

December 13, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

On July 9, 2021, we applauded your executive order “Promoting Competition in the American Economy.” Since then, your administration has done more to fight monopoly power and enforce our antitrust laws than any in recent memory. We commend this bold, decisive action to bring the whole of the executive branch’s force to bear in fighting monopoly power in agriculture and throughout our economy.

The executive order states clearly that farmers face excessive market concentration that harms their businesses, communities, and the entire American economy, and it outlines several changes that are needed, spanning several federal departments and agencies, to ensure farmers have access to fair, open, and competitive markets. The work of the Department of Justice (DOJ), Federal Trade Commission (FTC), and the U.S. Department of Agriculture (USDA), is pivotal to foster competition in American agriculture. However, we are concerned that the slow pace of progress by USDA on some of the actions specified in your executive order will jeopardize their effectiveness.

We have been impressed by the aggressive approach taken by the Department of Justice (DOJ) and Federal Trade Commission (FTC) to address anticompetitive conduct in the food system. Their new merger guidelines and long-overdue updates to the Hart-Scott-Rodino premerger filing forms will revitalize enforcement of potentially anticompetitive deals and prove that our top antitrust officials are no longer asleep at the wheel. The DOJ is holding bad actors in agriculture accountable for anticompetitive conduct, most notably in the case against Agri Stats Inc. for enabling price coordination among dominant protein firms.¹ The FTC filed litigation against two dominant pesticide firms for using pay-to-block schemes that appear to have raised the cost of agricultural inputs.² We applaud the work of federal antitrust enforcers, and we

¹ U.S. Department of Justice. (September 28, 2023). *Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors* [Press release]. <https://www.justice.gov/opa/pr/justice-department-sues-agri-stats-operating-extensive-information-exchanges-among-meat>.

² U.S. Federal Trade Commission. (September 29, 2022). *FTC and State Partners Sue Pesticide Giants Syngenta and Corteva for Using Illegal Pay-to-Block Scheme to Inflate Prices for Farmers* [Press release]. <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-state-partners-sue-pesticide-giants-syngenta-corteva-using-illegal-pay-block-scheme-inflate>.

encourage their ongoing vigilance and work to protect family farmers, ranchers, and consumers.

We also appreciate the actions USDA has taken to increase competition in agriculture. It is especially important that USDA and DOJ are partnering more closely to bring cases that fight unfair and anticompetitive practices that harm family farmers and ranchers.³ Other key initiatives by USDA include a partnership with state attorneys general to address anticompetitive practices by dominant firms in agricultural supply chains⁴ and an increased commitment to and investment in developing new local, regional, and value-added agricultural market opportunities.⁵

Additionally, USDA has started advancing rules to revitalize the Packers and Stockyards Act (P&S Act), a critical pro-competition law designed to protect family livestock producers from abuse in the marketplace, and that received significant and detailed attention in the executive order on competition regarding needed updates. *Nevertheless, we are concerned that the pace of USDA's progress on its P&S Act rulemakings could put them in jeopardy.*

We support USDA's recently finalized P&S Act rule to increase clarity and transparency in poultry growing contracts and the pending rule to provide stronger protections for market vulnerable individuals,³ but the most essential aspects of the work to strengthen the P&S Act remain in limbo. USDA has yet to propose a more comprehensive rule addressing abuses in the contract poultry growing system and a rule clarifying USDA's long-standing interpretation that it is unnecessary under the P&S Act to demonstrate industry-wide harm to establish a violation of the Act.

Until the rules are finalized, they are vulnerable to opponents of competitive agricultural markets. The FY2024 Agriculture, Rural Development, and Food and Drug Administration Appropriations bill in the House would prevent USDA from making any additional progress

³ USDA and DOJ, "Agriculture Department and Justice Department Issue Shared Principles and Commitments to Protect Against Unfair and Anticompetitive Practices," January 3, 2022. <https://www.usda.gov/media/press-releases/2022/01/03/agriculture-department-and-justice-department-issue-shared>.

⁴ USDA, "USDA Launches Historic Partnership with Bipartisan State Attorneys General to Help Reduce Anticompetitive Barriers Across Food, Agriculture Supply Chains," July 19, 2023. <https://www.usda.gov/media/press-releases/2023/07/19/usda-launches-historic-partnership-bipartisan-state-attorneys>.

