

**Congress of the United States**  
Washington, DC 20515

November 18, 2024

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

Dear Chair Khan:

As the Chairman of the House Committee on the Judiciary and Ranking Member of the Senate Committee on the Judiciary's Subcommittee on Competition Policy, Antitrust, and Consumer Rights, we are conducting oversight of the Federal Trade Commission's (FTC) practice of entering into settlement agreements unrelated to the competitive effects of a proposed merger.<sup>1</sup> Recent cases suggest that the FTC under your leadership is pursuing settlements not because there is harm to competition, but due to political pressure from Democrats in Congress.<sup>2</sup> Specifically, the FTC has entered into consent decrees in the Exxon/Pioneer and Chevron/Hess mergers, though neither merger warranted a settlement under the Clayton Act.<sup>3</sup> This abuse of the settlement process reinforces serious concerns about your politicization of the FTC and the practice of fabricating favorable precedent through settlement agreements.<sup>4</sup> Accordingly, we write to request information about these matters.

In general, FTC consent decrees settle claims of wrongdoing and impose specific requirements on a company when the FTC "has reason to believe" that the party to the consent

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<sup>1</sup> See Press Release, Fed. Trade Comm'n, FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal (May 2, 2024) (Exxon/Pioneer); Press Release, Fed. Trade Comm'n, FTC Order Bans Hess CEO from Chevron Board in Chevron-Hess Deal (Sep. 30, 2024).

<sup>2</sup> Letter from Charles E. Schumer, U.S. Senator, et al., to Lina Khan, Chair, Fed. Trade Comm'n, at 1 (Nov. 1, 2023). See Andrew Katsaros, Inspector General, Fed. Trade Comm'n, *FY 2024 Report on FTC's Top Management and Performance Challenges*, 5 (Sept. 30, 2024) (describing media leaks made during the pendency of both the Exxon/Pioneer and Chevron/Hess matters).

<sup>3</sup> See Melissa Holyoak & Andrew N. Ferguson, Comm'rs, Fed. Trade Comm'n, *Joint Dissent in the Matter of Exxon Mobil Corporation 1-2* (May 2, 2024) (explaining that the FTC fails to allege that the merged entity will possess significant market share); Melissa Holyoak, Comm'r, Fed. Trade Comm'n, *Dissenting Statement in the Matter of Chevron Corporation and Hess Corporation 2* (Sep. 30, 2024) (explaining that no Court would support the low "single-digit" market shares to support blocking a merger, "further highlighting the farcical nature of today's complaint."); Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *Dissenting Statement in the Matter of Chevron Corporation and Hess Corporation 5* (Sep. 30, 2024) (expressing doubt that the Commission would challenge a merger "involving two percent shares of the market,...").

<sup>4</sup> See Letter from Jim Jordan, Chair, H. Comm. on the Judic. and Cathy McMorris Rodgers, Chair, H. Comm. on Energy and Commerce to Lina Khan, Chair, Fed. Trade Comm'n (Oct. 10, 2024).

decree has violated federal antitrust law.<sup>5</sup> In both the Exxon/Pioneer and the Chevron/Hess matters, however, the FTC had no reason to believe the proposed transactions would harm competition.<sup>6</sup> Instead, the FTC appears to have pursued consent decrees after Democrats in Congress raised generalized, far-left policy concerns about mergers in the energy industry.<sup>7</sup> In these consent decrees, the FTC forced a restructuring of the companies's leadership, smeared the companies' executives, and prevented certain individuals from remaining on the boards of the acquiring companies.<sup>8</sup>

To be clear, these consent decrees by the FTC are not competition remedies to correct for merger specific harms—the FTC's actions are only a headline-grabbing tactic that targets disfavored entities and placates political allies.<sup>9</sup> These mergers did not present any anticompetitive concerns, thus the FTC's consent decrees are unwarranted and did nothing to enforce the Clayton Act or protect consumers from anticompetitive harm.<sup>10</sup>

Both Commissioner Holyoak and Commissioner Ferguson voted against issuing these consent decrees, emphasizing that the FTC did not allege any harm to competition in violation of the Clayton Act in either case.<sup>11</sup> As Commissioner Ferguson explained, while the companies accepted the terms of the consent decrees, they did so to avoid the significant costs of an extended merger review.<sup>12</sup> The costs to the now-excluded individuals, however, were significant. The FTC has irreparably damaged the individuals' reputations without allowing the individuals to mount an affirmative defense.

