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December 8, 2021

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

Dear Assistant Attorney General Kanter:

Family Farm Action Alliance, on behalf of the farmers in our network, is writing to call attention to the alarming spike in prices charged to farmers by highly-concentrated fertilizer corporations. This increase suspiciously coincides with an increase in income farmers are earning from commodity crops like soybeans and corn.

We are requesting that the Antitrust Division of the Department of Justice (DOJ) examine these troubling trends. We maintain that these corporations are using their monopoly power to raise and lower the price charged to farmers not based on basic supply and demand, but rather on the price the farmer is paid for their commodity crops.

For example, when corn prices paid to farmers are as high as they are right now, fertilizer corporations respond by increasing the price they charge for fertilizer. In 2018, Yara, one of the leading fertilizer corporations, stated that "[v]ariations in grain prices (corn or wheat) explain approximately 50% of the variations in the urea [a form of nitrogen-based fertilizer] price, making grain prices one of the most important factors driving fertilizer prices."[1] If these corporations are tying the price of their products to the farmer's ability to pay rather than supply and demand, that equates to an abuse of the market. Such abuses allow concentrated corporations to extract maximum profit out of the supply chain, leaving the farmer with no hope of profitability.

[1] 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/

There is a clear economic argument for our concern. According to economists, market abuses are likely when the concentration ratio of the top four firms (CR4) exceeds 40%; the current conditions of the fertilizer industry are ripe for market abuses.

From 1980 to mid-2000s, the number of fertilizer firms declined from 46 to 13 when demand dropped and costs for inputs increased; however, this consolidation continued even as demand grew, natural gas prices dropped, and the sector as a whole expanded. This means that fewer and fewer firms owned and operated an increasing number of production facilities — and fewer firms were able to reap the resulting profits.[2]

Today just two companies supply the entirety of North America with potash, a potassium-based fertilizer: Nutrien Limited and the Mosaic Company.[3] In 2019, a mere four corporations represented 75% of the production and sale of nitrogen-based fertilizer in the U.S.[4] Today, the four dominant firms in this sector are CF Industries, Nutrien, Koch, and Yara-USA.

Claiming a global shortage, fertilizer companies have recently broken records with the ballooning prices they charge for fertilizer.[5] Yet the companies' own documents refute any shortage claims and reveal they have additional capacity they're not utilizing. While it's true that natural gas prices are currently high, Yara's 2021 third quarter report states explicitly that this has had "[l]imited impact on finished fertilizer production to date; Yara is closely monitoring the situation going forward."[6] Nutrien's annual report states that "due to historically low global ammonia prices we curtailed production...while maintaining flexibility to respond to improvements in the market condition."[7] Their potash capacity likewise exceeds current production levels, and in 2020 the cash cost to produce potash was "$59 per tonne, the lowest level on record for Nutrien."[8]

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[2] Bekkerman, A., G.W. Brester, and D. Ripplinger. 2020. "The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry." Choices. Quarter 2. Available at https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-us-nitrogen-fertilizer-production-industry

[3] ETC Group. 2019. "Plate Tech Tonics: Mapping Corporate Power in Big Food." Available at https://etcgroup.org/sites/www.etcgroup.org/files/files/etc_platetechtonics_a4_nov2019_web.pdf

[4] Bekkerman, A., G.W. Brester, and D. Ripplinger. 2020. "The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry." Choices. Quarter 2. Available at https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-us-nitrogen-fertilizer-production-industry

[5] Nickel, Rod. 2021. "Fertilizer shortage may lead to spring scramble on North America's farms." Reuters. Available at https://www.reuters.com/markets/commodities/fertilizer-shortage-may-lead-spring-scramble-north-americas-farms-2021-11-24/

[6] Yara International ASA. 2021. "Yara International ASA 2021 Third quarter results." Available at https://www.yara.com/siteassets/investors/057-reports-and-presentations/quarterly-reports/2021/3q-2021/yara-3q-2021-presentation.pdf/

[7] Nutrien. 2020. "Leading Solutions for Sustainable Agriculture: Nutrien Annual Report 2020." Available at https://nutrien-prod-asset.s3.us-east-2.amazonaws.com/s3fs-public/uploads/2021-02/2020%20Nutrien%20Annual%20Report.pdf

