UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chai**
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of **Chevron Corporation,** **a corporation** **and** **Hess Corporation,** **a corporation**	**Docket No. C-4814** **PUBLIC VERSION**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Chevron Corporation ("Chevron") has executed an Agreement and Plan of Merger (the "Merger Agreement") to acquire Hess Corporation ("Hess") as a direct, wholly-owned subsidiary of Chevron (the "Proposed Acquisition") in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

NATURE OF THE CASE

1. For decades, the Organization of Petroleum Exporting Countries ("OPEC") had outsized power over oil prices in the United States. OPEC is an organization of twelve oil producing Member Countries and ten affiliated non-OPEC Participating Countries (collectively "OPEC Oil Producers"). Decisions made by this cartel of oil-exporting countries harm the dynamism of a competitive market and have affected what American consumers and businesses paid at the gas pump.

2. Around a decade ago, technological breakthroughs catalyzed a surge in U.S. production. Partly as a result, the United States for the past six years has produced more crude oil than any nation ever. U.S. production growth has injected new output into the crude oil market, ultimately lowering prices for Americans when they fill their tanks or heat their homes.

3. This fierce new competition from U.S. producers has frustrated OPEC representatives, as expanded U.S. production undercuts the artificially low production levels and associated artificially high prices OPEC Oil Producers seek to set and impose.

4. 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.

5. Mr. Hess encouraged high-level OPEC representatives in their stated mission to stabilize global oil markets.

6. In addition to communicating with [redacted] at OPEC, Mr. Hess also communicated with [redacted] about global output and crude oil inventory management. As Mr. Hess has noted publicly, there is a direct correlation between inventory levels and oil prices. Mr. Hess also made public statements praising OPEC for its role in stabilizing the oil market and oil prices.

7. OPEC's stated mission is "to coordinate and unify the petroleum policies of its Member Countries and ensure the stabilization of oil markets in order to secure an efficient, economic and regular supply of petroleum to consumers, a steady income to producers and a fair return on capital for those investing in the petroleum industry." OPEC meets regularly to set production targets and coordinate output for the OPEC Oil Producers to help manage global oil prices.

8. OPEC Oil Producers account for approximately 50% of global crude oil production, meaning that a significant share of the global crude oil market is exposed to OPEC's coordinated output decision-making. Coordination among competitors on output, if subject to the jurisdiction and the laws of the United States, would be actionable under federal antitrust laws. Chevron and Hess compete against OPEC Oil Producers in the global production and sale of crude oil.

9. In public and private events, oil industry executives have opportunities to communicate with representatives of OPEC, oil ministers of OPEC's member states, and representatives of foreign national oil companies with whom they compete. Contacts between competitors about their commercial practices regarding output, prices, or other competitive dimensions, whether made in public or in private, can undermine free and fair competition and violate the antitrust laws. Communications by oil executives that support and encourage OPEC members and foreign oil ministers to stabilize oil output and prices can facilitate opportunities for oil executives to act in support of these objectives.

10. Chevron and Hess agreed to the Proposed Acquisition on October 22, 2023. Section 1.3(a) of the Merger Agreement requires Chevron and its Board of Directors to take all actions necessary to appoint Mr. Hess as a director. The Board of Directors directs the affairs of the corporation, sets the corporation's strategy, and makes decisions on major corporate issues. The Board of Directors oversees Chevron's management and its strategic and business planning

process, and it reviews Chevron's corporate strategic business plan and capital expenditures budget and key financial and supplemental objectives. Chevron's Board of Directors also receives competitively sensitive and confidential information about the company's operations. If Mr. Hess were to join Chevron's Board of Directors, he could direct, approve, or influence Chevron's investments and policies to align more closely with OPEC's mission and operations.

11. Mr. Hess's history of communications with OPEC heightens the risk of harm to competition if Mr. Hess assumes a seat on Chevron's Board of Directors. Chevron is substantially larger than Hess and 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 participation on Chevron's Board of Directors would amplify Mr. Hess's supportive messaging to OPEC and others, thereby meaningfully increasing the likelihood that Chevron would align its production with OPEC's output decisions to maintain higher prices. This amplification increases the potential for harm by increasing the likelihood of a lessening of competition in the relevant market.

