

# United States Senate

WASHINGTON, DC 20510

November 15, 2023

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

Secretary Tom Vilsack  
United States Department of Agriculture  
1400 Independence Ave., SW  
Washington DC 20250

Dear Chair Khan and Secretary Vilsack,

I write today to request that you use all necessary resources to investigate possible unfair pricing practices of major chicken and pork processors in the United States. These industries have a history of anti-competitive practices and are currently subject to lawsuits over their practices in the past decade. With product prices currently high and signs of possible price gouging, your prompt attention is critical to bring relief to American consumers who cannot wait years for it.

For decades now, Americans have consumed more chicken per capita than any other meat.<sup>1</sup> Even as chicken prices rose to historic highs in 2022<sup>2</sup>, demand for chicken continued to grow.<sup>3</sup> Persistent and growing demand for chicken is reflected in the National Chicken Council's 2023 *Chicken Wing Report*, which predicted that during the Super Bowl LVII weekend Americans would eat a "record-breaking" 1.45 billion chicken wings, or four for every person in the United States.<sup>4</sup> Chicken prices are 20 percent higher than they were two years ago and 44 percent higher than they were in 2019.

As demand and prices for chicken products have increased, the industry itself has only grown more concentrated. In 2021, Cargill Inc. and Continental Grain Company purchased Sanderson Farms Inc., the third largest chicken producer in the Nation, merging it with Continental subsidiary Wayne Farms to create a new poultry business.<sup>5</sup> Per *Forbes*, this move "push[ed] the market share of the top four competitors to more than 60% from about 50%."<sup>6</sup> Market

<sup>1</sup> "Per Capita Consumption of Poultry and Livestock, 1965 to Forecast 2022, in Pounds," *National Chicken Council*, <https://www.nationalchickencouncil.org/about-the-industry/statistics/per-capita-consumption-of-poultry-and-livestock-1965-to-estimated-2012-in-pounds/>

<sup>2</sup> The average price for a boneless pound of chicken breast in September 2022 was \$4.746, up from \$3.353 in June 2021. "Average Price: Chicken Breast, Boneless (Cost per Pound/453.6 Grams) in U.S. City Average," *Federal Reserve Economic Data*, <https://fred.stlouisfed.org/series/APU0000FF1101>.

<sup>3</sup> Nathaniel Meyersohn, "Steak's Off the Table: Inflation-Wearied Shoppers Are Switching to Chicken," *CNN Business*, August 8, 2022. <https://www.cnn.com/2022/08/08/business/tyson-foods-chicken-beef-prices/index.html>.

<sup>4</sup> "As Prices Ease, Americans Projected to Eat 1.45 Billion Chicken Wings for Super Bowl LVII," *National Chicken Council*, February 1, 2023, <https://www.nationalchickencouncil.org/as-prices-ease-americans-projected-to-eat-1-45-billion-chicken-wings-for-super-bowl-lvii/>.

<sup>5</sup> "Cargill and Continental Grain to Acquire Sanderson Farms for \$203 per Share in Cash and Create a Leading U.S. Poultry Company," *Cargill*, August 9, 2021, <https://www.cargill.com/2021/cargill-and-continental-grain-company-to-acquire-sanderson-farms>.

<sup>6</sup> Chloe Sorvino, "Higher Chicken Prices Expected After \$4.5 Billion Poultry Merger Wins U.S. Approval," *Forbes*, August 5, 2022, <https://www.forbes.com/sites/chloesorvino/2022/08/05/higher-chicken-prices-expected-after-45-billion-poultry-merger-wins-us-approval/?sh=7c8e763167b9>.

concentration leaves growers, small farmers, workers, and consumers at the mercy of a consolidated industry that can constrict supply to increase profits rather than focus on increasing supply to meet rising demand.

This year alone, we have seen Tyson, the number one chicken producer in the US, announce its plans to close six chicken plants across Virginia, Arkansas, Missouri, and Indiana, laying off thousands of workers in predominantly rural communities.<sup>7</sup> In October, Tyson also said that it would be laying off hundreds of additional workers at a plant in North Carolina.<sup>8</sup> The U.S. Department of Agriculture also reports that prices for broiler chicken feed, primarily corn and soybean, have fallen this year.<sup>9</sup> By the very basic laws of supply and demand, if prices and demand are increasing, while input costs are decreasing, then supply should be rising, not falling. Yet that is not reflected in the reality of today's chicken market. Instead, with demand and prices still at or near record highs, we are seeing cuts to operations that are expected to boost the bottom lines of companies like Tyson and Pilgrim's Pride while continuing to squeeze the budgets of everyday Americans.<sup>10</sup>

Like the chicken industry, the pork processing industry is similarly concentrated. Per data from the U.S. Department of Agriculture's Economic Research Service, 67 percent of pork processing in 2019 went through the four largest companies, compared to 34 percent in 1980.<sup>11</sup> Since February 2021, the average per-pound price of a pork chop has gone up 15 percent, while the average price for a pound of bacon has gone up 23 percent.<sup>12</sup> It has, quite literally, gotten harder for working Americans to bring home the bacon.

