



**Statement of Joe Maxwell
President of Farm Action**

**Before the House Judiciary
Subcommittee on Antitrust, Commercial and Administrative Law**

January 19, 2022

Chairman Cicilline, Ranking Member Buck, and Members of the Subcommittee, thank you for this opportunity to testify regarding the Effects of Economic Concentration on America's Food Supply. I will be highlighting the on-the-ground implications of heavily concentrated food and agriculture markets for farmers, workers, and their rural communities.

I am the President and Co-Founder of Farm Action, an organization that strives to create a food and agriculture system that works for everyday people rather than a handful of powerful corporations. We look at the broader impact of market concentration within the food system, and develop policy recommendations to bring about economic vitality in rural America.

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' 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 growth of concentration in food and agriculture and its consequences. When I first began farming, I was one of 670,000 hog farmers in the U.S.¹ Today I am one of the remaining 64,000 hog farmers.² This decline is the direct result of the concentration and vertical integration in the pork industry. Today, four firms control 67% of the hog market.

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. We understand the capitalist economic system will not work without the government providing safeguards to ensure competition.

¹ Ronald L. Plain, John Lawrence, and Glenn Grimes. 2012. "Structure of U.S. Pork Industry." Available at: <https://porkgateway.org/resource/structure-of-u-s-pork-industry/>

² United States Department of Agriculture. 2017. Census of Agriculture. Available at: https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/st99_1_0020_0023.pdf

The food system is embroiled in a period of unprecedented consolidation and concentration, both globally and nationally. The level of concentration has reached such highs that today a handful of monopolistic corporations have such a level of power and control of the food system, they dictate who farms, what they farm, and who gets to eat.³ Economists agree that market abuses are likely to occur when the concentration ratio of the top four firms (CR4) exceeds 40%.⁴ In the U.S., CR4 ratios surge far beyond this percentage in such diverse sectors as the processing of soybeans, beef, pork, and poultry, as well as cold cereal, soft drinks, beer, salty snacks, bread, ice cream, fresh cut salad, wine, retail grocery, and convenience stores.⁵ Or in other words, the entire food system. The U.S. continues to allow the advancement of concentration through mergers and acquisitions. In the event the DOJ would allow the Cargill and Continental acquisition of Sanderson Farms to proceed, the CR4 in poultry processing will reach 60%.

Concentration levels like these are more than a series of abstract figures; rather they equate to a precarious condition with real-life consequences for people across the country. A concentrated food system controlled by only a few corporations presents enormous food security and national security risks. Concentration drives up food costs, contributing to the recent spike in inflation. Concentration in the food system drives farmers from the land and businesses out of business, hollowing out the economic vitality of rural America. It unreasonably profits from supply chain disruptions that leave shelves bare at the grocery store, prices higher for consumers, and steals farmers' profits increasing the burden of taxpayer-funded subsidies and safety nets that prop up farmers and provide for food insecure households.⁶ It is a self-perpetuating cycle of destruction that is tearing through rural America.

When we see the concentration of industries at the levels we do in our food system, the understanding and application of supply and demand modeling fails to explain the market dynamics of concentrated corporate power. What we see are these corporations extracting wealth up and down the supply chain, from farmer to eater.

Farmers are being squeezed at both ends; buying and selling. Four or less dominant firms control every aspect of the inputs farmers need to grow their crops, their livestock, and their poultry: our food. As an example, in the fertilizer sector two companies control nearly 100 percent of potash and four companies control 75% of nitrogen.

Using their market power these fertilizer companies have taken advantage of recent supply chain disruptions and increased commodity prices to spike fertilizer prices to

³ Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. 2020. "The Food System: Concentration and Its Impacts." Special Report to Family Farm Action Alliance. Available at <https://farmaction.us/concentrationreport/>

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

⁵ Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. 2020. "The Food System: Concentration and Its Impacts." Special Report to Family Farm Action Alliance. Available at <https://farmaction.us/concentrationreport/>

⁶ Miller, Emily M. 2021. "The Truth About Industrial Agriculture: A Fragile System Propped up by Myths and Hidden Costs. Available at <https://farmaction.us/truthreport/>

unprecedented levels.⁷ Fertilizer prices this past fall have jumped by over twice the price from the prior year.⁸ While it is clear their cost to manufacture synthetic fertilizer has gone up, those costs do not justify a 680% increase in their gross margin for the third quarter of 2021.⁹

Further, these spikes occurred just at a time commodity grain prices were up, when farmers had the illusion they would be operating profitably without the need for additional government subsidies. This outcome should not be surprising considering fertilizer companies such as Yara, one of the largest fertilizer manufacturers, bases 50% of their pricing model on how much the farmer is being paid.¹⁰ Using their market power these companies extract more as the farmer is paid more, guaranteeing the farmer cannot get ahead and the government can never be off the hook of providing farm subsidies.

