staples/Office Depot combination.'').

[36] *In re Domestic Airline Travel Antitrust Litig.,* 691 F. Supp. 3d 175, 219 (D.D.C. 2023) (finding that defendant airlines' statements regarding restrained output could support inference of a conspiracy violating the Sherman Act).

[37] Compl., *Rosenbaum* v. *Permian Res. Corp.,* No. 2:24–cv–00103 (D. Nev. 2024); Compl., *Mellor* v. *Permian Res. Corp.,* No. 2:24–cv–00253 (D. Nev. 2024). The United States Judicial Panel on Multidistrict Litigation consolidated these two lawsuits with three others and transferred them to the District of New Mexico. *See* Transfer Order, *In re: Shale Oil Antitrust Litig.,* MDL No. 3310 (Aug. 1, 2024). The parties also ''informed the Panel of eleven potentially-related actions pending in four districts.'' *Id.*

[38] Compl., *Rosenbaum* v. *Permian Res. Corp.,* No. 2:24–cv–00103, ¶ 104 (D. Nev. 2024) (''the supermajors started investing in shale in 2021 and 2022 at rates previously unseen, in direct response to U.S. shale producers underinvesting as an industry . . . Mid way through 2022, Chevron anticipated a '15% year-over-year increase' in shale oil production from 2021 and promised to continue 'bolstering production' '').

[39] 15 U.S.C. 18.

[40] Compl. at ¶ 50.

Complaint does not allege that Mr. Hess ever discussed non-public information with OPEC. Yet it suggests that the international oil cartel hangs on his every word, and his musings and suggestions spur national governments to action. Mr. Hess should be flattered that the Commission thinks so much of his influence. But I do not share my colleagues' view about the reach of Mr. Hess's powers. OPEC's *raison d'etre* for decades has been to manage output and raise crude oil prices to maximize its member nations' monopoly rents.[41] OPEC does not need the encouragement of the CEO of a midsized American producer to pursue its cartel goals.

Third, even if the Commission were correct that Mr. Hess's conduct would continue unabated as a Chevron director and that the conduct substantially affects competition, the majority does not state a section 7 claim unless it can show that Mr. Hess's addition to the Chevron board would injure competition more than if he were to remain Hess Corporation's CEO. If his addition to the Chevron board is no more dangerous to competition than his service as Hess Corporation's CEO, then the transaction poses no competitive risks.[42] The Complaint proposes two theories for why his addition to the Chevron board is worse than the status quo. Both fail.

The Commission first argues that because Chevron is larger than Hess Corporation, Mr. Hess's position on Chevron's board would ''amplify the importance and likely effect'' of his statements on OPEC.[43] This statement is pure *ipse dixit.* No allegations in the Complaint lend that allegation any plausibility.[44] And common sense suggests otherwise. The CEO of an oil producer directs the daily operations of the company. He exercises far more control over the company on a daily basis—including on pricing and output decisions—than one member of a twelve-person board of directors. The statements of an oil-company CEO would therefore likely carry much greater weight than the same statements made by one of twelve oil-company directors. The Complaint contains nothing suggesting that the opposite is true.

The Complaint also contends that Mr. Hess's service on Chevron's board would ''meaningfully increas[e] the likelihood that Chevron would align its production with OPEC's output decisions to maintain higher prices.'' [45] But this allegation too is conclusory *ipse dixit.* Nothing in the Complaint explains how this would happen. For example, the Complaint does not allege that Mr. Hess's communications with OPEC officials had any effect on Hess Corporation's capital plans, output decisions, or any other behavior by the company. Indeed, under his leadership, Hess Corporation's production growth routinely exceeded that of peer companies.[46] If Mr. Hess as CEO, did not curtail Hess Corporation's output in response to conversations with OPEC, it beggars belief that he could, and would, do so as one of the twelve members of Chevron's board.

But even if the Commission's assumptions were all correct—and they are not—the Commission still fails to state a section 7 violation. Even if Chevron were, at Mr. Hess's instigation, to reduce its output, the Complaint does not explain how that output would meaningfully affect competition. The combined Chevron-Hess Corporation entity will control two percent of the global oil market. A reduction in its output would hardly remove a drop from the metaphorical bucket.

