Congress of the United States
Washington, DC 20515

March 27, 2024

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Madam Chairwoman,

On November 1, 2023, twenty-three Senate Democrats sent you a letter "urg[ing] you to investigate" the recently announced oil and gas mergers.[1] We write to urge the Federal Trade Commission (FTC) to follow the law and the facts in its review of the recently announced oil and gas industry mergers. As is the case with any merger review, including those in the industrial sector, mergers must be assessed under a fair and unbiased standard grounded in sound economics and law that protects American consumers, and does not impose policy preferences to further political ends.

The FTC has historically viewed the production of oil and gas in the context of a global market.[2] In that market, a post-merger ExxonMobil would account for less than three percent of global production in a market dominated by foreign state-owned entities and less than six percent of United States domestic oil and gas production.[3] Similarly, a post-merger Chevron would account for just two percent of global production and four percent of U.S. production.[4] While not determinative, the FTC should, consistent with prior precedent and the application of basic economics, consider these relevant facts in its review.

Unfortunately, some of our Democratic colleagues do not want you to apply relevant facts or antitrust precedent fairly to these mergers, as demonstrated through their letter. Their letter makes specious and speculative claims about what these mergers would allegedly portend for "climate science" and "climate legislation," among other things. But as you have stated, the

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[1] Letter to The Honorable Lina Khan from Senator Charles Schumer and Senator Amy Klobuchar, et al., sent November 1, 2023.
[2] See Federal Trade Commission, *Gasoline Price Changes and the Petroleum Industry: An Update* at 7. ("Crude oil prices since 2005 have changed due to shifts in both world-wide demand and supply.");
https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-economics-gasoline-price-changes-and-petroleum-industry-update/federal-trade-commission-bureau-economics-gasoline-price-changes-and-petroleum-industry.pdf
[3] See ExxonMobil and Pioneer Annual Reports and Data; Energy Institute 2023 Statistical Review of World Energy; EIA Drilling Productivity Report.
[4] See Annual Reports for Chevron and Hess; Energy Institute 2023 Statistical Review of World Energy.

drafters' climate arguments have no role in the antitrust analysis of a merger.[5]

For example, the letter decried oil exporting operations, demonstrating a fundamental misunderstanding of how U.S. refineries operate at capacity, how global energy markets function, and how prices are determined. Furthermore, the letter pejoratively described the combined holdings of a merged ExxonMobil and Pioneer in the Permian Basin, but conveniently ignored that the new company would produce just fifteen percent of the Basin's oil and gas, while numerous other firms of varying sizes would continue to account for the vast majority of production.[6]
Incredibly, the letter also asked the FTC to simply ignore the parties' plan to produce an additional one billion barrels of oil over the life of the assets beyond what could be achieved if the parties acted separately. In other words, the letter deliberately ignored evidence of what would be a clear benefit to consumers, workers, and our nation's energy security: greater production.

Our Democratic colleagues may be entitled to their own opinions, but a fair and unbiased review of these mergers must be based upon actual facts.

Since these two proposed transactions will significantly expand oil and gas production, the obvious economic consequence would be that costs to consumers should fall. That would be a welcome development for American families who are paying substantially higher energy prices because of Biden administration policies.

While not a factor in proper FTC merger analysis, denying these mergers and the associated increase in production could also lead to greater global emissions of greenhouse gases. As domestic energy production decreases, it would need to be replaced by foreign substitutes. Our competitors like Russia produce natural gas that Energy Secretary Jennifer Granholm called the "dirtiest on earth." On the other hand, the U.S. produces some of the lowest methane intensive oil and gas in the world.[7]

It is precisely because these transactions will produce more oil and gas that our Democratic colleagues oppose them. Such actions, according to our colleagues, are "subverting our democratic processes" and "frustrate self-governing." However, our colleagues offer no similar hyperbole about the recent unilateral actions of the Biden administration to raise energy costs,

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[5] See Lina Khan, *ESG Won't Stop the FTC*, The Wall Street Journal, December 21, 2022; https://www.wsj.com/articles/esg-wont-stop-the-ftc-competition-merger-lina-khan-social-economic-promises-court-11671637135

[6] *See* GEORGE MASON UNIVERSITY GLOBAL ANTITRUST INSTITUTE, *Hearing on Concentration and Competitiveness in the U.S. Economy* 12 (September 13, 2018) ("Basic economic theory shows that concentration could reflect a decline in competition, but could equally reflect the forces of competition at work").

[7] IEA (2022), *Global Methane Tracker 2022*, IEA, Paris https://www.iea.org/reports/global-methane-tracker-2022.

limit competition, and reduce investment and access for the U.S. oil and gas industry. Instead, it appears Senate Democrats view antitrust enforcement as an opportunity to impose the same anti-fossil fuel policy preferences to the detriment of the American people— policy preferences that Congress has not authorized the Federal Trade Commission to regulate.

We respectfully request that the FTC conduct a fair and unbiased review of these mergers that is rooted in the facts, economic realities, and precedent. The oil and gas industry (like any other industry) should not be subject to unfair investigations or heightened antitrust scrutiny in order to further a political agenda that seeks the end of fossil fuel production. We expect the Commission to exercise its authorities with adherence to the rule of law and respect for due process, not partisan pressures and policy preferences.

Sincerely,

Ted Cruz
United States Senator

Mitch McConnell
United States Senator

Lindsey O. Graham
United States Senator

Bill Cassidy, M.D.
United States Senator

John Kennedy
United States Senator

Rick Scott
United States Senator

Thom Tillis
United States Senator

Kevin Cramer
United States Senator

John Barrasso, M.D.
United States Senator

Steve Daines
United States Senator

John Hoeven
United States Senator

Michael S. Lee
United States Senator

Cynthia Lummis
United States Senator

Shelley Moore Capito
United States Senator

Bill Hagerty
United States Senator

Tim Scott
United States Senator

Cindy Hyde-Smith
United States Senator

John Cornyn
United States Senator

Mike Crapo
United States Senator

James Lankford
United States Senator

James E. Risch
United States Senator

Ted Budd
United States Senator

Pete Ricketts
United States Senator

John Thune
United States Senator

Eric Schmitt
United States Senator

Markwayne Mullin
United States Senator

JD Vance
United States Senator

Katie Boyd Britt
United States Senator

Todd Young
United States Senator

Dan Sullivan
United States Senator

Roger F. Wicker
United States Senator

Marsha Blackburn
United States Senator

Deb Fischer
United States Senator

Lisa Murkowski
United States Senator

Jerry Moran
United States Senator

Rand Paul, M.D.
United States Senator

Roger Marshall, M.D.
United States Senator

John Boozman
United States Senator