Studies indicate that these ballooning fertilizer prices will consume farmers' profits and are predicting net farm income to fall. Highlighting this point, a recent study by the Agriculture and Food Policy Center at Texas A&M concluded that "[g]iven the farm safety net (USDA farm programs) is not designed to address rapidly rising costs of production, there are growing concerns in the countryside about the need for additional assistance."¹¹

Based on their predictive modeling, Texas A&M concluded the recent spike in fertilizer costs will cost the average feed corn farms \$94,000 per farm due to an increased fertilizer expense of \$39.55 per acre.¹²

The market power exercised by a handful of corporations undermines the key policy principles which govern USDA farm programs. In other words, current government farm subsidy programs do not work in a heavily concentrated economic environment.

What are the on-the-ground consequences of fertilizer prices spiking? Consider Congresswoman Fischbach's county of Stearns, MN, where the USDA reported 214,930 acres of grain corn planted in 2021. Similar acreages planted today would cost farmers in this county an additional \$8,500,481.50 in fertilizer expenses alone.

⁷ Nutrien. 2021. "Nutrien Delivers Record Third Quarter Results and Raises Full-Year Guidance." Available at <https://www.nutrien.com/investors/news-releases/2021-nutrien-delivers-record-third-quarter-results-and-raises-full-year>

⁸ Gary Schnitkey, Nick Paulson, Krista Swanson, and Jim Balts. 2021. "Nitrogen Fertilizer Prices Above Expected Levels." Available at <https://farmdocdaily.illinois.edu/2021/12/nitrogen-fertilizer-prices-above-expected-levels.html>

⁹ Nutrien. 2021. "Nutrien Delivers Record Third Quarter Results and Raises Full-Year Guidance." Available at <https://www.nutrien.com/investors/news-releases/2021-nutrien-delivers-record-third-quarter-results-and-raises-full-year>

¹⁰ Yara International. 2018. "Yara Fertilizer Industry Handbook." Available at <https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2018/fertilizer-industry-handbook-2018-with-notes.pdf>

¹¹ Agricultural and Food Policy Center. 2022. "Economic Impact of Higher Fertilizer Prices on AFPC's Representative Crop Farms." Texas A&M University. Available at <https://www.afpc.tamu.edu/research/publications/files/711/BP-22-01-Fertilizer.pdf>

¹² Agricultural and Food Policy Center. 2022. "Economic Impact of Higher Fertilizer Prices on AFPC's Representative Crop Farms." Texas A&M University. Available at <https://www.afpc.tamu.edu/research/publications/files/711/BP-22-01-Fertilizer.pdf>

Because of their outsized market power, this \$8.5 million of income is stolen by these dominant firms not only from the local farmers of Stearns County, but from the community in which they reside.

This loss of income means lower tax revenues for the county and state, which leads to lower investment in schools and local infrastructure. It means more independent farms and local businesses will go out of business, leading to even further tax-revenue loss. As we see \$8.5 million leave this community, it means depopulation and increased poverty. It is not only a loss of income for farms, but it hollows out their communities.

On the other side, the farmer faces the buyer. Monopsony corporate power is at such a level farmers simply have no market: they have become solely price takers. This reality has led many livestock producers to declare the market is dead. Using beef as an example, the CR4 in cattle is at 85%, but that ratio does not tell the whole story. Because livestock producers deal in live animals, they are limited to regional markets and not national. Far too often, livestock producers have only one or two buyers in their region, giving these packers even greater market power and control over pricing. Bill Bullard with R-CALF USA has submitted written testimony that sheds further light on this issue.

The information I presented on the spike in fertilizer prices demonstrates the market reaction to higher commodity prices for farmers. During low commodity price periods, farmers strive to squeeze every bushel they can from the land and rely on government subsidies to do the rest. The government subsidizes farmers to grow crops like corn and soybeans, which are feed grains. With lifeline subsidies favoring these crops above others, many farmers find themselves with little choice in what they grow; they grow feed. The result is a market often experiencing overproduction with cheap corn and soybeans. The beneficiaries of this cycle of production are giant meatpackers and processors like Cargill and JBS. The meatpackers stand at the ready to accept feed prices at below production cost, thus granting them greater profits. We call this system the Feed-Meat Complex,¹³ defined as the system of agriculture wherein government programs push farmers to raise feed grains to a point of overproduction and lower commodity prices to the benefit of the meat and poultry industry.

