



**Statement of Joe Maxwell  
Chief Strategy Officer for Farm Action**

**Before the U.S. Senate Banking Subcommittee on Economic Policy**

**May 22, 2024**

Chair Warren, Ranking Member Kennedy, and Members of the Subcommittee, thank you for this opportunity to testify regarding Lowering Food Prices and Combatting Corporate Price Gouging and Consolidation. I will be highlighting the on-the-ground implications of heavily concentrated food and agriculture markets for farmers and grocery shoppers.

I am Co-Founder and Chief Strategy Officer for Farm Action, an organization that works to hold the government accountable to principles of fair and competitive markets and to correct imbalances of power in the food and agriculture sector. We look at the broader impact of market concentration within the food and agriculture system and develop policy recommendations to bring about economic vitality in rural America. We believe competition in the marketplace is a cornerstone of economic opportunity and liberty.

Farm Action's lens for research and policy development begins with the premise that our capitalist economic system should work for the American people and our society. To do so, it must be operating within an economic environment where competitive markets exist, and where no one seller or buyer has the power to direct choices, prices, or participation in the market. Further, we understand the capitalist economic system will not work without the government providing safeguards to ensure competition.

I have spent the majority of my career working to build a just, inclusive U.S. economy. I have degrees in agriculture economics and law, and over 30 years of experience in policy development and advocacy. My brother and I are farmers from Missouri — he does most of the farming while I focus my time on issues like those I will be presenting today. I have experience developing food supply chains within the differentiated protein markets. As a farmer, I have firsthand knowledge of the increasing concentration in the food and agriculture sectors and its consequences. When I first began farming, I was one of 512,292 hog farmers in the U.S.<sup>1</sup> Today I

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<sup>1</sup> United States Department of Agriculture, National Agricultural Statistics Service. (1978). 1978 Census of Agriculture. Retrieved from [https://agcensus.library.cornell.edu/wp-content/uploads/1978-United\\_States-CHAPTER\\_1\\_State\\_Data-181-Table-21.pdf](https://agcensus.library.cornell.edu/wp-content/uploads/1978-United_States-CHAPTER_1_State_Data-181-Table-21.pdf)

am one of the remaining 61,000 hog farmers.<sup>2</sup> This decline is the direct result of the concentration and vertical integration in the pork industry. Today, four firms control 67 percent of the hog market.

## **Concentration in Food and Agriculture**

On a national and global scale, the food system is embroiled in a period of unprecedented consolidation and concentration. Today, a handful of monopolistic corporations have so much power and control over the food system that they dictate who farms, what they farm, and who gets to eat.<sup>3</sup>

Economists suggest that market abuses are likely to occur when the concentration ratio of the top four firms (CR4) exceeds 40 percent.<sup>4</sup> In the U.S., CR4 ratios surge far beyond this percentage in such diverse sectors as the processing of soybeans, corn, meat, and poultry, as well as cold cereal, soft drinks, beer, salty snacks, bread, ice cream, fresh-cut salad, wine, retail grocery, and convenience stores. For example, today, beef processing concentration is at 85 percent, pork processing is at 67 percent, and chicken is at 54 percent.<sup>5</sup> Just two seed companies accounted for 72 percent of corn acreage planted and 66 percent of soybean acreage planted between 2018 and 2020.<sup>6</sup> In other words, the entire food system is controlled by just a handful of corporations.

## **Farmers and Consumers Are Losing**

Due to today's heavily concentrated and vertically integrated food and agriculture supply chains, dominant firms no longer need to compete with each other in order to be profitable. Their market power leaves farmers and consumers vulnerable to market abuses: These companies use opportunistic market behavior to set the price they pay farmers and the price they charge consumers with little regard for market dynamics.