That is not to say that I favor Mr. Hess's alleged conduct. (I emphasize that the conduct is merely alleged; the Commission has not proven anything.) OPEC is not a friend to the American people. Just ask any American who lived through 1973. OPEC's goal is to keep oil prices high to extract monopoly rents from every consumer of petroleum products on the planet—including every single American. OPEC's member states include some of America's bitterest foes. I am not fond of the idea that American oil executives would share encouraging messages with an organization that includes America's enemies, the goal of which is to keep our oil prices high. But section 7 does not forbid disquieting conduct.[47] It forbids transactions ''the effect'' of which ''may be substantially to lessen competition, or to tend to create a monopoly.'' [48] Nothing in the Commission's Complaint suggests that this transaction will have such an effect. The Commission should not twist section 7 into knots to get at Mr. Hess's alleged conduct.

Neither judicial nor Commission precedent supports the Complaint's theory of section 7. The only time we have ever posited this sort of theory before was in a recent unlitigated settlement complaint involving the merger of Exxon Corporation and Pioneer Natural Resources Company.[49] And we did so over my dissent.[50] I cannot imagine that the majority Commission would ever risk litigating a section 7 claim involving two percent shares of the market simply because of one potential director's speeches and texts. I therefore doubt that the Commission will ever risk letting the courts review the interpretation of section 7 embodied in today's Complaint.

It is not a coincidence that the Commission has trotted out this theory only in settlements. I have lamented repeatedly that the majority has a penchant for pressing far-fetched, novel theories in complaints it knows will not be litigated, and relying on those unadjudicated complaints as a form of precedent for subsequent Commission action.[51] No court should give this consent, or its equally lawless predecessor in Exxon-Pioneer, any precedential value.[52] Unadjudicated complaints tell us nothing about the law. This Complaint is an accusation leveled by three Commissioners, nothing more.[53]

One might wonder why I object to a complaint that the merging parties are voluntarily settling. The Complaint is the Commission's statement of what section 7 means. I believe that statement to be woefully incorrect and therefore cannot join it. And the fact of settlement should lend no credibility to the majority's outlandish interpretation of section 7. Parties settle civil cases when it suits their interests even if they would prevail in litigation.[54] This consent agreement is a stark example. The Commission leveraged its Hart-Scott-Rodino Act [55] authority by threatening to hold up Chevron and Hess's $53 billion dollar merger even though the lack of a plausible section 7 theory had long been obvious. And yes, the parties could have told the Commission to make their day and file a lawsuit. But that lawsuit would cause months of delay and cost countless millions of dollars in legal fees. The merging parties surely would have prevailed on this section 7 claim, but the victory could very well have been Pyrrhic if market conditions changed in the intervening months. They therefore rationally took the quick and easy path opened to them by this consent agreement. For Hess Corporation's

[41] *See* Org. of the Petroleum Exporting Countries, OPEC: Our Mission (''In accordance with its Statute, the mission of the Organization of the Petroleum Exporting Countries (OPEC) is to coordinate and unify the petroleum policies of its Member Countries and ensure the stabilization of oil markets . . .'').

[42] *See* Dep't. of Justice & Fed. Trade Comm'n, Merger Guidelines, section 2.3 (Dec. 18, 2023) (''Guideline 3: Mergers Can Violate the Law When They *Increase* the Risk of Coordination'') (emphasis added).

[43] Compl. at ¶ 50.

[44] *See Bell Atl. Corp.* v. *Twombly,* 550 U.S. 544, 570 (2007) (requiring that a complaint plead ''enough facts to state a claim to relief that is plausible on its face.'').

[45] Compl. at ¶ 11.

[46] *See, e.g.,* Fitch Maintains Rating Watch Positive on Hess' 'BBB' Ratings, Fitch Ratings, Inc., (Aug. 21, 2024) (''Hess' growth profile differentiates it from most exploration and production (E&P) peers''); Sourasis Bose and Sabrina Valle, Oil producer Hess beats profit estimates on U.S. production boost, Reuters (July 26, 2023).

[47] Whether Mr. Hess's alleged conduct violated some other antitrust law or, any other Federal law, is not at issue in this case and I therefore take no position on that question.

[48] 15 U.S.C. 18.

[49] Compl., *In re Exxon Mobil Corp.,* FTC File No. 241 0004 (May 2, 2024).

[50] *See* Joint Dissenting Statement of Melissa Holyoak, Comm'r, Fed. Trade Comm'n, and Andrew N. Ferguson Comm'r, Fed. Trade Comm'n, *In re ExxonMobil Corp.,* FTC Matter No. 241 0004 (May 1, 2024).