Low profit margins have taken a toll on the number of American farmers, but that is not the only driving force behind farmers leaving the land. An unintended consequence of government farm subsidies is they encourage larger farmers to buy out smaller farmers, further consolidating U.S. farms.¹⁴

Putting further pressure on the farmer is that they compete directly with their meatpacker buyers in the production of livestock. Over the last several decades, the meatpacker has advanced a model of vertical integration and captured supply through contracts where they either own or control the majority of the livestock or poultry they need to meet the daily demand at their

¹³ Farm Action. 2020. "The Feed-Meat Complex: Unpacking the Truth About How Big Meat Pockets Billions in Farm Subsidies." Available at <https://farmaction.us/2020/11/16/thefeedmeatcomplex/>

¹⁴ Ryan Evans. 2021. "Husker study links crop insurance premium subsidies to fewer, larger farms." Available at <https://news.unl.edu/newsrooms/today/article/husker-study-links-crop-insurance-premium-subsidies-to-fewer-larger-farms/>

meatpacking plants. Through the vertically-integrated supply chain, meatpackers have seized greater control and power over the markets.

The level of concentration and vertical integration in the poultry industry is at such high levels there are almost no individual independent poultry farmers left today. The majority of farmers in the poultry business are contract poultry growers, who raise a vertical integrator's poultry for companies like JBS/Pilgrims, Wayne Farms, Sanderson Farms, and Tyson Foods. These companies own the chick from hatch to grocery store shelf. Farmers have become the landlord and owner of poultry barns used by the vertical integrators where the farmer provides the facilities, labor, and manure management. Often the contract poultry grower has borrowed millions of dollars against their home and farms in order to build the facilities that house a poultry integrator's chickens on a per-flock basis. Because these barns are solely designed for poultry production and oftentimes only meet the specifications of one poultry integrator, the farmer becomes trapped and beholden to the large poultry integrator in their region. In reviewing \$1.8 billion dollars of loans to contract poultry growers by the Small Business Administration (SBA), the SBA Inspector General found the level of control the vertical integrator exercised over the contract grower practically overcame all of the contract grower's ability to operate their business independent of the vertical integrator's mandates.¹⁵

The contract poultry grower lives in an economic reality where one wrong move or step out of line results in the loss of their contract with the vertical integrator, and possibly their farm and home as well.

This does not tell the whole story of America's farmers. Farmers of color have felt the pain of power since the beginning of this country's history, from the theft of labor and land to systemic barriers of discrimination within society and government. They have been blocked from accessing capital and government programs, denying them ownership of farmland. Most of those who once had land have been driven from it. Communities of color are often targets of the vertical integrators who know these communities have the least amount of power; they push their model of industrial animal production onto these communities.

The lived experiences of farmers in Nicodemus, Kansas, the oldest remaining African-American farming settlement west of the Mississippi river as told by Dr. Holmes and the Kansas Black Farmers Association,¹⁶ the stories of farmers on tribal lands as known by the Intertribal Agriculture Council,¹⁷ and the story of North Carolina hog farming communities should be part of your understanding of the impacts of concentration.¹⁸

¹⁵Office of Inspector General. 2018. "Evaluation of SBA's 7(a) Loans to Poultry Farmers. Available at <https://www.sba.gov/document/report-18-13-evaluation-sbas-7a-loans-poultry-farmers>

¹⁶Farm Action. 2021. "Trailblazers and Game Changers: How Kansan Black Women Leaders Are Fighting for Family Farms." Available at <https://farmaction.us/2021/05/27/kansan-black-women-leaders-are-fighting-for-family-farms/>

¹⁷<https://www.indianag.org/>

¹⁸Barry Yeoman. 2019. "'It smells like a decomposing body:' North Carolina's polluting pig farms." Available at <https://www.theguardian.com/environment/2019/aug/27/it-smells-like-a-decomposing-body-north-carolinas-polluting-pig-farms>

An Oklahoma farmer and supporter of ours sums it up best: “Lose your farmers, lose your families, lose your families, lose your schools, lose your schools, lose your community.” This is the story of the hollowing out of rural America by corporate power and misplaced government farm supports.

As farmers have been driven from the land so have the local businesses the farmers supported and relied upon for their services and supplies. Companies like JBS, Cargill, Smithfield, and Tyson bring their own feed, their own animals, their own veterinarians, their own hardware and building supplies. They bypass all of the links of the supply chain, all the independent business within the rural community. Their supply chain is one link and they own it and control it. Concentration within other sectors has resulted in the loss of local retail businesses and credit unions and local banks, leaving farmers and rural communities nearly stranded in a land controlled by dominant firms. Stacy Mitchell and her team at the Institute for Local Self Reliance have done great work in documenting this story.¹⁹ The results are catastrophic: local and regional businesses are driven out of business and off the mainstreets of rural America. From livestock auction barns to feed stores and grocery stores, they have been driven from the landscape that once was a vibrant rural economy by corporate power.