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<sup>2</sup> United States Department of Agriculture, National Agricultural Statistics Service. (2022). 2022 Census of Agriculture. Retrieved from [https://www.nass.usda.gov/Publications/AgCensus/2022/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_US/st99\\_1\\_017\\_019.pdf](https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_1_US/st99_1_017_019.pdf)

<sup>3</sup> Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. (2020). The Food System: Concentration and Its Impacts. *Special Report to Family Farm Action Alliance*. Retrieved from <https://farmaction.us/concentrationreport/>

<sup>4</sup> David Chessler. (1996). Determining When Competition is “Workable:” A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996. Retrieved from <https://ipu.msu.edu/wp-content/uploads/2016/12/Chessler-Workable-Competition-96-19-July-96-1.pdf>

<sup>5</sup> Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. (2020). The Food System: Concentration and Its Impacts. *Special Report to Family Farm Action Alliance*. Retrieved from <https://farmaction.us/concentrationreport/>

<sup>6</sup> United States Department of Agriculture, Economic Research Service. 2023. Concentration and Competition in U.S. Agribusiness. Retrieved from [https://www.ers.usda.gov/webdocs/publications/106795/eib-256\\_summary.pdf?v=6656.2](https://www.ers.usda.gov/webdocs/publications/106795/eib-256_summary.pdf?v=6656.2)

Below are three case studies conducted by Farm Action highlighting how dominant firms have used their market power to extract excessive profits through price gouging during periods of claimed supply disruption and production cost increases. In all three cases, the evidence clearly demonstrates the firms exercised opportunistic market behavior that resulted in the markets not responding as would be expected.

### *Egg Industry*

One of the best examples of opportunistic market behavior that defied expected market responses resulting in consumer price gouging was the skyrocketing egg prices beginning in 2021 and ending last year. In 2022, egg prices more than doubled for consumers — going from \$1.32 to \$3.95 for a dozen large Grade A eggs.<sup>7</sup>

Contrary to industry narratives, this 300 percent increase in the price of a carton of eggs wasn't simply attributable to “supply disruption, ‘act of God’ type stuff,”<sup>8</sup> like the avian flu or inflationary pressures. As Farm Action’s letter to the FTC explained in more detail in January 2023,<sup>9</sup> dominant egg producers appear to have calibrated their pricing and production (supply) decisions during this period to achieve and sustain a dramatic, three-fold increase in the wholesale price of eggs to increase their profits excessively.

The first case of avian flu in a commercial table-egg layer facility was detected on February 8, 2022, in Delaware.<sup>10</sup> By May 11, avian flu outbreaks would be reported in 20 states.<sup>11</sup> After the end of May, however, avian flu discoveries would slow down dramatically.<sup>12</sup> Notably, no hen losses were reported after the beginning of June except due to sporadic

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<sup>7</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *December 15, 2022 Situation and Outlook Report*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>8</sup> Pan, Jing. (2023). ‘Act of God’: The price of eggs is soaring due to an ‘unprecedented’ crisis, warns a trade strategist — here are 2 surging food stocks to help buck the slumping market. *Yahoo Finance*. Retrieved from <https://finance.yahoo.com/news/act-god-type-stuff-trade-163000136.html>

<sup>9</sup> Musharbash, Basel. (January 19, 2023). [Farm Action’s letter to FTC Chair Lina Khan re: Price Gouging and Collusion in Shell Eggs Sector]. Retrieve from <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>

<sup>10</sup> United States Department of Agriculture, Economic Research Service. (2022). Recent avian flu outbreak reduces U.S. egg-laying flock. Retrieved from <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=103873>

<sup>11</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: May 2022. *Situation and Outlook Report May 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/103952/ldp-m-335.pdf?v=7293.7>

<sup>12</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: June 2022. *Situation and Outlook Report June 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104124/ldp-m-336.pdf?v=1306.9>; United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: July 2022. *Situation and Outlook Report July 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104319/ldp-m-337.pdf?v=9050.6>

outbreaks in September, October, and November.<sup>13</sup> All in all, the total number of egg-laying hens lost to avian flu in 2022 was around 43 million birds.<sup>14</sup>

Although these figures seem to support the industry narrative that the 2022 avian flu outbreak 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 seven to eight percent lower than it was a year prior — and in all but two months was never more than six percent lower.<sup>15</sup> 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.<sup>16</sup> With total flock size only marginally impacted 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.<sup>17</sup>

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.”<sup>18</sup>

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<sup>13</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>; USDA ERS 2022. Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: November 2022. *Situation and Outlook Report November 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105249/ldp-m-341.pdf?v=6446.5>; Department of Agriculture Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: October 2022. *Situation and Outlook Report October 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105007/ldp-m-340.pdf?v=6471.3>

<sup>14</sup> Department of Agriculture, Economic Research Service. (2022). Avian influenza outbreaks reduced egg production, driving prices to record highs in 2022. Retrieved from <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=105576>

<sup>15</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>16</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: June 2022. *Situation and Outlook Report June 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104124/ldp-m-336.pdf?v=1306.9>; Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>17</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7> (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).

