

September 2, 2021

Robert Lepore
Chief, Transportation, Energy and Agriculture
Antitrust Division
Department of Justice
Suite 8000
450 Fifth Street NW
Washington, DC 20530

Dear Mr. Lepore,

The Campaign for Family Farms and the Environment is a coalition of state and national organizations, including Dakota Rural Action (SD), Iowa Citizens for Community Improvement, Land Stewardship Project (MN), Missouri Rural Crisis Center, Food & Water Watch and the Institute for Agriculture and Trade Policy. We work together to change the policies propping up corporate factory farms that are putting independent livestock producers out of business, extracting wealth from our rural communities, and polluting our land, water and air. We are writing to respectfully request that the Department of Justice oppose the early termination of the antitrust examination and undertake a second review of the proposed acquisition of Sanderson Farms by Cargill and Continental Grain Company.

The Clayton Antitrust Act bars mergers and joint ventures that could substantially reduce competition in any business line in any part of the country. The proposed deal would create a more concentrated national chicken market and would also have impacts on national grain markets because of the large volume of corn and soybeans used for feed. The horizontal and vertical impacts of this proposal warrant the request for additional information needed for a more thorough and comprehensive analysis by regulators. Therefore, we urge the Department of Justice to engage in a thorough investigation of the proposed acquisition to address the potential negative impact on farmers, workers and consumers.

Horizontal and Vertical Impacts

Sanderson Farms is currently the third largest company for broiler chicken production in the U.S. Wayne Farms (owned by Continental Grain Company) is the seventh largest.¹ The proposed acquisition will create a new private poultry corporation, increasing the market share of the top three processors from 46 to 51 percent² and creating a firm with approximately 15 percent of the U.S. broiler chicken market.³

In addition to an analysis of national market implications of this increased concentration for buyers of chicken such as food service companies and grocery retailers, the Department should scrutinize the local and regional implications of the merger for contract poultry growers and processing plant workers in areas where the merging firms may overlap.

According to the Wayne Foods website, the company has poultry plants in the following communities:

- Albertville, Alabama
- Decatur, Alabama
- Dothan, Alabama
- Enterprise, Alabama
- Union Springs, Alabama
- Danville, Arkansas
- Pendergrass, Georgia
- Laurel, Mississippi
- Dobson, North Carolina

The company also has a prepared foods plant in Decatur, Alabama.

According to the Sanderson Farms website, the company has poultry processing plants in the following communities:

- Moultrie, Georgia
- Hammond, Louisiana
- Collins, Mississippi
- Flowood, Mississippi
- Hazlehurst, Mississippi
- Laurel, Mississippi
- McComb, Mississippi
- Kinston, North Carolina
- St. Pauls, North Carolina
- Bryan, Texas
- Palestine, Texas
- Tyler, Texas
- Waco, Texas

And Cargill Protein Group has a plant in Waco, Texas that processes poultry products.⁴

In addition to the potential horizontal impacts of this proposed deal, we urge the Department to scrutinize implications for grain farmers, not only in the Southeast region where the merged company will operate its chicken production complexes, but nationwide. The broiler chicken industry is a major buyer of grain for feed. In the vertically integrated structure of contract broiler chicken production, poultry companies own the feed that is provided to contract poultry growers as part of the broiler grow-out process. Cargill is already a dominant buyer of grains including corn and soy. In addition, Sanderson Farms is also a buyer of corn and soy, which they process and deliver to their contract poultry growers. Sanderson Farms' website states that in 2017, the company processed 3.5 million tons of feed in its feed mills⁵ and industry publications

profiling the company's expansion efforts emphasize the rail infrastructure required to procure grain from all over the country, especially the Midwest.⁶

When major grain buyers are consolidating their operations, the monopsonist impact on our nation's grain farmers must be scrutinized. As Sanderson Farms states on its website, up to 75 percent of the production cost for a chicken comes from the cost of its feed. If the goal of this acquisition is to reduce feed costs through vertical integration, regulators should examine the impact of that loss of margin on other players in the current supply chain, including grain producers across the country.

Accusations of Anticompetitive Conduct

For many years, concern has been growing about the level of consolidation in industries like the broiler chicken industry and the opportunity this creates for companies to coordinate production and pursue other anticompetitive practices through mechanisms such as statistical tracking services.⁷ If this deal leads to increased market share for fewer companies, the opportunity for such anticompetitive practices will increase.

Sanderson Farms has been implicated in numerous separate class-action lawsuits regarding price and wage fixing, by retailers who buy their products, poultry plant workers, and contract poultry growers who grow chickens for the company. If the price-and-wage-fixing allegations against Sanderson Farms stand up to court scrutiny, it would be very inappropriate for the firm to gain even more market power through this acquisition. At the very least, the Department should delay its decision on this acquisition until the courts have rendered their decision on these cases.