⁵ U.S. Department of Agriculture. (June 9, 2022). *USDA Proposes New Rule for Transparency in the Service of Fair and Competitive Markets for Poultry Growers* [Press release]. <https://www.usda.gov/media/press-releases/2023/11/08/usda-announces-progress-further-competition-agriculture-level>; Agricultural Marketing Service. (2022). *Inclusive Competition and Market Integrity under the Packers and Stockyards Act*. U.S. Department of Agriculture. <https://www.ams.usda.gov/rules-regulations/unfair-practices-violation-packers-and-stockyards-act>; <https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming>.

on these rules.⁶ This is the same strategy employed by opponents of the P&S Act during the Obama-Biden administration, when similar rulemakings were so severely delayed that the attempt to strengthen the P&S Act failed.⁷

Without adequate antitrust enforcement, USDA risks wasting many of these important investments they have made in local, regional, and value-added markets as producers struggle to find market access in our hyper-consolidated agricultural industries. To ensure our nation's farmers and ranchers can thrive, USDA must restore the P&S Act by swiftly finalizing a strong set of rules.

We thank you again for your administration's leadership in revitalizing enforcement of anticompetitive conduct and we look forward to working with you to rein in monopoly power and foster competition in agriculture and across the American economy.

Respectfully,

20/20 Vision
Agricultural Justice Project
American Agriculture Movement
American Economic Liberties Project
American Grassfed Association
American Indian Mothers Inc
American Indian Mothers Inc.
Bold Alliance
Campaign for Contract Agriculture Reform
Campaign for Family Farms and the Environment
Catskill Mountainkeeper
Community Farm Alliance
Competitive Markets Action
Dakota Resource Council
Dakota Rural Action
Demand Progress
Farm Action
Farm Aid
Farm and Ranch Freedom Alliance
Food & Water Watch
Friends of the Earth
HEAL (Health, Environment, Agriculture, Labor) Food Alliance

⁶ Chris Clayton, "House Ag Funding Bill Would Block Livestock Marketing Rule," *DTN Progressive Farmer*, May 17, 2023. <https://www.dtnpf.com/agriculture/web/ag/blogs/ag-policy-blog/blog-post/2023/05/17/house-ag-funding-bill-block-rules>.

⁷ Lina Khan, "Obama's Game of Chicken," *Washington Monthly*, November 9, 2012.

<https://washingtonmonthly.com/2012/11/09/obamas-game-of-chicken/#:~:text=The%20untold%20story%20of%20how,of%20independent%20farmers%2C%20and%20lost>.

Illinois Stewardship Alliance
Institute for Local Self-Reliance
Iowa Citizens for Community Improvement
Kansas Black Farmers Association
Land Stewardship Project
Latino Farmers & Ranchers International, Inc.
Marbleseed
Michael Fields Agricultural Institute
Michigan Organic Food and Farm Alliance
Missouri Coalition for the Environment
Missouri Rural Crisis Center
National Family Farm Coalition
National Farmers Union
National Sustainable Agriculture Coalition
Natural Resources Defense Council
Nebraska Women Involved in Farm Economics
New Entry Sustainable Farming Project
Northeast Organic Dairy Producers Alliance
Northeast Organic Farming Association of New Hampshire (NOFA-NH)
Northeast Organic Farming Association of New Jersey NOFA NJ
Northeast Organic Farming Association of Vermont (NOFA-VT)
Ohio Ecological Food and Farm Association (OEFFA)
Open Markets Institute
Organic Farming Research Foundation
Organization for Competitive Markets
Oxfam America
P Street
Pasa Sustainable Agriculture
Powder River Basin Resource Council
Progress Michigan
Public Citizen
R-CALF USA (Ranchers - Cattlemen Action Legal Fund, United Stockgrowers of America)
Renewing the Countryside
Revolving Door Project
Rural Advancement Foundation International-USA
Rural Coalition
United Food and Commercial Workers International Union
Western Organization of Resource Councils
Women Involved in Farm Economics
Women, Food and Agriculture Network (WFAN)