<sup>18</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: May 2022. *Situation and Outlook Report May 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/103952/ldp-m-335.pdf?v=7293.7>

To justify the price increase, the egg industry also deployed the reliable “inflation” excuse from its toolbox. Feed and fuel costs did increase. Yet documents from the largest egg producer, Cal-Maine Foods, indicate that increased production costs did not justify their excessive increase in the price of eggs. In its financial filings, Cal-Maine Foods noted that total farm production and feed costs in 2022 were only 19 percent higher than they were in 2021.<sup>19</sup> It is worth noting that during Cal-Maine Foods’ second quarter of 2023, they had not lost any hens to avian flu.<sup>20</sup>

So if the egg industry's explanations of lower production due to avian flu and inflationary costs do not explain the skyrocketing prices consumers faced, what does? The answer is that the dominant firms used opportunistic, abusive market behavior to garner excessive corporate pricing.

For the 26-week period ending on November 26, 2022, Cal-Maine Foods 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.<sup>21</sup> Notably, their 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.<sup>22</sup> 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).<sup>23</sup>

In a competitive market where market dynamics are allowed to function, one would have expected rival dominant egg producers to respond to a near-tripling of average prices with efforts to undercut Cal-Maine Foods’ skyrocketing profit margin and capture market share. But that is not what happened. Farm Action found no evidence of aggressive price competition for business among the largest egg producers. More to the point, although the USDA found that favorable

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<sup>19</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/b0cebe03-d49f-4d51-8aff-8eacc74816d2>

<sup>20</sup> Cal-Maine Foods, Inc. (2022, December 28). *Cal-Maine Foods Reports Record Results for Second Quarter Fiscal 2023* [Press release]. Retrieved from <https://www.businesswire.com/news/home/20221228005357/en/Cal-Maine-Foods-Reports-Record-Results-for-Second-Quarter-Fiscal-2023>

<sup>21</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/b0cebe03-d49f-4d51-8aff-8eacc74816d2>

<sup>22</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved at <https://calmainefoods.gcs-web.com/static-files/907903b7-b982-48dd-86a1-167713695e15>; Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/907903b7-b982-48dd-86a1-167713695e15>; Cal-Maine Foods, Inc. (2022). Annual Report. Form 10-K United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/4fcc68f8-a380-476b-ba77-c45818ca897f>

<sup>23</sup> Ibid.

conditions for layer flock expansion existed as early as August 2022, the industry kept production pared back through the end of the year. “[D]espite the record-high wholesale prices,” the USDA observed in December 2022, producers were “taking a cautious approach to expanding production in the near-term.”<sup>24</sup>

Contrary to industry narratives, the increase in the price of eggs was not an “Act of God” or inflationary conditions—it was simple: The dominant firms were able to take advantage of a supply disruption and increase costs to tacitly hold production stable, not compete with each other, and earn excessive profits by gouging the consumer at the grocery store.

### *Cattle/Beef Industry*

An unfortunate example of an industry's dominant firms using a single supply disruption to exercise opportunistic behavior in the market, harming both farmers and consumers, is the 2019 fire at the Tyson beef processing plant in Holcomb, Kansas.

On Friday night, August 9, 2019, a fire shuttered a Tyson plant that handled five to six percent of beef processed in the U.S. On Monday morning, all the dominant beef packers were literally screaming fire, causing retail grocers to aggressively purchase wholesale beef in an effort to secure the expected Labor Day beef sales. At the same time, beef packers cut the price they were paying cattle producers, using the excuse of lost processing capacity.

By August 24, the result was a 67 percent spread in what the beef packers paid the cattle producer and how much they charged the retail grocery. To put this in perspective, this spread reflected a 143 percent increase over the average from 2016 to 2018.