America’s food chain workers are not exempt from the oppression of concentration and consolidation. The most graphic example of this oppression is reports showing many meat processing employees are not allowed regular bathroom breaks, forcing some to wear diapers.²⁰ The U.S. Bureau of Labor Statistics states that food and tobacco workers have the highest level of injury and illness of any other workers.²¹ All of us rely on these workers for our food; they in return should have a right to a fair wage. Yet, their pay has not kept up with inflation. In 1982, the base hourly pay for meatpacking workers in the United Food and Commercial Workers (UFCW) union was \$10.69, which equates to \$29.14 when adjusted for inflation.²² In May 2020, however, the average hourly wage across the industry was \$15.05.²³ The wage forecast for all U.S. workers is brighter with an estimate of a 3.9% increase in companies' budget for payroll this year over that of last year.²⁴ However, this percentage pales in comparison to the percentages of profits being taken by the companies referenced in my testimony.

¹⁹Stacy Mitchell. 2016. “Monopoly Power and the Decline of Small Business: The Case for Restoring America’s Once Robust Antitrust Policies.” Available at <https://ilsr.org/wp-content/uploads/2018/03/MonopolyPower-SmallBusiness.pdf>

²⁰ Oxfam America. 2016. “No Relief: Denial of Bathroom Breaks in the Poultry Industry.” Available at <https://www.oxfamamerica.org/explore/research-publications/no-relief/>

²¹ US Bureau of Labor Statistics. 2021. “Food and Tobacco Processing Workers.” Available at <https://www.bls.gov/ooh/production/food-and-tobacco-processing-workers.htm#tab-3>

²² Claire Kelloway. 2022. “U.S. Food Prices are Up. Are the Food Corporations to Blame for Taking Advantage.” Available at <https://time.com/6139127/u-s-food-prices-monopoly/>

²³ US Bureau of Labor Statistics. 2020. “Occupational and employment wages, May 2020.” Available at <https://www.bls.gov/oes/current/oes513023.htm#nat>

²⁴Gad Levanon. 2022. “2022 Salary Increase Budgets are the Highest since 2008.” Available at <https://www.conference-board.org/blog/labor-markets/2022-salary-increase-budgets>

Heavy concentrated and vertical integrated supply chains provide the dominant firms with control and power but have shown their inability to provide food security for our nation. One disruption in the chain can leave empty grocery store shelves, consumers paying higher prices, and farmers being paid below-market prices.

The best example of a single occurrence of a supply chain disruption is the 2019 fire at the Tyson beef processing plant in Holcomb, Kansas.

On a Friday night, August 9, 2019, a fire shuttered a Tyson beef processing plant that represented five to six percent of beef processed in the U.S. On Monday morning the beef packers were literally screaming fire, causing retail grocers to make a run on 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 24th, the result was a 67% 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% increase over the average from 2016-2018.

What is most telling about the market power of the dominant beef packers is that the week following the slaughter of fat cattle, slaughter numbers only dropped by 1,000 as compared from the week prior to the fire. In the three weeks that followed the fire, the beef industry slaughtered 5,000 more fat cattle than the three weeks prior to the fire.²⁵ The reality was the packers had the processing capacity to replace the capacity that was lost at Holcomb. Seldom does anyone profit from a fire, but when you have dominant market power you can do whatever you want.

What does concentration of the food supply mean for America's consumers? They are facing the worst inflation since 1982. Over the 12-month time period of 2021, food prices have spiked 6.3%.²⁶ However, at the same time meatpackers are declaring record quarterly profits. Marfrig/National Beef reported in their first quarter of 2021 earnings statement that the industry was experiencing record profits for a first quarter, attributing this record of profitability to factors such as a robust economic relief package and the fact that the cost of cattle was down 4.8% compared to the same period in 2020.²⁷

While cattle prices have gone up since the first quarter of 2021, the big meatpackers have not slowed their appetite to garner record profits from the market. In their 2021 third quarter earnings statement, JBS SA reported its U.S. beef earnings before interest, taxes, depreciation, and amortization had increased 220% over the same period the previous year.²⁸

²⁵ USDA AMS. 2020. "Boxed Beef & Fed Cattle Price Spread Investigation Report." Available at <https://www.ams.usda.gov/reports/boxed-beef-and-fed-cattle-price-spread-investigation-report>

