ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Chevron Corporation and Hess Corporation File No. 241-0008

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.

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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.