What is most telling about the market power of the dominant beef packers and their use of a supply disruption to make excessive profits is that in the three weeks that followed the fire, the beef industry slaughtered 5,000 more cattle than the three weeks before the fire.<sup>25</sup> The reality was the packers had the processing capacity to replace that which was lost at Holcomb. Seldom does anyone profit from a fire, but when you have dominant market power, you can do whatever you want.

Farmers are being squeezed at both ends — buying and selling — and losing their fair share of the consumer food dollar. In 2022, farmers and ranchers only received 14.9 cents of

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<sup>24</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>25</sup> United States Department of Agriculture, Agricultural Marketing Services. (2020). Boxed Beef & Fed Cattle Price Spread Investigation Report. Retrieved from <https://www.ams.usda.gov/reports/boxed-beef-and-fed-cattle-price-spread-investigation-report>

every dollar that consumers spent on food.<sup>26</sup> This figure has been consistently falling since 2014 and will likely continue to do so without aggressive antitrust reforms. It does not take a supply disruption for them to be in a losing market position. As an example, in the cattle market, the top four meatpackers' share of the beef market has jumped from 21 percent to 85 percent since 1970 — those top four meatpackers are JBS, Tyson, Cargill, and Marfrig's National Beef. Meanwhile, the producers' share of the consumer beef dollar has plummeted from around 70 percent to 37 percent. In this transition, cattle producers have lost an estimated \$1,500 per head of their share of the consumer beef dollar to the meatpacker.<sup>27</sup> Consider the hypocrisy of a fair market where the producer is paid low prices while the consumer pays higher prices.

### *Fertilizer Industry*

Much like grocery consumers, farmers are at the mercy of dominant firms when they purchase their agricultural inputs. Four or fewer dominant firms control every aspect of the inputs farmers need to grow and raise their crops, livestock, and poultry to feed America. The fertilizer price hikes between 2021 and 2022 are a prime example of these dominant firms using their market power to reap excessive profits under the guise of supply chain disruptions, just as we saw with eggs and beef processing.

The fertilizer industry has experienced some of the highest rates of consolidation over the past 25 years. Between 1980 and the mid-2000s, we saw the number of fertilizer firms decline from 46 to 13. As the price of natural gas (from which nitrogen-based fertilizers are derived) dropped and demand increased, this pattern of consolidation continued. This resulted in fewer firms owning and operating an increasing number of production facilities.<sup>28</sup> Today, just two companies supply the entirety of North America with potash, a potassium-based fertilizer: Nutrien Limited and the Mosaic Company.<sup>29</sup> In 2019, four corporations represented 75 percent of the production and sale of nitrogen-based fertilizer in the US: CF industries, Nutrien, Koch, and Yara-USA.<sup>30</sup>

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<sup>26</sup> United States Department of Agriculture, Economic Research Service. (2022). Food Dollar Series. Retrieved from <https://www.ers.usda.gov/data-products/food-dollar-series/>

<sup>27</sup> Callicrate, Mike. (2021). Story of the Steer and a Theft of Epic Proportions. *No-Bull Food News*, November 16, 2021. Retrieved from <https://nobull.mikecallicrate.com/2021/11/16/story-of-the-steer-and-a-theft-of-epic-proportions/>

<sup>28</sup> Bekkerman, A., G.W. Brester, and D. Ripplinger. (2020). The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry. *Choices*. *Quarter 2*. Retrieved from <https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-u-s-nitrogen-fertilizer-production-industry>

<sup>29</sup> ETC Group. (2019). Plate Tech-Tonics: Mapping Corporate Power in Big Food. Retrieved from <https://www.etcgroup.org/content/plate-tech-tonics>

<sup>30</sup> Bekkerman, A., G.W. Brester, and D. Ripplinger. (2020). The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry. *Choices*. *Quarter 2*. Retrieved from <https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-u-s-nitrogen-fertilizer-production-industry>

