

# United States Senate

WASHINGTON, DC 20510-3203

November 1, 2023

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan:

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)<sup>1</sup> and Chevron's proposed \$53 billion acquisition of Hess Corporation (Hess)<sup>2</sup> – two of the largest oil-and-gas deals of the 21<sup>st</sup> 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. At the regional level, the deals threaten to harm small operators and suppress wages. The Federal Trade Commission (FTC) must carefully consider all of the possible anticompetitive harms that these acquisitions present. Should the FTC determine that these mergers would violate antitrust law, we urge you to oppose them.

## **This Industry Is Already Too Concentrated, and Americans Are Already Paying the Price.**

In the 1990s, over 2,600 mergers occurred throughout all segments of the U.S. petroleum industry.<sup>3</sup> Between 1990 and 2001, the number of major U.S. energy companies plunged by more than half, dropping from 19 to 9, due to merger activity.<sup>4</sup> Most notably, Exxon merged with Mobil in 1999; Chevron merged with Texaco in 2001 (after Chevron had already acquired Gulf Oil and Texaco had already bought Getty Oil in the 1980s).<sup>5</sup>

Such consolidation enabled anticompetitive coordination in the industry, and the remaining firms were well aware that they were members of an oligopoly with a “small number of companies involved, all of whom share[d] a motivation to recoup costs and not undermine the market.”<sup>6</sup> For example, according to internal Mobil and BP documents, the majors understood that “[f]looding the market and depressing margins on the base volume”<sup>7</sup> they marketed was unprofitable. Likewise, they knew that directing their individual supplies into, or away from, particular regions of the country enabled them to achieve “price uplift scenarios” and to “leverage up” prices.<sup>8</sup> The Government Accountability Office found that five specific mergers from that time period – Marathon-Ashland, Shell-Texaco I (Equilon), BP-Amoco, MAP-UDS, and Exxon-Mobil – led to wholesale gasoline price increases ranging from 0.39 to 5.00 cents per gallon.<sup>9</sup> Of those five, the price increase due to the Exxon-Mobil merger was the greatest.

After these huge mergers took place, the majors' upstream operations were skewed to the detriment of consumers. Studies at the time demonstrated that spending on drilling for new oil supplies by the merged giants fell significantly compared to the drilling budgets before their mergers.<sup>10</sup> Strangely enough, the majors cut back on upstream production at a time when crude prices were sky high and exploration costs had fallen by more than half, "one of the biggest potential disconnects between supply and demand in the 150-year history of the oil business."<sup>11</sup> These anticompetitive tactics resulted in a fragile supply for the nation where isolated mishaps at refineries or broken pipelines caused enormous price spikes for consumers (as took place in 2000, 2001, 2002, and 2005) – all of which financially benefited the oligopolists, providing them no incentive to stabilize national supply.<sup>12</sup>

Consolidation in midstream operations hurt Americans consumers, as well. In 1993, the largest five oil refiners had a collective share of about one-third of the American market, and the largest ten controlled 55.6 percent. By 2005, due to the wave of mergers, the top five controlled 55 percent of the market, and the largest ten had 81.4 percent.<sup>13</sup> This increase in concentration enabled the largest players to manipulate the industry by withholding supply in order to drive up prices, and since most of the firms were also vertically integrated, they benefited from higher prices at the retail level, as well.<sup>14</sup>

Similar market dynamics exist today. The oil-and-gas industry is still dominated by a handful of corporate giants, led by the top-two players Exxon and Chevron. Any further consolidation could harm American consumers. This is especially true given the inelastic demand for gas products; those who drive to work rarely have substitutes for gas, so as prices rise, people do not purchase less gas. In April 2020, as the COVID-19 pandemic began, retail gasoline prices averaged \$1.84. Prices steadily rose for two years, hitting a historic height of \$4.93 in June 2022, and remain relatively high today at \$3.84.<sup>15</sup> Meanwhile, Exxon and Chevron posted their own historic heights in 2022: \$56 billion in profits for Exxon<sup>16</sup> and \$36.5 billion for Chevron.<sup>17</sup> They were not alone; Big Oil corporations collectively earned an industry high of nearly \$200 billion last year.<sup>18</sup> President Biden rightfully called for the FTC to investigate the oil industry for price gouging<sup>19</sup> since such surges cannot be explained away by increased production costs from the pandemic or inflation,<sup>20</sup> especially in light of these firms' astronomical profits.