[51] *See* Concurring Statement of Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *In re Asbury Automotive Group, Inc., et al.,* FTC Matter No. 222 3135, 2 (Aug. 16, 2024) (''*In re Asbury*''); *see also* Concurring and Dissenting Statement of Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *In re Invitation Homes,* FTC Docket No. 9436, 5 (Sep. 16, 2024).

[52] *See* Joint Dissenting Statement of Melissa Holyoak, Comm'r, Fed. Trade Comm'n, and Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *In re ExxonMobil Corp.,* FTC Matter No. 241 0004 (May 1, 2024).

[53] *See In re Asbury, supra* note 24, at 2 (''[U]nadjudicated complaints are not the law. A complaint is an accusation, nothing more. It is subject neither to adversarial testing—the defining feature of the American legal tradition—nor to adjudication by the Commission or an impartial Article III judge.'').

[54] *See id.* at 3 (''[M]any firms settle even if they honestly believe that they did nothing wrong and that they would prevail in litigation. Those firms reasonably conclude that a swift end to the Commission's investigation or threatened enforcement advances their interests more than a litigation victory.'').

[55] 15 U.S.C. 18a.

shareholders, the consent is all upside: with the merger cleared, they will soon get paid. And for Chevron's shareholders, the benefit is clear and the cost is minimal: a valuable asset in exchange for keeping one person off of the board of directors.

The Commission majority and the Democratic politicians who urged them on will hail today's Complaint and proposed order as a victory. Those politicians have loudly urged the Commission to block this merger, and today the Commission majority can pretend it delivered, even as it allows the merger to proceed.[56] Fawning press coverage will surely follow—a nice bonus for the Democrats as voters head to the polls to pick the next President. The American public rightly loathes OPEC and has little affection for its perceived friends. Few apart from seasoned antitrust practitioners will look under the hood of the Commission's antitrust theory. The Commission will tout this modest, coerced settlement as a ''win'' and add it to the list of ''wins'' it uses to calculate a supposed ''90% win rate.''[57]

But this settlement is not a victory for the rule of law. ''A settlement extracted from an innocent party reveals much about the Commission's power, but nothing about the law.''[58] The Commission's power under the Hart-Scott-Rodino Act is considerable and coercive. We do not approve or forbid mergers, but we may sue to block them. Lawsuits are expensive and time-consuming, and the mere risk of an enforcement action can make an otherwise valuable transaction too costly to pursue.[59] Our gatekeeping function therefore gives us the power to exact tolls on merging parties even if our legal theory is bunk.[60] The risk, time, and expense associated with convincing a judge that the Commission's theory is bunk is coercive enough that merging parties will pay for the Commission to go away. But such a settlement does not vindicate the rule of law. It is instead a sort of tax on mergers made possible by the fact that Congress has made the Commission a merger gatekeeper.

Today, two merging companies pay a toll to pass through the Hart-Scott-Rodino gate. They do not pay the toll because section 7 requires it. Nothing in section 7 requires Mr. Hess to stay off the Chevron board. They pay the toll because the Commission has threatened to make their lives difficult if they do not, and they have concluded that it is easier to pay than to resist. The Commission collects the toll and proclaims victory. But reducing antitrust enforcement to a pay-for-peace racket inflicts serious injury on the rule of law—and on the Commission's credibility.

I therefore respectfully dissent.

[56] *See supra* note 7.

[57] *See* Douglas Farrar, X, (Sept. 13, 2024), *https://x.com/DouglasLFarrar/status/1834727643171733651* (''FTC Chair Khan has won more than 90% of her lawsuits'') (quoting remarks of Rep. Alexandria Ocasio-Cortez).

[58] *In re Asbury,* supra note 24, at 3.

[59] *Id.* at 4 (''That a firm may break this cycle by litigating is no answer to my objection. For most small businesses—and many large ones—a Commission investigation is costly. Lawyers are expensive, and investigations sometimes last for years. Litigation may take many years more. The mere risk of a Commission investigation is coercive and can be enough to force some businesses to yield.'').

[60] *See* Joint Dissenting Statement of Melissa Holyoak, Comm'r, Fed. Trade Comm'n, and Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *In re ExxonMobil Corp.,* FTC Matter No. 241 0004 (May 1, 2024).

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FEDERAL TRADE COMMISSION

[File No. 232 3052]

Rytr LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 4, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Rytr LLC; File No. 232 3052'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex R), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 4, 2024. Write ''Rytr LLC; File No. 232 3052'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Rytr LLC; File No. 232 3052'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex R), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that