In 2021, and particularly in the last quarter of the calendar year, the price of all major nutrients used in crop production — Nitrogen, Phosphorus, and Potassium (NPK) — skyrocketed at record-breaking rates and levels. Compared to September 2020 prices, the main nitrogen-based fertilizers, anhydrous ammonia, urea, or liquid nitrogen, increased 210 percent, 155 percent, and 159 percent respectively. Phosphorus-based fertilizers, Diammonium phosphate (DAP) and Monoammonium phosphate (MAP), have increased 100 percent and 125 percent, respectively. Potash, the main source of potassium, rose over 134 percent.<sup>31</sup> In October of 2021 alone, the price of anhydrous fertilizer jumped 26 percent from the previous month to levels not seen since 2008. Urea increased 21 percent from previous months, and the price of potash was 13 percent higher.<sup>32</sup> The evidence demonstrates that in the fall of 2021, using their market power, the dominant fertilizer companies took advantage of supply chain disruptions and increased commodity prices paid to farmers to spike fertilizer prices to unprecedented levels.<sup>33</sup>

Just like the other dominant firms across the food system, fertilizer companies leaned on the narrative of shortages, supply chain disruptions, and increased cost of production to justify these price hikes.

It is a fact that the cost of production had increased. For example, Nutrien’s 2021 third quarter report noted a 51 percent increase in the cost of goods for nitrogen production over the three-month period preceding September 30th — however, their gross manufacturing margin went up 680 percent over this same period.<sup>34</sup> While it is true that natural gas prices were high, Yara’s 2021 third quarter report explicitly stated that this had “[l]imited impact on finished fertilizer production to date.”<sup>35</sup> At CF Industries, they saw their gross margin increase 530 percent, while the cost of sales only accounted for 120 percent of that increase during that same period.<sup>36</sup> While their cost to manufacture synthetic fertilizer had gone up, those costs did not justify the excessive pricing levels these fertilizer corporations pushed onto farmers.

Fertilizer companies attributed these rising prices to global shortages, yet the companies’ own documents refute any shortage claims by revealing that they had additional capacity that they did not utilize. Nutrien’s 2020 annual report states that “due to historically low global

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<sup>31</sup> Myers, Shelby and Veronica Nigh. (2021). Too Many to Count: Factors Driving Fertilizer Prices Higher and Higher. *American Farm Bureau Federation*. Retrieved from <https://www.fb.org/market-intel/too-many-to-count-factors-driving-fertilizer-prices-higher-and-higher>

<sup>32</sup> Micik Dehlinger, Katie. (2021). DTN Retail Fertilizer Trends: Nitrogen Fertilizer Prices Close in on All-Time Highs as UAN32 Breaks Record. *DTN/Progressive Farmer*. Retrieved from <https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/11/03/nitrogen-fertilizer-prices-close>

<sup>33</sup> Nutrien. (2021). Nutrien Delivers Record Third Quarter Results and Raises Full-Year Guidance. Retrieved from <https://www.nutrien.com/investors/news-releases/2021-nutrien-delivers-record-third-quarter-results-and-raises-full-year>

<sup>34</sup> Ibid.

<sup>35</sup> Yara International ASA. (2021). Yara International ASA 2021 Third quarter results. Retrieved from <https://www.yara.com/investor-relations/latest-quarterly-report/>

<sup>36</sup> CF Industries Holdings, Inc. (2021). United States Security and Exchange Commission Form 10-Q. Retrieved from <https://cfindustries.q4ir.com/sec-filings/documents/sec-filings-details/default.aspx?FilingId=15332569>



ammonia prices we curtailed production...while maintaining flexibility to respond to improvements in the market condition.”<sup>37</sup> Their potash capacity also exceeded current production levels and in 2020, the cash cost to produce potash was \$59 per tonne, the lowest level on record for Nutrien.<sup>38</sup> Their very own reports tell us there was not a capacity shortage to produce fertilizer and that some of their production costs were even at record lows, yet farmers across the country were grappling with fertilizer price increases that knocked their feet out from under them. According to fertilizer companies’ own financial statements, their cost of goods sold had increased; still, their gross margins went up substantially more.

What appears much likelier than supply disruptions and inflationary increases in production costs is that the price hikes were aligned with the rising prices farmers were getting for their grain harvests. In fact, in 2018, Yara stated that “[v]ariations in grain prices (corn or wheat) explain approximately 50 [percent] of the variations in the urea price, making grain prices one of the most important factors driving fertilizer prices.”<sup>39</sup> During this period, on average, corn prices were up more than 20 percent from the start of the year.<sup>40</sup> In effect, these corporations were stealing the farmers’ profits. Farmers get paid more; fertilizer companies take more. In that these corporations are tying the price of their products to the farmer’s ability to pay — rather than to supply and demand — and that they are controlling the supply by decreasing production, they are using opportunistic behavior to generate excessive profits. Such abuses allow concentrated corporations to extract maximum profit out of the supply chain, leaving the farmer with no hope of profitability.