### **The Deals Could Harm Competition and Lead to Even Higher Prices for Americans.**

Exxon is the largest oil-and-gas corporation in the United States, operating up and down the supply chain and across the entire industry. Its acquisition target, Pioneer, is an upstream petroleum operator drilling in Texas's Permian Basin. Pioneer owns more drilling acreage than any other producer in the Permian where Exxon is also a top producer. A merged Exxon-Pioneer could produce a staggering 1.2 million barrels per day – more than twice the amount of the next competitor.<sup>21</sup> Accordingly, this deal would enable the new Exxon to dominate the Permian – the most prolific oil-and-gas field in the world and America's most important.

Chevron is America's 2<sup>nd</sup> largest oil-and-gas firm with integrated operations rivaling Exxon's. Hess is one of the largest producers in North Dakota's Bakken Shale, the deepwater Gulf of Mexico, and offshore Guyana.

Supporters of the deals have argued that the global market for oil and gas is so enormous that dominant firms in the relevant basins would not have enough supply to restrict capacity or raise prices in any meaningful way.<sup>22</sup> Focusing only on the global market is improper. Even if these energy firms represent a small fraction of the global petroleum market, the question before the FTC is whether these proposed transactions may substantially lessen competition in any line of commerce.<sup>23</sup> Thus, the FTC must consider how Exxon's or Chevron's vertically integrated operations may harm American competition in any national or regional market. For example, Exxon owns extensive midstream operations in the Permian Basin, meaning Exxon controls storage, refining, and transportation for a significant amount of capacity in the region where it will acquire Pioneer's drilling operations. Exxon has an extensive pipeline system that transfers crude supply from the Permian to the Texas Gulf Coast. Recently, Exxon expanded its refinery operations on the Texas Gulf Coast by an additional capacity of 250,000 barrels per day<sup>24</sup> and announced plans to ramp up its exporting operations<sup>25</sup> on the Texas Gulf Coast, suggesting that Exxon-Pioneer intends to move significantly more oil and gas out of the United States than the two companies exported separately. Exxon's CEO Darren Woods put it more bluntly in 2020: "These projects are export machines, generating products that high-growth nations need to support larger populations with higher standards of living. Those overseas markets are the motivation behind our investments. The supply is here; the demand is there. We want to keep connecting those dots."<sup>26</sup> This export strategy – in the nation's most important oil-and-gas field, no less – could reduce the amount of their capacity ultimately available to American consumers and thereby increase prices throughout the energy supply chain, including at the gas pump. Furthermore, as we described above, the major energy firms already have a history of artificially reducing supply and increasing prices following rounds of consolidation.

If this "consolidation trend in the US"<sup>27</sup> continues accelerating, competing exploration-and-production companies will find it increasingly difficult to operate without Exxon's and Chevron's networks, which creates new abilities and incentives for Exxon and Chevron to engage in anticompetitive tactics. Exxon's and Chevron's operations downstream would enable them to redirect Pioneer's and Hess's crude supply to themselves, away from (and possibly to the detriment of) their midstream competitors. These new market dynamics could result in price hikes for midstream customers, and such added costs are often passed downstream to retail customers, including drivers at gas stations.

We also urge you to investigate how an Exxon-Pioneer merger might impact local operators in the Permian as well as oilfield employees such as geologists and engineers. Potential anticompetitive harms at any level of the supply chain and in any market merit consideration by the FTC.

### **The FTC Must Protect Americans from Big Oil.**

These deals also demonstrate how corporate consolidation can frustrate self-governing democracy. At a time when Americans overwhelmingly support governmental efforts to clean up the environment and protect our nation from climate disasters,<sup>28</sup> Exxon and Chevron are doubling down on fossil-fuel production.<sup>29</sup> The proposed transactions would augment these corporations' outsized political power, further enabling them to spend millions on lobbyists to thwart climate legislation, litigation to slash environmental rules, and a coordinated campaign to

mislead consumers and discredit climate science – all to protect their billions in profits.<sup>30</sup> By taking actions to promote competition, the FTC would also prevent the fossil-fuel industry from further subverting our democratic processes.

