Congress of the United States
Washington, DC 20510

February 16, 2022

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Jonathan Kanter,

We are writing today regarding our concerns over the proposed $4.5 billion merger between Sanderson Farms and Wayne Farms, the third- and sixth-largest poultry-processing companies in the United States, by Cargill Inc. and Continental Grain Co.[1] This proposed mega merger raises significant antitrust concerns in an industry already marked by price fixing, labor violations, and intense consolidation. In particular, this mega merger could increase the major poultry companies' monopoly and monopsony power, allowing them to raise prices for consumers while cutting pay for farmers and other poultry-industry workers. Given these concerns, we urge the Department of Justice (DOJ) to conduct a thorough review of the proposed Sanderson-Wayne deal to ensure that it does not harm American farmers and consumers.

Concerns over rampant price fixing at the expense of poultry farmers and American consumers are not new. In November 2021, you received a letter about the highly concentrated poultry industry[2] as American consumers were hit with disproportionately high prices on poultry while major poultry companies enjoyed record profits, massive stock buybacks, and CEO raises. [3] Just last week, you received another letter raising these concerns and urging the Department of Justice to aggressively pursue price fixing and ensure competitive markets.[4]

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[1] Bloomberg, "Cargill, Continental to Buy Sanderson Farms for $4.5 Billion," Crystal Tse and Kim Chipman, August 9, 2021, https://www.bloomberg.com/news/articles/2021-08-09/cargill-continental-to-buy-sanderson-farms-for-4-53-billion.

[2] Senator Elizabeth Warren, "Warren Calls for DOJ Investigation into Top Poultry Companies' Anticompetitive Practices as Americans Face Record-High Turkey Prices Ahead of Thanksgiving," press release, November 22, 2021, https://www.warren.senate.gov/newsroom/press-releases/warren-calls-for-doj-investigation-into-top-poultry-companies-anticompetitive-practices-as-americans-face-record-high-turkey-prices-ahead-of-thanksgiving.

[3] Senator Elizabeth Warren, "Warren Calls for DOJ Investigation into Top Poultry Companies' Anticompetitive Practices as Americans Face Record-High Turkey Prices Ahead of Thanksgiving," press release, November 22, 2021, https://www.warren.senate.gov/newsroom/press-releases/warren-calls-for-doj-investigation-into-top-poultry-companies-anticompetitive-practices-as-americans-face-record-high-turkey-prices-ahead-of-thanksgiving.

[4] Senator Elizabeth Warren, "Warren Calls On DOJ to Take Aggressive Action to Enforce Antitrust Laws As Giant Corporations Raise Consumer Prices to Highest Levels in Decades," Press Release, February 8, 2022,

Price fixing among the "Big Four" poultry companies – Tyson Foods, Pilgrim's Pride, Perdue, and Sanderson Farms – has been a widespread issue for several years, made easier by their joint 54% market share as of 2021.[5] Cargill Inc., which would own Sanderson Farms and Wayne Farms with Continental Grain Co. under the proposed merger, has been implicated in several price-fixing lawsuits alongside Sanderson Farms. In October 2020, Cargill and several other major poultry companies were named in a suit alleging that a "turkey cartel" had conspired to set prices artificially high,[6] and in 2019, Sanderson Farms was served a subpoena from the Department of Justice in a price-fixing lawsuit alongside Tyson Foods Inc. and Pilgrim Pride Corp.[7]

This history of price fixing, including by the companies involved in this proposed merger, has already had a significant impact on American consumers. A 2018 lawsuit against Sanderson Farms and other major poultry companies alleged that since 2008, coordinated production cuts between the companies resulted in a "roughly 50% increase in the price of broiler chickens," cheating American families out of approximately $330 each year.[8] A 2017 suit alleged that the "wrongful conduct" of chicken companies including Tyson Foods Inc., Pilgrim's Pride Corp., and Sanderson Farms Inc. "not only materially reduced or eliminated the historical boom and bust cycle of the chicken industry, they propped up chicken prices during periods of rapidly falling input costs."[9]

Concentration in the poultry industry has left most farmers with only one or two companies with which they can work, a situation big poultry companies have seized on to cut pay and force farmers into untenable financial situations.[10] While four companies currently control more than half of the U.S. poultry market, consolidation and control can be even more of a factor regionally: in many regions, one or two processors control the market.[11] Farmers have also

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https://www.warren.senate.gov/newsroom/press-releases/warren-calls-on-doj-to-take-aggressive-action-to-enforce-antitrust-laws-as-giant-corporations-raise-consumer-prices-to-highest-levels-in-decades.

[5] White House, "Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families," Brian Deese, Sameera Fazili, and Bharat Ramamurti, September 8, 2021, https://www.whitehouse.gov/briefing-room/blog/2021/09/08/addressing-concentration-in-the-meat-processing-industry-to-lower-food-prices-for-american-families/.

[6] Bloomberg Law, "Tyson, Cargill, Hormel, Butterball to Face Turkey Cartel Claims," Mike Leonard, October 27, 2020, https://news.bloomberglaw.com/antitrust/tyson-cargill-hormel-butterball-to-face-turkey-cartel-claims.