The three case studies — the egg sector, cattle/beef sector, and fertilizer sector — all share the same market scenario: (1) The market concentration within the sector is so extreme that the market dynamic of competition among dominant firms has been eroded, (2) production capacity existed to offset the supply chain disruption and was not either utilized to meet the demand or was used but did not pressure a price decrease, and (3) dominant firms used supply chain disruptions and inflationary production costs to provide cover for achieving excessive profits through price gouging and short paying the farmers. The facts demonstrate that within these heavily concentrated sectors, the market no longer responds as economic modeling would expect, allowing the dominant firms to take all they can without fear of the consequences of a competitive market.

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<sup>37</sup> Nutrien. (2020). Leading Solutions for Sustainable Agriculture: Nutrien Annual Report 2020. Retrieved from <https://www.nutrien.com/investors/financial-reporting>

<sup>38</sup> Nutrien. (2020). Leading Solutions for Sustainable Agriculture: Nutrien Annual Report 2020. Retrieved from <https://www.nutrien.com/investors/financial-reporting>

<sup>39</sup> Yara International. (2018). Yara Fertilizer Industry Handbook. Retrieved from <https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2018/fertilizer-industry-handbook-2018-with-notes.pdf/>

<sup>40</sup> Macrotrends. Corn Prices - 59 Year Historical Chart. Retrieved from <https://www.macrotrends.net/2532/corn-prices-historical-chart-data>

## Who's Winning?

Unfortunately, the case studies set out above are not anecdotal or isolated cases. The Nasdaq April 2021 headline summed up who's winning in the food system: "*Who's Hungry? Food Companies Are Gobbling Up Profits.*"<sup>41</sup>

A 2022 Guardian article, "Revealed: Top US Corporations Raise Prices on Americans Even As Profits Surge," stated that "[t]he analysis of Securities and Exchange Commission filings for 100 US corporations found net profits up by a median of 49 [percent], and in one case by as much as 111,000 [percent]. Those increases came as companies saddled customers with higher prices and all but ten executed massive stock buyback programs or bumped dividends to enrich investors."<sup>42</sup>

Recent antitrust actions — such as fining companies for price fixing — have not deterred dominant meatpackers from continuing to take an opportunistic approach to the market. Here are a few examples from the fiscal year 2022 ending on June 30 (FY 2022):

- (1) Brazilian meatpacking behemoth JBS reported a \$4.382 billion net income for FY 2022 — a 56 percent increase year-over-year.<sup>43</sup> Meanwhile, the corporation agreed to pay \$72.5 million between two price-fixing settlements since the beginning of FY 2022. To put this into perspective, this is like someone who is making \$43,820 a year off of a crooked market deal and only paying \$725 back as a penalty for their actions. It's only 1.65% of their gain — no more than a spit in the ocean.<sup>44</sup>
- (2) The American-owned Tyson Foods' reported net income for FY 2022 was \$4.055 billion — a whopping 72.85% increase year-over-year.<sup>45</sup> Tyson agreed to pay \$135 million between four price-fixing settlements since the beginning of FY

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<sup>41</sup> Hyatt, John. (2021). Who's Hungry? Food Companies Are Gobbling Up Profits. Retrieved from <https://www.nasdaq.com/articles/whos-hungry-food-companies-are-gobbling-up-profits-2021-04-30>

<sup>42</sup> Perkins, Tom. (2022). Revealed: top US corporations raising prices on Americans even as profits surge. *The Guardian*. Retrieved from <https://www.theguardian.com/business/2022/apr/27/inflation-corporate-america-increased-prices-profits>

<sup>43</sup> JBS. (2023). Results 4Q23 & 2023. Retrieved from <https://api.mziq.com/mzfilemanager/v2/d/043a77e1-0127-4502-bc5b-21427b991b22/069c7410-73c0-2c39-5b01-b5a25c8cdd15?origin=1>