12. Because the effect of the transaction may be substantially to lessen competition by increasing the risk of harm to competition and meaningfully increasing the likelihood of industry coordination in the global market for the production and sale of oil, the Proposed Acquisition violates Section 7 of the Clayton Act. The Proposed Acquisition would also facilitate an unfair method of competition in violation of Section 5 of the FTC Act. Harm to competition in crude oil production and sales would likely result in higher oil prices, leading to higher prices for transportation fuels (gasoline, diesel, and jet fuel), heating oil, chemicals, and end products such as lubricants, plastics, paints, and asphalt.

RESPONDENTS

13. Chevron is one of the world's leading public integrated energy companies. In 2023, it reported $196.9 billion in revenue and had approximately 40,000 employees globally. Headquartered in San Ramon, California, it operates all around the world. Its major crude oil production operations in the United States are primarily in California, Colorado, New Mexico, Texas, and the Gulf of Mexico.

14. Chevron is, and at all relevant times relevant herein has been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44, and Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

15. 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, it reported $10.6 billion in revenue and had approximately 1,700 employees globally. Its crude oil operations in the United States are in North Dakota, Montana, and the Gulf of Mexico.

16. Hess is, and at all relevant times relevant herein has been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44, and Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

THE PROPOSED ACQUISITION

17. On October 22, 2023, Chevron executed the Merger Agreement 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 name John B. Hess, Chief Executive Officer of Hess, to the Chevron Board of Directors.

18. The Proposed Acquisition constitutes a merger subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

THE RELEVANT ANTITRUST MARKET

19. 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.

20. A relevant geographic market in which to analyze the Proposed Acquisition is global.

THE PROPOSED ACQUISITION MEANINGFULLY INCREASES THE RISK OF HARM TO COMPETITION

21. The United States is currently the world's largest oil producer, surpassing Saudi Arabia and Russia. Since around 2010, U.S. producers of shale oil have fueled domestic production growth, contributing to lower oil prices globally. The significant and sustained drop in the world price of oil from 2014 to 2016 directly impacted OPEC Oil Producers' ability to maintain production quotas and higher world crude oil prices. OPEC responded to renewed competition from U.S. shale oil producers by engaging in price wars that contributed to the sustained price drop and by adding affiliate countries to its organization (known as the "OPEC+" countries).

22. Falling oil prices, rather than causing reduced output from U.S. producers, resulted in technological breakthroughs to lower production costs and improve productivity. Mr. Hess described the impact of the price war on November 13, 2019, at a Bank of America Merrill Lynch Global Energy Conference:

> And I think OPEC itself probably misplayed their cards when they thought when the free fall in oil prices happened in 2014, that basically, they would put U.S. producers out of business because basically, as oil prices went down, American independent ingenuity went up. Tremendous breakthroughs. Our companies [sic] – one of the companies that's done this, but the whole industry has. We've been able to lower our drilling and completion costs by over 50% in the last 5 years and improve our well productivity, so a totally different idea by increased proppant, the right spacing, drilling times, we added all up. Basically, productivity per well in shale has gone up about 50%. So basically, shale has become a survivor, not necessarily a thriver in a $50 WTI world, but we've survived and the most

successful companies are the ones that will continue to make these productivity improvements, even though productivity we see, along with other shale producers in the business, as being incremental from here.

23. Faced with reinvigorated competition from U.S. producers, and having failed to win a price war, OPEC officials had an incentive to coordinate with these rivals rather than compete.

24. OPEC's Secretary General, Mohammad Barkindo, engaged in efforts to convince U.S. producers to coordinate oil production and inventory reserves, which would raise global oil prices above levels that would otherwise prevail. These overtures, which began as early as late 2016, took place at industry events and private meetings between U.S. oil executives and OPEC representatives.