Under President Biden, the FTC has been willing to stand up to Big Oil. Just last year, the FTC required an energy private-equity fund to divest its entire crude-oil business in Utah before allowing a similar transaction to close, expressing concerns that the deal would lead to higher prices for refiners and consumers at the pump.<sup>31</sup>

The fight against Big Oil is not new. When the Justice Department took on Standard Oil in the early twentieth century, the Supreme Court protected competition by breaking up Standard Oil into 43 different firms.<sup>32</sup> Eventually, the global industry reorganized into seven dominant global players, including five prominent American companies – three of which (Standard Oil of California, Gulf Oil, and Texaco) combined into today’s Chevron, and two of which were Standard Oil of New Jersey (now known as Exxon) and Standard Oil of New York (now known as Mobil). In our view, the FTC should not have approved the ExxonMobil merger in 1999, which created the largest corporate successor of Standard Oil’s original illegal monopoly, or the merger between Chevron and Texaco in 2001. Lax enforcement during that period resulted in market manipulation, unstable supply, and price hikes for Americans. We must avoid similar mistakes going forward. It is incumbent upon the FTC to closely review the Exxon-Pioneer and Chevron-Hess acquisitions and take appropriate action should such reviews uncover any possible anticompetitive effects enabled by the acquisitions.

If anything, the FTC should be investigating the past anticompetitive mergers of Big Oil conglomerates like ExxonMobil and Chevron to determine whether these energy giants should be broken up once again.

We appreciate your attention to these serious matters.

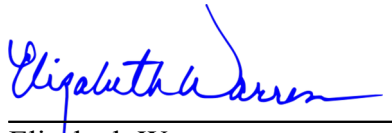
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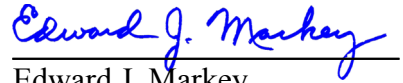
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United States Senator



Amy Klobuchar  
United States Senator



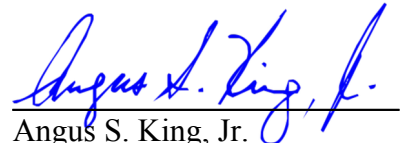
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United States Senator



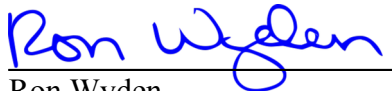
Edward J. Markey  
United States Senator



Mazie K. Hirono  
United States Senator



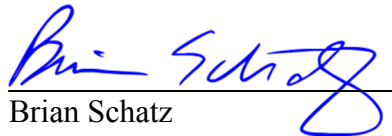
Angus S. King, Jr.  
United States Senator



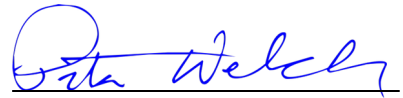
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United States Senator



John Fetterman  
United States Senator



Brian Schatz  
United States Senator



Peter Welch  
United States Senator



Debbie Stabenow  
United States Senator



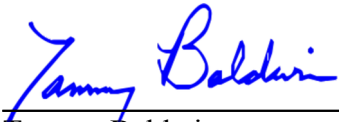
Sheldon Whitehouse  
United States Senator



Tina Smith  
United States Senator

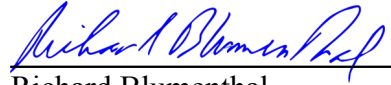


Bernard Sanders  
United States Senator



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Tammy Baldwin  
United States Senator



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Richard Blumenthal  
United States Senator



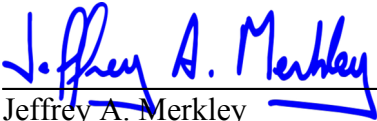
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Jack Reed  
United States Senator



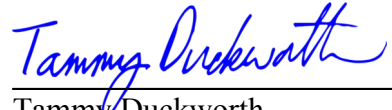
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Jeanne Shaheen  
United States Senator



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Jeffrey A. Merkley  
United States Senator



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Tammy Duckworth  
United States Senator



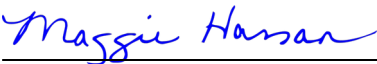
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Cory A. Booker  
United States Senator



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Jacky Rosen  
United States Senator



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Maggie Hassan  
Margaret Wood Hassan  
United States Senator



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