<sup>44</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

<sup>45</sup> Tyson. (2023). United States Securities and Exchange Commission Form 10-K. Retrieved from [https://ir.tyson.com/files/doc\\_financials/annual/2023/tsn-2023-10k-final.pdf](https://ir.tyson.com/files/doc_financials/annual/2023/tsn-2023-10k-final.pdf)

2022, costing them less than 3.33% of their annual gains generated from potentially conducting illegal practices.<sup>46</sup>

- (3) Smithfield Foods no longer publicly discloses its profits after Chinese-owned WH Group purchased the company; however, WH Group's reported net income was \$1.427 billion for the year ending in June 2022 — an 18.86% increase year-over-year. The corporation agreed to pay \$200 million between three price-fixing settlements since the beginning of FY 2022, costing them only 14 percent of their profit for the year.<sup>47</sup> Let's just call these settlements what they are: the cost of doing business.

There has been much discussion about the cause of the rapid growth in inflation, with many focusing on wage increases and government investment in the economy. Farm Action would propose that this misses the mark — concentration's contribution to inflation must not be ignored.

### **Actions Being Taken**

Government policy has contributed significantly to the concentration in our food system and the continued corporate control over food and agriculture market sectors. The good news is that with targeted policy changes, it can also contribute to a system that is more fair, decentralized, and resilient. We call on the government to free itself from the undue influence of corporate special interests and to own its role in safeguarding market accountability and competitiveness in the food and agricultural marketplace.

President Biden began this Administration's effort with the July 2021 Executive Order on Promoting Competition in the American Economy (EO),<sup>48</sup> directing federal agencies to revive antitrust enforcement and promote competition throughout the U.S. economy. Since then, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have taken bold actions to curb market abuses within the heavily concentrated food and agriculture markets. Taking the EO's whole of government approach, FTC and DOJ ended the 40 years of failed economic policy of the "consumer welfare standard" for reviewing mergers and acquisitions, restoring a

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<sup>46</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

<sup>47</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

<sup>48</sup> The White House. (2021). Executive Order on Promoting Competition in the American Economy. July 09, 2021. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

lens of competition within the guidelines. DOJ and USDA also instituted a web portal for farmers and ranchers to anonymously report market abuses.

Individually, DOJ made history not once but twice when they instituted legal action based on the Packers and Stockyards Act (P&S Act) bringing about a court consent decree that ended the use of the tournament payment scheme for the 15 percent of the poultry market controlled by Wayne Foods and Sanderson Farms. Since then, it has also filed antitrust legal actions against AgriStats for operating an information exchange for the sole purpose of promoting total industry profits at the expense of competition in the pork, poultry, and turkey markets.<sup>49</sup>

USDA has issued two of the P&S Act rules the EO called for, and established a seed liaison position to assist emerging seed companies in maneuvering the technical aspects of the patent and trademark process.

USDA has also made investments in supply chains and local procurement that will bolster competition and support more resilient local and regional food systems: USDA invested \$1 billion to expand domestic meat and poultry processing capacity,<sup>50</sup> the Resilient Food Systems Infrastructure (RFSI) Program committed \$420 million to increasing processing and distribution capacity in the middle of supply chains,<sup>51</sup> USDA increased credit access for supply chain projects through the Food Supply Chain Guaranteed Loan Program,<sup>52</sup> and through the Local Food Purchase Assistance Cooperative Agreement Program (LFPA)<sup>53</sup> and Local Foods for Schools (LFS)<sup>54</sup>, USDA committed \$1.1 billion to increase local producers' market access points. These investments are an important step towards building a more fair and resilient food system.

### **Additional Actions Needed**

Investments in more regionalized and diversified food systems will only succeed if space is created for them in consolidated markets through antitrust enforcement and anchoring them to procurement policy. As previously noted, industries across food and agriculture are highly

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<sup>49</sup> United States of America, Department of Justice v. Agristats, Inc. Case 0:23-cv-03009, Doc. 1, Filed 09/28/23. Retrieved from <https://www.justice.gov/d9/2023-10/416782.pdf>

<sup>50</sup> United States Department of Agriculture. Meat and Poultry Supply Chain. Accessed on May 20, 2024. Retrieved from <https://www.usda.gov/meat>

<sup>51</sup> United States Department of Agriculture, Agricultural Marketing Service. Resilient Food Systems Infrastructure Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/services/grants/rfsi>