25. Mr. Hess also encouraged his OPEC competitors to stabilize production and draw down inventories. Mr. Hess appeared with Mr. Barkindo at a December 10, 2016 forum at the Center for Strategic and International Studies ("CSIS"), a nonprofit policy research organization in Washington, D.C. Discussing the impact of the OPEC Oil Producers' Declaration of Cooperation on the industry, Mr. Hess stated:

> You say, why is this agreement so important? We had a glut, it was a stubborn glut from over-production, and even though demand was increasing every year for oil, a million barrels a day, the glut remained, and while there's been some relief of the excess inventory in the last three months, it certainly wasn't enough to prop up prices to encourage future investment. What this deal does is accelerate the draw down of those excessive supplies to get to inventories in the world where they're comfortable, but not excessive, and if this agreement hadn't been done, I think probably prices would have floundered for another year in the 40s.

26. As Hess's CEO, Mr. Hess attended public meetings and maintained private communications with OPEC representatives during this time. These interactions presented OPEC representatives with opportunities for discussion, meetings, and communications with their rival U.S. oil producers relating to maintaining market stability that ultimately is likely to increase prices. Hess's ordinary course documents demonstrate that, as Hess's CEO and Director, Mr. Hess had access to and connections with OPEC Oil Producers, his market rivals. Documents from Mr. Hess's files include communications with [redacted]

COMMUNICATIONS WITH
<u>OPEC SECRETARY GENERAL MOHAMMAD BARKINDO</u>

27. Mohammad Barkindo was OPEC's Secretary General from August 1, 2016, until July 5, 2022. OPEC's Secretary General administers OPEC's affairs and acts as its legally authorized representative and Chief Executive of its Secretariat. Communications between Mr.

Hess and Mr. Barkindo began at least as early as December 2016 and continued [redacted].

28. Early connections between Mr. Hess and Mr. Barkindo involve joint public appearances at events in the United States. In December 2016, Mr. Hess and Mr. Barkindo joined in a forum discussion at CSIS to discuss oil market trends. The press release reports that Mr. Hess, who is a CSIS trustee, stated: "We're entering a new chapter for oil prices; one of upward trajectory." Mr. Hess also stated:

> The key question is can shale and OPEC coexist? The answer is absolutely yes. Everybody tends to talk about shale and shale is becoming the new OPEC. Not the case. Shale is short cycle. OPEC and deepwater are long cycle. We're going to need both for sustainable prices going forward.

29. In March 2017, Mr. Barkindo attended CERAWeek, an energy conference held annually in Houston, Texas. In his capacity as Hess's CEO, Mr. Hess attended meetings between Mr. Barkindo and senior oil executives during which Mr. Barkindo "garner[ed] views and opinions" from the executives. Discussing his participation in the conference, Mr. Barkindo stated that "we all belong to the same industry, we have all felt the brunt of the volatility the market has experienced over the past two years or so and we all want to see the restoration of stability" and that "no-one wants to see a repeat of 2015 and 2016." Mr. Hess stated that "[i]t's a new OPEC" and that Mr. Barkindo's message was that "[w]e're all in the same boat." Mr. Hess also said that "It was a very good exchange of information and views about oil … I really commend the OPEC Secretary General for the outreach. It was a good talk." Mr. Barkindo continued his outreach to U.S. shale oil producers, stating in October 2017 at the Oil & Money conference in London, United Kingdom, that there was "a general understanding that this downturn was not in the interest of anybody. As much as we felt the pinch so did they."

30. After CERAWeek 2017 through [redacted] Mr. Hess communicated [redacted] with Mr. Barkindo [redacted]

31. For example, [redacted] Mr. Hess highlighted that it was [redacted] Public reports following Mr. Hess's and Mr. Barkindo's Davos appearances cite Mr. Hess as saying that OPEC played a positive role in stabilizing oil prices and Mr. Barkindo as saying that the United States benefited from OPEC policies and that OPEC rescued the U.S. oil industry.