[7] Meat + Poultry, "Sanderson Farms receives subpoena in price-fixing lawsuit," Ryan McCarthy, September 10, 2019, -https://www.meatpoultry.com/articles/21870-sanderson-farms-receives-subpoena-in-price-fixing-lawsuit.

[8] Chicago Tribune, "Second lawsuit against poultry giants alleges chicken price-fixing conspiracy," Ally Marotti, January 15, 2018, https://www.chicagotribune.com/business/ct-biz-winn-dixie-tyson-chicken-prices-20180115-story.html; NBC News, "You're Getting Skinned on Chicken Prices," Ben Popken, February 17, 2017, https://www.nbcnews.com/business/consumer/you-re-getting-skinned-chicken-prices-suit-says-n721821.

[9] Bloomberg, "Top U.S. Chicken Producers Sued on Price-Fixing Claims by Buyers," Michael Hirtzer, September 4, 2020, https://www.bloomberg.com/news/articles/2020-09-04/bob-evans-farms-alleges-tyson-others-inflated-chicken-prices?sref=ZvMMMOkz.

[10] Food & Power: Chicken, Open Markets Institute, https://www.foodandpower.net/chicken/.

[11] Washington Monthly, "More Trouble with Big Chicken," Claire Kelloway, August 25, 2021, https://washingtonmonthly.com/2021/08/25/more-trouble-with-big-chicken/.

reported that even in areas where there is competition, there are informal "no-poach" agreements between processors that undercut any meaningful labor mobility.[12] "No-poach" agreements, which violate antitrust laws, occur when companies agree not to hire or recruit one another's employees, thereby "agreeing not to compete for those employees' labor."[13] The consequences of this have been devastating for American farmers: the typical U.S. chicken farmer has seen their pay decrease more than 6 percent, adjusted for inflation, between 1988 and 2015.[14]

The Sanderson-Wayne mega merger could exacerbate the exploitation of chicken farmers. Sanderson Farms and Wayne Farms have significant overlap in their geographic regions in the Southeast,[15] leading farmers to worry that the combined entity could have greater market power to cut their pay even further while leaving them no recourse. Immediately after Sanderson announced the proposed merger with Wayne, Sanderson executives in Mississippi also announced plans to make significant cuts to pay for chicken growers, which were only reversed after strong opposition, though the company warned that the cuts may nevertheless occur in the future.[16] One farmer observed that "the pay cut and the merger are inseparable—the only reason Sanderson proposed the cut was because the merger would leave growers with little choice but to accept the new terms."[17]

These companies also have an extensive record of working to artificially suppress chicken farmers' compensation. Cargill, Sanderson, and Wayne, along with other processors, are defendants in wage and/or price fixing lawsuits in Alaska, Arkansas, Illinois, Maryland, Minnesota, and Oklahoma.[18] In 2021, Tyson and Perdue–who together control roughly a third of the domestic poultry market–finalized a $35 million settlement over allegations the companies colluded to lock farmers into "unprofitably low" compensation.[19]

The proposed mega merger also highlights the existing dangers of vertical integration in the poultry industry. Processors, also called integrators, already control nearly every step of the

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[12] Bloomberg Law, "Tyson, Others Face New Cartel Claims, Now From Chicken Farmers," Mike Leonard, September 21, 2020, https://news.bloomberglaw.com/bloomberg-law-analysis/tyson-others-face-new-cartel-claims-now-from-chicken-farmers?context=article-related.

[13] Department of Justice, "No More No-Poach: The Antitrust Division Continues to Investigate and Prosecute "No-Poach" and Wage-Fixing Agreements," Press Release, Spring 2018, https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements.

[14] The Fern, "Is the U.S. chicken industry cheating its farmers?" Leah Douglas and Christopher Leonard, August 2, 2019, https://thefern.org/2019/08/is-the-u-s-chicken-industry-cheating-its-farmers/.

[15] Washington Monthly, "More Trouble with Big Chicken," Claire Kelloway, August 25, 2021, https://washingtonmonthly.com/2021/08/25/more-trouble-with-big-chicken/.

[16] Mother Jones, "The Chicken Farmers Are Pushing Back," Marcia Brown, Oct. 6, 2021, https://www.motherjones.com/environment/2021/10/the-chicken-farmers-are-pushing-back/.

[17] *Id.*

[18] RAFI-USA, Testimony to U.S. House of Representatives, Margaret Krome Lukens and Aaron Johnson, Jan. 19, 2022, https://docs.house.gov/meetings/JU/JU05/20220119/114345/HHRG-117-JU05-20220119-SD010.pdf.