<sup>52</sup> United States Department of Agriculture, Rural Development. Food Supply Chain Guaranteed Loan Program. Accessed on May 20, 2024. Retrieved from <https://www.rd.usda.gov/food-supply-chain-guaranteed-loans>

<sup>53</sup> United States Department of Agriculture, Agricultural Marketing Service. Local Food Purchase Assistance Cooperative Agreement Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/selling-food-to-usda/lfpacap>

<sup>54</sup> United States Department of Agriculture, Agricultural Marketing Service. Local Food for Schools Cooperative Agreement Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/selling-food-to-usda/lfs>

consolidated — even with these targeted investments to help smaller operations expand, there is no longer a fair playing field on which to compete. The federal government can support these investments by creating alternative pathways to markets for them through procurement policy. Strong antitrust enforcement will also protect these operations from anticompetitive behaviors from the dominant firms.

Without proper safeguards, government investments to boost competition will inevitably end up in the hands of the dominant corporations they are trying to challenge. For example, Koch Industries, a dominant fertilizer corporation, has announced its planned 3.6 billion-dollar acquisition of OCI Global’s Iowa Fertilizer Company (IFCO), a major nitrogen fertilizer plant.<sup>55</sup> IFCO was built with substantial local, state, and federal investments, with its proponents citing the opportunity to challenge Koch Industries’ dominance in fertilizer markets.<sup>56</sup> The FTC and DOJ should investigate this proposed acquisition and, if evidence warrants, take action to block this merger.

Reviving the Robinson-Patman Act would also help tame abuses of buyer power by dominant manufacturers and retailers, particularly in the grocery sector. FTC must act on its Robinson-Patman investigations and issue guidance and advisory opinions to better articulate ambiguous aspects of the Act, thus clarifying enforcement.

Critically, farmers must have the right to bring legal action against meatpackers under the P&S Act without proving harm to competition, and USDA must follow DOJ’s lead by banning the poultry tournament system. Further, USDA and Congress should restore the Grain Inspection, Packers and Stockyards Administration (GIPSA), armed with a budget to keep it sufficiently staffed and empowered to enforce the P&S Act.

Congress should grant FTC and DOJ the authority to review past acquisitions and mergers and their impact on competition, with the authority to reverse them. One legislative package that focuses on the meatpacking industry is Senator Hawley’s S. 2818, Strengthening Antitrust Enforcement for Meatpacking Act of 2023. The Chair is a co-sponsor of this legislation.<sup>57</sup>

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<sup>55</sup> Koch Industries. (2023, December 18). Koch Ag & Energy Solutions Reaches Agreement to Acquire Wever Fertilizer Plant from OCI Global [Press release]. Retrieved from [https://kochfertilizer.com/newsroom/Koch-Ag-Energy-Solutions-Reaches-Agreement-to-Acquire-Wever-Fertilizer-Plant-from-OCI-Global\\_2683.aspx](https://kochfertilizer.com/newsroom/Koch-Ag-Energy-Solutions-Reaches-Agreement-to-Acquire-Wever-Fertilizer-Plant-from-OCI-Global_2683.aspx)

<sup>56</sup> Syroka, Scott. (2023, December 28). A bad deal gets worse: Koch trying to buy Iowa fertilizer plant. Bleeding Heartland. Retrieved from <https://www.bleedingheartland.com/2023/12/28/a-bad-deal-gets-worse-koch-trying-to-buy-iowa-fertilizer-plant/>

<sup>57</sup> Strengthening Antitrust Enforcement for Meatpacking Act of 2023, S.2818, 118th Cong. (2023). Retrieved from <https://www.congress.gov/bill/118th-congress/senate-bill/2818/text>

Today the FTC has limited authority to take action against corporations that engage in excessive profit-taking — or price gouging — and should be provided with the authority to protect America’s farmers and consumers. The Chair, along with others, has introduced S.3803, the Price Gouging Prevention Act,<sup>58</sup> which would provide FTC with the tools it needs to address this issue.

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<sup>58</sup> Price Gouging Prevention Act of 2024, S.3803, 118th Cong. (2024). Retrieved from <https://www.congress.gov/bill/118th-congress/senate-bill/3803>