We appreciate that the FTC has provided a staff-level briefing on the Exxon/Pioneer settlement; however, it has not alleviated our concerns about the FTC's use of consent decrees to pursue far-left policy objectives. To further inform the Committee's oversight of the FTC's enforcement of the antitrust laws, we write to request that you produce the following material:

1. All documents and communications referring or relating to the FTC's consent decrees for Exxon Mobil Corp., F.T.C. No. 241-0004 (2024) and Chevron Corp., F.T.C. No. 241-0008 (2024);

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<sup>5</sup> J. Thomas Rosch, Comm'r, Fed. Trade Comm'n, *Consent Decrees: Is the Public Getting Its Money's Worth?*, Remarks before the XVIIIth St. Gallen International Competition Law Forum (Apr. 7, 2011), at 8.

<sup>6</sup> See *supra* note 3 (Republican Commissioners' dissents explaining how, in both cases, the FTC failed to articulate how the effects of each transaction would "substantially lessen competition," and therefore violate the Clayton Act).

<sup>7</sup> See, e.g., Letter from Charles E. Schumer, U.S. Senator, et al., to Lina Khan, Chair, Fed. Trade Comm'n, at 1 (Nov. 1, 2023).

<sup>8</sup> See Holyoak, *supra* note 3 citing Letter from Charles E. Schumer, *supra* note 1.

<sup>9</sup> See Holyoak, *supra* note 3 at 2 ("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."); Ferguson, *supra* note 3 at 5-6 (Because the case is a "stark example" of the Commission leveraging its merger enforcement authority over "innocent" parties that will obtain "[f]awning press coverage," "No court should give this consent, or its equally lawless predecessor in Exxon-Pioneer, any precedential value.").

<sup>10</sup> See *Id.*; see also Analysis of Agreement Containing Consent Order to Aid Public Comment, *Exxon Mobil Corp.*, No. 241-004 (F.T.C. 2024).

<sup>11</sup> See Holyoak, *supra* note 3 at 1-2; See Ferguson, *supra* note 3 at 5.

<sup>12</sup> Ferguson, *supra* note 3 at 5-6.

2. All recommendation memoranda related to Exxon Mobil Corp., F.T.C. No. 241-0004 (2024) and Chevron Corp., F.T.C. No. 241-0008 (2024).

In addition, we request a staff-level briefing about the FTC's use of its enforcement authority to justify the use of settlements that prohibit certain individuals from serving on a corporate board following an acquisition. Please schedule the briefing as soon as possible, but no later than 5:00 p.m. on December 4, 2024 and produce the requested documents for both matters no later than 5:00 p.m. on December 2, 2024 (two days before).

Both the House and Senate Committee on the Judiciary are authorized to conduct oversight of and legislate on matters relating to “[a]dministrative practice and procedure” and the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”<sup>13</sup> If you have any questions about this matter, please ask your staff to contact Committee staff at (202) 225-6906.

Sincerely,



Jim Jordan  
Chairman  
House Committee on the Judiciary



Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
Senate Committee on the Judiciary

cc: The Honorable Jerrold L. Nadler, Ranking Member, Committee on the Judiciary  
The Honorable Amy Klobuchar, Chair, Subcommittee on Competition Policy, Antitrust,  
and Consumer Rights, Senate Committee on the Judiciary

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<sup>13</sup> Rules of the U.S. House of Representatives, R. X (2023); *see also* Rules of the U.S. Senate, XXV(m) (2013).