As pork prices grew and U.S. demand dipped, American pork processors were able to lean on foreign markets to sell their products, particularly China. However, China's restoration of higher tariffs on pork imports in 2022 reduced international demand and increased the domestic supply of pork.<sup>13</sup> Again, per the basic idea of supply and demand, one would expect that a sudden increase in supply would result in lower prices for consumers. Yet, as with chicken, that is not

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<sup>7</sup> Tom Polansek, "Tyson Foods to Shut Four US Plants in Blow to Small Towns," *Reuters*, August 7, 2023, <https://www.reuters.com/markets/commodities/tyson-foods-shut-four-more-us-chicken-plants-2023-08-07/>.

<sup>8</sup> Elizabeth Doughman, "Layoffs Announced at Tyson Foods Wilkesboro Plant," *WATT Poultry*, October 2, 2023, <https://www.wattagnet.com/broilers-turkeys/processing-slaughter/article/15635492/layoffs-announced-at-tyson-foods-wilkesboro-plant>.

<sup>9</sup> <https://www.ers.usda.gov/data-products/livestock-and-meat-domestic-data/livestock-and-meat-domestic-data/>

<sup>10</sup> Tom Polansek, "Record Chicken Prices Squeeze US Shoppers, Benefit Tyson Foods," *Reuters*, October 5, 2023, <https://www.reuters.com/business/retail-consumer/record-chicken-prices-squeeze-us-shoppers-benefit-tyson-foods-2023-10-05/>.

<sup>11</sup> J.M. MacDonald, Xiao Dong, and Keith Fuglie, "Concentration and Competition in U.S. Agribusiness, EIB-256," *U.S. Department of Agriculture, Economic Research Service*, June 2023, Page 25 <https://doi.org/10.32747/2023.8054022.ers>.

<sup>12</sup> The average price for a pound of pork chops in February 2021 was \$3.676, as compared to \$4.327 in September 2023. For bacon, the per-pound price increased from \$5.778 to \$7.083 in that time. "Average Price: All Pork Chops (Cost per Pound/453.6 Grams) in U.S. City Average," *Federal Reserve Economic Data*, <https://fred.stlouisfed.org/series/APU0000FD3101>; Average Price: Bacon, Sliced (Cost per Pound/453.6 Grams) in U.S. City Average," *Federal Reserve Economic Data*, <https://fred.stlouisfed.org/series/APU0000704111>.

<sup>13</sup> "China to Levy Higher Pork Tariffs on Pork Imports in 2022 Amid Supply Glut," *Reuters*, December 15, 2021, <https://www.reuters.com/markets/commodities/china-levy-higher-tariffs-pork-imports-2022-amid-supply-glut-2021-12-15/>.

the case. As the Wall Street Journal noted, “the glut of pork on the market has yet to translate into lower prices for consumers.”<sup>14</sup>

Rather than cutting prices, the industry seems determined to cut production, reducing its capacity while keeping costs high for consumers. In August, Perdue Farms announced that it would be closing a factory in Michigan that processed ham, sausage, and other pork products, laying off 132 workers.<sup>15</sup> Smithfield Foods Inc., the world’s largest pork producer, is closing 35 farms across Missouri<sup>16</sup>, and in October announced it would be closing its Charlotte-based processing plant.<sup>17</sup> While these decisions might help reduce the overhead costs and overall supply for producers and processors, it will only exacerbate demand issues and keep prices high for consumers.