[8] *Ibid.*

Despite the apparent lack of a true shortage, these corporations have all elected to simultaneously surge retail prices for their products. Since 2020, all nitrogen fertilizers are now more than double in price: anhydrous is up by 131% and urea by 110%. Potash is up by 120%. In October of 2021 alone, the price of anhydrous fertilizer jumped 26% from the previous month to levels not seen since 2008. Urea increased 21% from the previous months, and the price of potash is now 13% higher.[9]

These trends bear out at the local level. According to our own independent outreach to farmers in Northeast Missouri, potash costs went from $390 a ton in 2019, to $315 a ton in 2020, to $745 in 2021. Similarly, prices for anhydrous fertilizer went from $475 a ton in 2019, to $415 in 2020, to $805 a ton in 2021; today, it will cost more than $1,480 per ton for farmers who will need to apply in the spring of 2022. It is striking that the fluctuations of these prices so closely follow the price fluctuations for corn: in 2019, the average closing price per bushel was $3.85, in 2020 it was $3.64, and in 2021 it spiked to $5.73.[10]

For commodity farmers who grow corn and soybeans, all of this means that an opportunity to make a profit has been stolen: on average, corn prices are up more than 20% from the start of the year.[11] Yet a report from the University of Illinois projects an increase of $80 per acre for fertilizer for corn and a $57 increase for soybeans, cutting into that elusive profit.[12]

In a highly-consolidated food system, the barriers to profitability for independent farms[13] has effects that ripple outward. When an independent farm fails, the United States' loosely-regulated farmland market means there is a strong chance the valuable land will be snatched up by billionaires, corporations, or global entities. As a result, the surrounding community loses neighbors, local employers, and a significant part of its tax base. Farm closures mean less funding for schools and hospitals, leaving the remaining population with little or no access to critical services.[14]

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[9] Micik Dehlinger, Katie. 2021. "DTN Retail Fertilizer Trends: Nitrogen Fertilizer Prices Close in on All-Time Highs as UAN32 Breaks Record." DTN/Progressive Farmer. Available at https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/11/03/nitrogen-fertilizer-prices-close

[10] "Corn Prices - 59 Year Historical Chart." Macrotrends. Available at https://www.macrotrends.net/2532/corn-prices-historical-chart-data

[11] *Ibid.*

[12] Schnitkey, G., C. Zulauf, K. Swanson, N. Paulson and J. Baltz. 2021. "2022 Grain Farm Income Projections Negatively Impacted by Fertilizer Cost Increases." farmdoc daily (11):156, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign. Available at https://farmdocdaily.illinois.edu/2021/11/2022-grain-farm-income-projections-negatively-impacted-by-fertilizer-cost-increases.html

[13] 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://farmactionalliance.org/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf

[14] Miller, Emily M. 2021. "The Truth About Industrial Agriculture: A Fragile System Propped up by Myths and Hidden Costs." Available at https://farmactionalliance.org/wp-content/uploads/2021/07/Truth-Report.pdf

While farmers are the end-users for fertilizer, the problem of market abuses in this sector holds consequences for consumers as well: higher fertilizer costs will eventually lead to higher food prices. In our concentrated food system, a small number of people determine where and how food will be produced, as well as who gets to eat and how much they will pay. This system is vulnerable to any supply chain disruption, whether caused by extreme weather or a public health emergency, and only offers the illusion of choice to the consumer.[15]

We ask that the DOJ open an investigation to determine to what extent the actions of these consolidated fertilizer firms are distorting the market, the resulting impact on farmers, and whether policy intervention will be necessary to remediate such distortions. The economic conditions of the fertilizer sector suggest market abuses are likely, and farmers are experiencing a price squeeze that is highly suspicious in its timing.

Thank you for your swift attention to this matter.

Sincerely,

Joe Maxwell, President
Family Farm Action Alliance

cc:
The Honorable Lina Khan, Chair of the Federal Trade Commission
The Honorable Tom Vilsack, Secretary of Agriculture

[15] 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://farmactionalliance.org/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf