



January 19, 2023

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

Re: Price Gouging and Collusion in Shell Eggs Sector

Dear Chair Khan:

Farm Action is a farmer-led advocacy organization dedicated to building a food and agriculture system that works for everyone, not just a handful of powerful corporations. Our network includes farmers, ranchers, rural community leaders, food system workers, independent processors and grocers, and policymakers across the country. We write today to convey concerns over apparent price gouging, price coordination, and other unfair or deceptive acts or practices by dominant producers of eggs such as Cal-Maine Foods, Rose Acre Farms, Versova Holdings, and Hillandale Farms, among others.

Egg prices more than doubled for consumers last year — going from \$1.788 in December 2021 to \$4.250 in December 2022 for a dozen large Grade A eggs.¹ Industry-aligned consultants and leading egg producers have blamed this dramatic increase on “supply disruption, ‘act of God’ type stuff.”² As we detail below, however, the real culprit behind this 138 percent hike in the price of a carton of eggs appears to be a collusive scheme among industry leaders to turn inflationary conditions and an avian flu outbreak into an opportunity to extract egregious profits reaching as high as 40 percent.

The production and distribution of eggs in the United States is dominated by a handful of companies led by Cal-Maine Foods (“Cal-Maine”). With nearly 47 million egg-laying hens, Cal-Maine controls approximately 20 percent of the egg market and dwarfs its nearest competitor.³ It is known as the “bellwether” for the industry.⁴ The leading firms in the industry have a history of engaging in “cartelistic conspiracies” to limit production, split markets, and increase prices for consumers.⁵ A jury found such a conspiracy existed as recently as 2018.⁶ We urge the FTC to examine the pricing and production behavior of dominant firms in the egg industry over the past 12 months with this backdrop in mind.

¹ See Jing Pan. 2023. [Act of God!: The price of eggs is soaring due to an 'unprecedented' crisis, trade strategist says — here's 2 surging food stocks to help buck the slumping market \(yahoo.com\)](#).

² See Ibid.

³ See Hendrix ISA. 2022. [Top U.S. egg producer Ranking of 2022](#); Cal-Maine Foods. 2022. [Cal-Maine Foods Investor Presentation January 2022](#).

⁴ Egg-News.com. 2022. [Cal-Maine Foods Reports on Q2 of FY 2023](#).

⁵ See Peter C. Carstensen. 2023. [The Third Circuit's Scrambling of Precedent in Processed Eggs](#).

⁶ See *In re Processed Egg Prod. Antitrust Litig.*, 962 F.3d 719, 725 (3d Cir. 2020).

I. Supply Chain Disruptions Do Not Justify Dramatic Increase in Egg Prices

The weekly wholesale price for Grade A large eggs climbed substantially higher in every quarter of 2022. It began 2022 at around 144 cents per dozen — a 32.8 percent year-over-year increase compared to January 2021.⁷ At the time, the USDA’s Economic Research Service (ERS) noted this price was “significantly higher than expected” and reflected “lower-than-expected 2022 beginning inventory” as well as “producers’ intentions to add fewer layers to flock in 2022.”⁸ The trend continued in February 2022, with “lower production growth” leading the average wholesale price to reach 173.6 cents per dozen — or 31.8 percent higher than it was in February 2021.⁹

The first case of avian flu in a commercial table-egg layer facility was detected on February 22 in Delaware.¹⁰ Over the ensuing Spring season, avian flu outbreaks would be reported in 10 states and result in the loss of 30.7 million egg-laying hens.¹¹ After the end of May, however, avian flu discoveries would slow down dramatically.¹² Notably, no hen losses were reported after the beginning of June except due to sporadic outbreaks in September, October, and November.¹³ All in all, the total number of egg-laying hens lost to avian flu in 2022 was around 43 million birds.¹⁴

Although these figures seem to support the theory that the avian flu outbreak of 2022 was significant, its actual impact on the egg supply was minimal. After accounting for chicks hatched during the year, the average size of the egg-laying flock in any given month of 2022 was never more than 7-8 percent lower than it was a year prior — and in all but two months was never more than 6 percent lower.¹⁵ Moreover, the effect of the loss of egg-laying hens on production was itself blunted by “record-high” lay rates observed among remaining hens throughout the year.¹⁶ With total flock size substantially unaffected by the avian flu and lay rates between one and four percent higher than the average rate observed between 2017 and 2021, the industry’s quarterly egg production experienced no substantial decline in 2022 compared to 2021.¹⁷

⁷ See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: February 2022](#).

⁸ Ibid.

⁹ Ibid.

¹⁰ See USDA ERS. 2022. [Recent avian flu outbreak reduces U.S. egg-laying flock](#)

¹¹ See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: June 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: May 2022](#).

¹² See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: June 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: July 2022](#).

¹³ See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: November 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: October 2022](#).

¹⁴ See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Avian influenza outbreaks reduced egg production, driving to record highs in 2022](#).

¹⁵ See USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#)

¹⁶ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: June 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#).

¹⁷ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#) (showing that, compared to 2021, quarterly egg production in 2022 was approximately 0.4% lower in the first quarter, 3.8% lower in the second quarter, 3% lower in the third quarter, and an estimated 4.4% lower in the fourth quarter of 2022).

Notwithstanding the 2022 avian flu outbreak’s apparently mild impact on the industry, egg prices skyrocketed after it hit. The weekly wholesale price for shell eggs climbed from 173.5 cents per dozen at the end of February to 194.2 cents in the middle of March.¹⁸ By the first week of April, it had reached 298 cents per dozen.¹⁹ For two months after this point, the wholesale price of eggs appeared to stabilize at elevated levels slightly below this peak — but then it started increasing again.²⁰ In July, it broke previous records and reached over 300 cents per dozen.²¹ After dipping briefly in August, the rally in wholesale egg prices continued, hitting 400 cents per dozen in October and almost 450 cents per dozen in the first weeks of December.²²

As USDA ERS noted as early as May 2022 (when egg prices were still below 300 cents per dozen), “the price increase” observed in the egg sector was “much larger than the decreases in production” caused by the avian flu, and “reflect[ed] the inelastic nature of demand for eggs.”²³ It also reflected the unwillingness of dominant egg producers to increase production in response to record-high prices. USDA ERS observed in August 2022 that “[m]oderating expected feed costs and recent record-high egg prices should motivate an increase in the demand for pullets [of chicks]” in coming months as producers seek to expand egg-laying flocks.²⁴ This anticipated expansion of production seems to have never materialized, however. By December 2022, USDA ERS was explaining that “[r]ecent data on the table-layer flock inventory, its productivity, and egg-type chicks hatched . . . suggest[s] that producers—despite the record-high wholesale prices—are taking a cautious approach to expanding production in the near-term.”²⁵

II. Dominant Egg Producers Have Increased Profit Margins By Five-Fold

Beyond the avian flu outbreak, no other supply chain disruption or increase in input costs justifies the dominant egg producers’ more than three-fold price hike. Although increases in feed and fuel costs have been held up by some as primary reasons for the near-tripling of wholesale egg prices over the past year,²⁶ the dominant producers’ course-of-business documents suggest these claims have little

¹⁸ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: February 2022](#).

¹⁹ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#).

²⁰ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: June 2022](#); [Livestock, Dairy, and Poultry Outlook: May 2022](#).

²¹ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: July 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: August 2022](#).

²² USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: November 2022](#); USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: October 2022](#).

²³ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: May 2022](#).

²⁴ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: August 2022](#).

²⁵ USDA ERS. 2022. [Livestock, Dairy, and Poultry Outlook: December 2022](#).

²⁶ See Jing Pan. 2023. [Act of God': The price of eggs is soaring due to an 'unprecedented' crisis, trade strategist says — here's 2 surging food stocks to help buck the slumping market \(yahoo.com\)](#).

merit. For example, in a presentation to investors just this month, Cal-Maine noted that total farm production and feed costs in 2022 were only 22 percent higher than they were in 2021.²⁷

Contrary to industry narratives, the increase in the price of eggs has not been an “Act of God” — it has been simple profiteering. For the 26-week period ending on November 26, 2022, Cal-Maine reported a ten-fold year-over-year increase in gross profits — from \$50.392 million to \$535.339 million — and a five-fold increase in its gross margins.²⁸ Notably, Cal-Maine’s gross profits increased in lockstep with rising egg prices through every quarter of the year — going from nearly \$92 million in the quarter ending on February 26, 2022, to approximately \$195 million in the quarter ending on May 28, 2022, to more than \$217 million in the quarter ending on August 27, 2022, to just under \$318 million in the quarter ending on November 26, 2022.²⁹ The company’s gross margins likewise increased steadily, from a little over 19 percent in the first quarter of 2022 (a 45 percent year-over-year increase) to nearly 40 percent in the last quarter of 2022 (a 345 percent year-over-year increase).³⁰

Although the other dominant egg producers are private companies whose profit information is not publicly available, Cal-Maine’s willingness to increase its prices — and profit margins — to such unprecedented levels suggests foul play. That Cal-Maine — the leader in a mostly commoditized industry with, presumably, the most efficient operations and the greatest financial power — will quintuple its profit margin in one year without any compelling business reason is plainly an indication of market power. It is also an invitation for rival egg producers to tacitly collude with Cal-Maine, forego price competition themselves, and maintain high prices for the entire industry.³¹ Fundamentally, Cal-Maine seems to be engaging in price leadership — using the avian flu outbreak and the inflationary conditions of the past year as cover to establish a new “focal point”³² for egg prices, one that will not only pass through cost inflation, but also radically enhance the industry’s pre-2022 profit margins.

III. Conclusion: The FTC Should Take Action to Restore Competition and End Abusive Price Gouging in the Egg Industry

The course of action taken by Cal-Maine and other large egg producers over the past year is consistent with longstanding economic research on how monopolized industries “administer prices” — either tacitly or expressly — to achieve target “cost-plus” margins during economic shocks and periods of

²⁷ Cal-Maine Foods. 2022. [Cal-Maine Foods Investor Presentation January 2022](#).

²⁸ [Form 10-Q for Calmaine Foods INC filed 12/28/2022 \(gcs-web.com\)](#).

²⁹ [907903b7-b982-48dd-86a1-167713695e15 \(gcs-web.com\)](#); [Form 10-Q for Calmaine Foods INC filed 12/28/2022 \(gcs-web.com\)](#); [Form 10-Q for Calmaine Foods INC filed 09/26/2022 \(gcs-web.com\)](#); [*Form 10-K for Calmaine Foods INC filed 07/18/2022 \(gcs-web.com\)](#)

³⁰ [907903b7-b982-48dd-86a1-167713695e15 \(gcs-web.com\)](#); [Form 10-Q for Calmaine Foods INC filed 12/28/2022 \(gcs-web.com\)](#); [Form 10-Q for Calmaine Foods INC filed 09/26/2022 \(gcs-web.com\)](#); [*Form 10-K for Calmaine Foods INC filed 07/18/2022 \(gcs-web.com\)](#)

³¹ *Cf. Hearing on the Impact of Corporate Power on Workers and Consumers Before the H. Comm. on Economic Disparity & Fairness in Growth*, 117th Cong. (2022) (statement of Hal Singer, Managing Director, Econ One Research).

³² *Cf. id.*

high inflation.³³ In a truly competitive market, one would have expected rival egg producers to respond to a near-tripling of average prices with efforts to undercut Cal-Maine’s skyrocketing profit margin and capture market share. Yet we have found no evidence of aggressive price competition among the largest egg producers over the past year.

This pattern of behavior by the dominant firms in the egg industry raises significant concerns about monopoly power and potential antitrust violations in this sector.³⁴ It also presents exactly the kind of monopoly or oligopoly power that is entrenched in a market “with highly inelastic demand” and that “imposes substantial costs on the public” which Chair Khan has previously argued enforcers should seek to challenge.³⁵ We urge the FTC to exercise the full scope of its authorities — under the Sherman, Clayton, and FTC Acts — to identify, challenge, and uproot anti-competitive arrangements that suppress competition among egg producers and enable dominant firms like Cal-Maine to extort consumers for the eggs they need every day.

In the end, what Cal-Maine Foods and the other large egg producers did last year — and seem to be intent on doing again this year — is extort billions of dollars from the pockets of ordinary Americans through what amounts to a tax on a staple we all need: eggs. They did so without any legitimate business justification. They did so because there is no “reasonable substitute” for a carton of eggs. They did so because they had power and weren’t afraid to use it. This kind of organized theft is exactly

³³ See generally Howard Sherman, *Monopoly Power and Stagflation*, 11(2) J. Econ. Issues 269 (1977). For a review of the literature on administered pricing in monopolized industries, see Christina Kelton, *The Administered-Price Thesis: Literature Review and Methodological Discussion*, Working Paper 43, The Food System Research Group, Department of Agriculture Economics, University of Wisconsin—Madison (June 1980) (available at: <https://bit.ly/39zl6TP>). See also Howard Sherman, *Stagflation: A Radical Theory of Unemployment and Inflation* (1976); *The Roots of Inflation* (John Blair ed. 1975); John Blair, *Economic Concentration* (1972); Michael Kalecki, *Theory of Economic Dynamics* (1968); Kathleen Pulling, *Cyclical Behavior of Profit Margins*, 12(2) J. Econ. Issues 287 (1978); Richard Edwards, *The Impact of Industrial Concentration on the Economic Crisis*, in *The Economic Crisis Reader* 217 (David Mermelstein, ed. 1975); John Blair, *Market Power and Inflation*, 8(2) J. Econ. Issues 453 (1974); Alfred Eichner, *A Theory of the Determination of the Mark-Up Under Oligopoly*, 83(4) Econ. J. 1184 (1973). Cf. Bennett Harrison, “Inflation by Oligopoly: Two Case Histories”, *Nation Magazine* (August 30, 1975).

³⁴ As a starting point, we suggest that these potential violations may include: (1) price coordination in violation of the Sherman Act; (2) invitations to collude and practices that facilitate tacit collusion in violation of the FTC Act’s prohibition on “unfair methods of competition”; and (3) deceptive misrepresentations of the underlying cost of goods sold or markups on those costs in violation of the FTC Act’s prohibitions on both “unfair methods of competition” and “unfair or deceptive acts or practices” in trade or commerce. See Federal Trade Commission, [Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act](#), at 12-13, 15 (Nov. 10, 2022).

³⁵ See Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 Harv. L. & Pol’y Rev. 235, 285-8 (2017). Cf. Sandeep Vaheesan, *Resurrecting “A Comprehensive Charter of Economic Liberty”: The Latent Power of the Federal Trade Commission*, 19(3) U. Penn. J. Bus. L. 645, 684-87 (2017).

what Congress — and the public it represents — “empowered and directed” the FTC to prevent.³⁶ The FTC should do nothing less.

We urge the FTC to promptly open an investigation into the egg industry, prosecute any violations of the antitrust laws it finds within, and ultimately, get the American people their money back.³⁷

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Basel Musharbash', with a long horizontal flourish extending to the right.

Basel Musharbash, Legal Counsel
Farm Action

³⁶ See [Statement of Chair Lina M. Khan Joined by Commissioner Rebecca K. Slaughter and Commissioner Alvaro M. Bedoya On the Adoption of the Statement of Enforcement Policy Regarding Unfair Methods of Competition Under Section 5 of the FTC Act](#) (“When Congress passed the FTC Act in 1914, it didn’t just create a new agency. It created new law for that agency to enforce. Section 5 of the Act provides that ‘unfair methods of competition in or affecting commerce’ are ‘hereby declared unlawful.’ The next clause states, ‘The Commission is hereby empowered and directed to prevent’ businesses ‘from using unfair methods of competition.’ Together these sentences form the heart of the Commission’s legislative mandate in the domain of competition.”).

³⁷ See 15 U.S.C. §§ 45(B) (providing the FTC with the authority to seek monetary restitution to consumers harmed by “unfair methods of competition” and “unfair or deceptive acts or practices” prosecuted through its administrative proceedings); *AMG Capital Management, LLC v. FTC*, 141 S.Ct. 1341, 1352 (2021) (“Nothing we say today . . . prohibits the [FTC] from using its authority under § 5 and § 19 to obtain restitution on behalf of consumers.”).