Unfortunately, unfair business practices from the poultry and pork industry are nothing new. In recent years the U.S. Department of Justice (DOJ) has been cracking down on price-fixing and bid-rigging practices at major chicken processors. In 2021, Pilgrim’s Pride pleaded guilty and was sentenced to pay a \$107.9-million fine for violating federal anti-trust laws.<sup>18</sup> In 2022, the DOJ filed a lawsuit and proposed consent decree against three poultry producers—Sanderson Farms Inc., Cargill Inc., and Wayne Farms LLC—over violations of the Packers and Stockyards Act.<sup>19</sup> Earlier this year, a federal judge in Minneapolis approved a \$75-million settlement between Smithfield Foods Inc. and consumers groups that had accused Smithfield of engaging in illegal, conspiratorial practices that would constrain pork supply in order to inflate prices.<sup>20</sup>

Beyond the actions of individual companies, we have also seen allegations of collusion to raise prices across their respective industries. This year, the DOJ announced a lawsuit against Agri Stats Inc., an agricultural statistical research and consulting company, for violating the Sherman Act. Agri Stats customers process 90 percent of chicken sales, 80 percent of pork sales, and 90 percent of turkey sales. The lawsuit alleges that Agri Stats provides these companies with sensitive information about sales prices and costs, which allow the companies to collude to raise prices in violation of federal antitrust law. Agri Stats’ shady business practices are perhaps best

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<sup>14</sup> Patrick Thomas, “America Has Too Much Pork,” *The Wall Street Journal*, May 26, 2023, <https://www.wsj.com/articles/america-has-too-much-pork-52de4159>.

<sup>15</sup> Eszter Racz, “Perdue Farms to Close US Meat Plant,” *JustFood*, August 18, 2023, <https://www.just-food.com/news/perdue-farms-to-close-us-meat-plant/?cf-view>.

<sup>16</sup> Dominic Genetti, “Smithfield, World’s Largest Pork Producer, Closing Missouri Farms,” *The Telegraph*, August 10, 2023, <https://www.thetelegraph.com/news/article/smithfield-largest-pork-closing-missouri-farms-18289465.php>.

<sup>17</sup> “Smithfield Foods to Close Charlotte Plant,” *Smithfield*, October 9, 2023, <https://www.smithfieldfoods.com/press-room/2023-10-09-Smithfield-Foods-to-Close-Charlotte-Plant>.

<sup>18</sup> “One of the Nation’s Largest Chicken Producers Pleads Guilty to Price Fixing and Is Sentenced to a \$107 Million Criminal Fine,” *U.S. Department of Justice*, February 23, 2021, <https://www.justice.gov/opa/pr/one-nation-s-largest-chicken-producers-pleads-guilty-price-fixing-and-sentenced-107-million>.

<sup>19</sup> “Justice Department Files Lawsuit and Proposed Consent Decrees to End Long-Running Conspiracy to Suppress Worker Pay at Poultry Processing Plants and Address Deceptive Abuses Against Poultry Growers,” *U.S. Department of Justice*, July 22, 2022, <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy>

<sup>20</sup> Mike Scarcella, “Pork Consumers’ \$75 Million Price-Fixing Accord with Smithfield Approved,” *Reuters*, April 12, 2023, <https://www.reuters.com/legal/pork-consumers-75-million-price-fixing-accord-with-smithfield-approved-2023-04-12/>.

summarized by a Smithfield executive, who said that their advice amounted to “just raise your price.”<sup>21</sup>

Like other industries, the poultry and pork processing industry has struggled with unforeseen difficulties like higher costs, economic uncertainty stemming from foreign conflicts, and outbreaks of animal diseases. However, regulators cannot ignore the industry’s past and ongoing price fixing allegations, or the many signs that they may be engaging in practices that intentionally raise prices today.

I applaud recent actions by the USDA to promote competition and transparency in the poultry market and the creation of the office of Chief Competition Officer.<sup>22</sup> I encourage the USDA to continue using its authority under the Packers and Stockyards Act to protect farmers and consumers from monopolistic actions by others in the industry.

I am requesting that the Federal Trade Commission and the USDA undertake an investigation into the recent practices of major poultry and pork processing companies in the US which could be unfairly raising prices for consumers. Families in Pennsylvania and across the Nation deserve to know whether these high prices are the result of genuine economic pressures on the industry or whether they are artificial actions taken to further enrich wealthy executives and shareholders. Inflation is real, and we owe it to working families to ensure that we are taking every action possible to prevent bad actors from making it worse for their own gain.

Thank you for your attention to this important matter. If you have any additional questions, comments, or concerns, please contact me or my staff at (202) 228-5078.

Sincerely,



Robert P. Casey, Jr.  
United States Senator

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<sup>21</sup> “Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors,” *U.S. Department of Justice*, September 28, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-agri-stats-operating-extensive-information-exchanges-among-meat>.

<sup>22</sup> <https://www.usda.gov/media/press-releases/2023/11/08/usda-announces-progress-further-competition-agriculture-level>