²⁶ Bureau of Labor Statistics. 2021. "Consumer Price Index." Available at <https://www.bls.gov/news.release/pdf/cpi.pdf>

²⁷ Marfrig. 2021. "1Q Earnings Release." Available at: <https://api.mziq.com/mzfilemanager/v2/d/b8180300-b881-4e6c-b970-12ad72a86ec8/d1b97500-9c2d-eb99-8c5a-06bb19d427a8?origin=1>

²⁸ JBS. 2021. "3Q21 Highlights." Available at <https://api.mziq.com/mzfilemanager/v2/d/043a77e1-0127-4502-bc5b-21427b991b22/5c65b4c8-a358-615f-bf06-277f30fc22d3?origin=2>

A Nasdaq April 2021 headline sums up the power of concentration in all the U.S. food supply, *“Who’s hungry? Food Companies are Gobbling up Profits.”*²⁹

There has been much discussion about the cause of the rapid growth in inflation. Some have been focusing only on wage increases and government investment in the economy. We would propose this misses the mark. Concentration’s contribution to inflation must not be ignored.

Failing to include corporate market power from any analysis of the recent inflation trends is to tell the mass of the American people: “You can never expect to have a liveable wage nor have any hope of opportunity in the land that was built on the promise of opportunity because paying you a liveable wage will spur too much inflation.”

Government policy has contributed significantly to the concentration in our food system, but the good news is that with targeted policy changes it can also contribute to a system that is more fair, decentralized, and resilient. The Administration has begun this effort, announcing for example a billion dollars’ investment in local and regional meat and poultry processing, and commitment to stronger Farmer Fair Practices Rules under the Packers and Stockyards Act. Yet, Congress must do more.

First, we can push the pause button on all mergers and acquisitions that will provide large firms more market share. This is a common-sense measure that has been led by Representative Pocan, Senator Booker, and Senator Tester for years. While these mergers are on pause, we need to review previous mergers for violations of antitrust law and impacts on national security.

We must also aggressively enforce current antitrust laws. As an example, Senator Klobuchar's Competition and Antitrust Law Enforcement Reform Act would go a long way toward providing the authority and resources needed to enforce our laws. Additionally, Representative Spanberger and Senators Tester and Grassley have proposed a Meatpacking Special Investigator to elevate antitrust enforcement within USDA and require more coordination between the agencies with oversight of agriculture, food, and retail consolidation.

Longer-term solutions will also require updating our antitrust laws for agriculture, food, and retail. Beginning by restoring the DOJ and FTC’s review criteria to that of competition and not simply efficiency or consumer welfare. We urge Congress to take action on bills like Representative Khanna and Senator Booker’s Protecting America’s Meatpacking Workers Act, which would update the Packers and Stockyards Act and address critical worker exploitation described earlier.

Congress must reinstate Mandatory Country of Origin Labeling for beef. This provision is included in the bipartisan American Beef Labeling Act of 2021, S.2716, introduced by Senators John Thune and Jon Tester and cosponsored by eight other bipartisan supporters.

As we embark on the process of writing the 2023 Farm Bill, we should be squarely focused on the priority of creating a stronger, more resilient system. We should strive to build wealth in our communities with a keen eye to disadvantaged communities and farmers of color.

²⁹ John Hyatt. 2021. “Who’s Hungry? Food Companies Are Gobbling Up Profits.” Available at <https://www.nasdaq.com/articles/whos-hungry-food-companies-are-gobbling-up-profits-2021-04-30>

Government must use its own billions of dollars of procurement buying power to anchor these investments, pulling a more diverse group of producers into the supply chain. Without this shift in government procurement, the dominant firms will use exclusionary contracts and other tactics to ensure they ultimately own these investments or can drive new entrants in the market out of business. This Subcommittee knows very well the power of exclusionary contracts to block new entrants and smaller suppliers in the market as you referenced in your landmark report.³⁰ Government must invest in other links in the supply chain to include distribution and alternative markets like Missouri's retail food hub Root Cellar, Ohio's Yellowbird Foodshed, or Colorado's Rocky Food Collaborative.

Finally, we urge you to increase funding for additional staff at DOJ, FTC, and USDA Packers and Stockyards program to provide additional antitrust enforcement.

Thank you for this opportunity.

A handwritten signature in cursive script that reads "Joe Maxwell". The signature is written in black ink on a white background.

Joe Maxwell, President and Co-Founder
Farm Action

³⁰ See generally Majority Staff of House Subcomm. on Antitrust, Commercial & Admin. Law, 116th Cong., Investigation of Competition in Digital Markets (2020),