32. [redacted]

[redacted]

33. [redacted]

34. [redacted]

35. The CSIS event, held March 8, 2019, was a luncheon conversation with Mr. Barkindo. Mr. Hess introduced Mr. Barkindo, who remarked that Mr. Hess's "wise guidance, and great sincerity to me personally, and to OPEC as an Organization, is always immensely appreciated." Mr. Barkindo's speech emphasized the importance of market stability and the importance OPEC attached to the relationship between the United States, OPEC, and the global oil industry.

36. [redacted]

37. [redacted]

[redacted]

38. [redacted]

[redacted]

39. [redacted]

40. [redacted]

COMMUNICATIONS WITH
<u>OPEC SECRETARY GENERAL HAITHAM AL GHAIS</u>

41. On August 1, 2022, Haitham Al Ghais assumed the office of Secretary General of OPEC. [redacted] After they met in March 2023 at CERAWeek, [redacted]

42. [redacted]

43. Mr. Hess chose to speak at the 8th OPEC International Seminar, "Towards a Sustainable and Inclusive Energy Transition," an OPEC summit in Vienna, Austria in July 2023. Not only did Mr. Hess speak at the summit, but Hess Corporation also served as a sponsor for the event – the only U.S. firm to do so. Hess Corporation was a gold level sponsor of the event – the second-highest sponsorship level available – alongside entities associated with OPEC member states like Kuwait Petroleum Corporation and the Nigerian Upstream Petroleum Regulatory Commission.

<u>PRIVATE COMMUNICATIONS WITH</u> [redacted]

44. [redacted] is an oil industry and government leader from Saudi Arabia. Saudi Arabia is the largest producer among OPEC members. [redacted] held leadership positions for many years at Saudi Aramco, [redacted] Saudi Aramco is one of the largest oil producers in the world.

[redacted]

45. Mr. Hess communicated privately with [redacted]

46. [redacted]

[redacted]

47. [redacted]

MR. HESS'S PUBLIC STATEMENTS

48. Mr. Hess repeated themes from his private communications about market stability and other business topics that he had with Messrs. Barkindo, Al Ghais, and [redacted] in public statements about the role that OPEC should play and was playing in the market. On Hess's July 28, 2021, earnings call, Mr. Hess stated:

> So shale will play a role, but it's going to have a back seat in terms of being the swing supplier. The swing supplier going forward and really the Federal Reserve of oil prices is going to be OPEC led by – or OPEC+ led by Saudi Arabia, Russia and the other members. And I think they've been very disciplined, very wise and being very tempered about bringing their spare capacity back.

49. In several investor conferences from 2020 to 2022, Mr. Hess stated that OPEC was responsible for the stability of oil markets and oil prices. In these public statements, Mr. Hess signaled his approval of OPEC's actions in the market. Mr. Hess praised OPEC as being "very, very clever, intelligent, wise in how they brought their oil back," consistent with his

private communications with OPEC representatives. Discussing how "the balance in the market and the stability of the markets is finally in OPEC's hands," Mr. Hess said that Saudi Arabia had done a "masterful job leading OPEC plus, giving the market what it needs, but not oversupplying it," and that "OPEC, I think, has done a great job managing the oil market."

50. Mr. Hess's appointment to Chevron's Board of Directors, as an element of the Proposed Acquisition, would heighten the risk of harm to competition, including meaningfully increasing the risk of industry coordination. Mr. Hess's supportive messaging to OPEC encourages 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, Mr. Hess's elevation to the Chevron's Board of Directors would amplify the importance and likely effect of any public or private communications on these issues. The effects of this merger-specific enhancement of Mr. Hess's authority may be to substantially lessen competition, in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. The Merger Agreement, which contains the Board appointment section that causes the violation to occur, is an unfair method of competition in violation of Section 5 of the FTC Act.

VIOLATIONS CHARGED

51. The effect of the Proposed Acquisition, if consummated, may be to substantially lessen competition, or tend to create a monopoly, in the relevant antitrust market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

52. The Merger Agreement between Chevron and Hess constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

53. The Proposed Acquisition constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this sixteenth day of January, 2025, issues its Complaint against said Respondents.

By the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor
Secretary