[19] Associated Press, "Tyson, Perdue to pay $35M to settle with chicken farmers," Josh Funk, September 2, 2021, https://apnews.com/article/business-fa91f3a79e4eb9aa5e3d0046e4f16d85.

poultry supply chain, claiming ownership of the feed mills, hatcheries, slaughter houses, processing plants, and final product distribution.[20] Integrators also force growers to maintain facilities to their exact specifications, causing a significant financial barrier for farmers wanting to switch companies and forcing growers to take on hundreds of thousands of dollars in debt to meet the integrators' infrastructure demands. [21] This system of horizontal and vertical integration "controls the economic viability of each grower and can easily push select targets into bankruptcy, even on whim."[22]

The proposed Sanderson-Wayne mega merger would unquestionably allow the newly integrated company to tighten its hold on the entire process of chicken farming. Sanderson's parent company, Cargill, already holds a significant role in the commodity market for chicken feed, processing 21% of all U.S. soybeans[23] while Wayne Farms is a self-described "vertically integrated U.S. poultry producer."[24] The new market power given to Cargill if the transaction proceeds raises concerns that the company could cross-subsidize its enterprises, "undercut[ting] feed prices to temporarily lower chicken production prices in order to hurt competitors."[25]

Farmers have already expressed concerns that the Sanderson-Wayne merger could further harm their ability to maintain their livelihoods. In August 2021, the Minnesota Farmers Union's board voted unanimously to oppose the acquisition, and MFU President Gary Wertish argued that "increased consolidation does not benefit farmers, nor consumers. Instead, it concentrates power into the hands of a few and leaves farmers with fewer market opportunities and consumers with higher prices."[26] Representatives from 45 chicken farms created the Mississippi Poultry Growers Alliance compiled a list of demands for Sanderson Farms, opposing pay cuts they viewed as tied

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[20] RAFI-USA, "Big Chicken Companies Own or Control Everything Except the Farm, But Why?," July 14, 2016, https://www.rafiusa.org/blog/big-chicken-companies-own-and-control-everything-except-the-farm-why/; National Chicken Council, "Vertical Integration," https://www.nationalchickencouncil.org/industry-issues/vertical-integration/.
[21] "Restoring Economic Health to Contract Poultry Production," C. Robert Taylor and David A. Domina, May 13, 2010, https://www.competitivemarkets.com/wp-content/uploads/2012/02/dominareportversion2.pdf.
[22] *Id.*
[23] Washington Monthly, "More Trouble with Big Chicken," Claire Kelloway, August 25, 2021, https://washingtonmonthly.com/2021/08/25/more-trouble-with-big-chicken/; The Des Moines Register, "Opinion: Department of Justice should deny Cargill-Sanderson Farms merger," Dave Dickey, December 6, 2021, https://www.desmoinesregister.com/story/opinion/columnists/2021/12/06/feds-should-deny-cargill-sanderson-farms-merger/8854573002/.
[24] Cargill, "Cargill and Continental Grain Company to Acquire Sanderson Farms for $203 per Share in Cash and Create a Leading U.S. Poultry Company," press release, August 9, 2021, https://www.cargill.com/2021/cargill-and-continental-grain-company-to-acquire-sanderson-farms.
[25] The Des Moines Register, "Opinion: Department of Justice should deny Cargill-Sanderson Farms merger," Dave Dickey, December 6, 2021, https://www.desmoinesregister.com/story/opinion/columnists/2021/12/06/feds-should-deny-cargill-sanderson-farms-merger/8854573002/.
[26] Ag Week, "Minnesota Farmers Union board opposes Cargill buying Sanderson Farms," September 2, 2021, https://www.agweek.com/business/minnesota-farmers-union-board-opposes-cargill-buying-sanderson-farms.

to the merger and pushing for better standards of living for chicken farmers, 71 percent of whom lived below the poverty line in a 2014 study.[27]

The Biden Administration has made addressing corporate consolidation and its impact on workers and consumers a centerpiece of its economic policy, calling on the DOJ and the Federal Trade Commission (FTC) to investigate anticompetitive practices in the meatpacking and poultry industries.[28] The Administration should carefully scrutinize this merger and oppose it if it is likely to reduce competition and have an adverse impact on consumers or farmers. In reviewing the prospective transaction, the DOJ must also consider the extensive history of price fixing in the poultry industry, particularly in light of past and ongoing litigation against Sanderson Farms and Wayne Farms. Section 7.2 of the Horizontal Merger Guidelines states that a history of collusion or coordinated interaction in a market will be given "substantial weight" when the DOJ and the FTC assess the likelihood that an acquisition or merger will lead to anticompetitive harms.[29] This mega merger, in a sector already plagued with consolidation and illegal behaviors that harm farmers and consumers alike, represents a new threat to building a competitive agricultural industry.

In light of these serious concerns, we respectfully urge the DOJ to scrutinize the proposed Sanderson-Wayne transaction to determine whether it violates the antitrust laws, and the DOJ should oppose the merger if it does.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Mondaire Jones
Member of Congress

[27] Mother Jones, "The Chicken Farmers Are Pushing Back," Marcia Brown, Oct. 6, 2021, https://www.motherjones.com/environment/2021/10/the-chicken-farmers-are-pushing-back/.
[28] White House, "FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain," press release, January 3, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/.
[29] Department of Justice and Federal Trade Commission, "Horizontal Merger Guidelines," August 19, 2010, https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

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