The Antitrust Division is currently conducting an investigation into price fixing, bid rigging and other anticompetitive conduct in the broiler chicken industry, and as recently as late July announced the latest indictments of executives of a large poultry company.⁸ We have no knowledge of whether Sanderson Farms is involved in the Department's investigation or not. But the broad nature of the investigation across the entire broiler chicken industry suggests that new mergers and acquisitions in the broiler chicken industry would be ill-advised until the Department has completed its investigation.

Agriculture Already Suffers from Extreme Consolidation

The agricultural processing sector is already excessively concentrated. The recent disruptions in the food system caused by the pandemic, especially the protein supply chain, offer a vivid example of how extreme consolidation has made our food system less resilient while exploiting family farms, workers, rural communities, the environment, and public health.

The state of competition in agriculture markets is raising alarm among policymakers. Senator Grassley, Ranking Member of the Senate Judiciary Committee, has urged close scrutiny of this

acquisition. In a letter sent to Acting Assistant Attorney General for Antitrust Richard Powers on August 9, 2021, the Senator urged the Antitrust Division:

... to thoroughly examine this proposed acquisition to preserve a competitive market in the U.S. poultry industry. I also urge the Antitrust Division to seek input from the Department of Agriculture in its analysis of the proposed transaction and its impact on the poultry market. The Antitrust Division should scrutinize this proposed acquisition to ensure that it will not reduce market access opportunities or facilitate anti-competitive and predatory business practices in the industry. As you know, the poultry industry recently has been investigated for conspiring to fix prices and rig bids for chicken products, and pass on the costs to consumers and other purchasers. Further, the Antitrust Division should consider whether the proposed acquisition will result in more limited choices of poultry products and higher prices for consumers.⁹

And this summer, President Biden's Executive Order on Promoting Competition in the American Economy called on the Department to heighten the scrutiny of vertical and horizontal mergers, and calls on the Secretary of Agriculture to take actions to address unfair, deceptive, discriminatory and unduly preferential practices in the livestock and poultry sector. The Executive Order makes the following strong proclamations:

Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries — seed, fertilizer, feed, and equipment suppliers — and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

....

This order affirms that it is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony — especially as these issues arise in labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.

Given these statements by the President, it seems logical for the Department to heavily scrutinize the proposed acquisition, and to insist on seeing additional information and documentary materials regarding this acquisition before rendering a decision. We believe the proposed acquisition of Sanderson Farms by Cargill and Continental Grain Company would reduce competition and harm consumers, workers and farmers. We request that the

Department of Justice extend the waiting period and make a second request to solicit further information from the parties and give the agencies more time to review the complexities of the proposed deal.

If you have questions or need more information, please contact Patty Lovera at (202) 526-2726 or pattylovera20@gmail.com.

Sincerely,

Campaign for Family Farms and the Environment

¹ Top 10 broiler rankings in 2020, by weekly production (pounds, millions). Source: WattAgNet Annual Survey in talkbusiness.net

1. Tyson Foods, 200.47
2. Pilgrim's Pride, 160.94
3. Sanderson Farms, 89,65
4. Perdue Foods, 63.02
5. Koch Foods, 60.74
6. Mountaire Farms, 57.39
7. Wayne Farms, 49.4
8. Peco Foods, 36.48
9. George's Inc., 29.5
10. Foster Farms, 28.09

² Claire Kelloway. "Cargill, Continental Grain Take Over Chicken Leader Sanderson Farms for \$4.5 Billion." *Food and Power*. August 19, 2021. <https://www.foodandpower.net/latest/cargill-conti-sanderson-merger-2021>

³ Cara Lombardo and Jacob Bunge. "Cargill, Continental Grain to Acquire Sanderson Farms." *Wall St. Journal*. August 9, 2021. <https://www.wsj.com/articles/chicken-producer-sanderson-farms-nears-sale-to-continental-grain-cargill-11628461800?mod=djemalertNEWS>

⁴ FSNS Certification Audit Certificate. June 11, 2021. <https://www.cargill.com/doc/1432077256813/mfs-audit-635-waco-tx-brc-cert-pdf.pdf>

⁵ Sanderson Farms. "A Balancing Act – The Science Behind an Artfully Created Feed Formula." <https://sandersonfarms.com/blog/balancing-act-science-behind-artfully-created-feed-formula/>

⁶ Sarah Muirhead. "Sanderson Farms planning for future at Collins mill." *Feedstuffs*. January 13, 2018. <https://www.feedstuffs.com/news/sanderson-farms-planning-future-collins-mill>

⁷ Christopher Leonard. "Is The Chicken Industry Rigged?" *Bloomberg*. February 15, 2017. <https://www.bloomberg.com/news/features/2017-02-15/is-the-chicken-industry-rigged>

⁸ Department of Justice, Office of Public Affairs. "Four Executives and Company Charged with Price Fixing in Ongoing Investigation into Broiler Chicken Industry." July 29, 2021. <https://www.justice.gov/opa/pr/four-executives-and-company-charged-price-fixing-ongoing-investigation-broiler-chicken>

⁹ Senator Chuck Grassley. Letter to Department of Justice. August 9, 2021. www.grassley.senate.gov/imo/media/doc/continental_grain_company_merger.pdf