Congress of the United States
Washington, DC 20510

May 20, 2022

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

CC:

President Joseph R. Biden
White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Commissioner Robert M. Califf
Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Secretary Thomas J. Vilsack
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Chairman Gary Gensler
Securities & Exchange Commission
100 F Street NE
Washington, DC 20549

Chair Khan:

We are writing to urge the Federal Trade Commission (FTC) to work with relevant federal agencies to investigate the U.S. baby formula industry and study any unfair or unsustainable practices, like deceptive marketing, price gouging, and stock buybacks, that may be weakening our nutritional formula supply and ultimately harming our constituents.

While the COVID-19 pandemic has played a massive role in causing supply chain shocks and sudden demand swings, the gradual consolidation of the baby formula market may be worsening these disruptions and deficiencies in our highly concentrated market. Four corporations—Abbott, Reckitt Benckiser, Nestlé, Perrigo—control about 90% of the U.S. baby formula market.[1] These companies rely on similar sources and centralized production capacities, which could be harming supply chain resiliency and product diversification. This type of high market concentration may come at the cost of decreasing market redundancy and flexibility while increasing the risk of sector-wide shortages – even if a single plant ceases manufacturing. That is seemingly what happened when Abbott had to shut down a facility and recall its product, Similac, due to a bacterial contamination earlier this year.[2]

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[1] Laura Reiley & Sam Easter, "Baby Formula Factory Says It's Still Months Away from Production," Washington Post, May 14, 2022. https://www.washingtonpost.com/business/2022/05/14/baby-formula-shortage-sturgis/

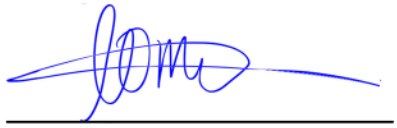
[2] Anna Edney, "Tainted Baby-Formula Risk Was Seen Months Before Abbott's Recall," Bloomberg, May 12, 2022. https://www.bloomberg.com/news/articles/2022-05-12/inspectors-saw-bacteria-risk-at-abbott-formula-factory-last-year

Another potential contributor to such alarmingly high concentration in the formula industry could be the Special Nutrition Program for Women, Infants, and Children (WIC). While WIC has been instrumental in increasing access to affordable formula options for low-income families, its competitive bidding process may be leading to corporate consolidation and higher formula prices for non-WIC families. This program is administered by states, where they can negotiate substantial discounts on formula in exchange for market exclusivity. Over time, these exclusive contracts have been going to a smaller number of large corporate manufacturers. As a result, Abbott, for example, now holds exclusive WIC contracts in at least 31 states.[3] It will also be important that the financial activities of these corporations be examined as well to ensure that their facilities and products are not being neglected. These companies should not be incentivized to solely maximize profits and prioritize stock value at the expense of public health and consumer safety. We must make sure that no corners are being cut on any level when nutritional formula is such a necessity for many Americans.

That is why we are requesting that the FTC use its 6(b) authority to conduct a wide-ranging study on the consolidation of the nutritional formula industry. The FTC should work with other federal partners to provide a report on the economic and health impacts of the formula industry's fragile supply chain and manufacturing capabilities. It should also include an analysis of business and financial practices by these formula companies that could be contributing to declines in affordability, consumer choice, and product quality. Lastly, this report should have recommendations to Congress and regulators on improving federal programs and regulatory or enforcement actions to strengthen domestic supply, prevent future shortages, and stabilize formula prices for all American families.

We want to thank you and the Administration for already taking the first steps to scrutinize merger activity and other potentially monopolistic activities in this industry and other sectors. Under your leadership, we hope the FTC will continue to hold corporate wrongdoers accountable for any anti-competitive behavior and consumer exploitation. We request a response to this report inquiry no later than 30 days after receiving our letter.

Sincerely,



Ilhan Omar
Member of Congress

Mark Takano
Member of Congress

[3] Amanda Mull, "We've Never Been Good at Feeding Babies," The Atlantic, May 14, 2022. https://www.theatlantic.com/health/archive/2022/05/baby-formula-supply-shortage-problem/629867/

Raúl M. Grijalva
Member of Congress

Bonnie Watson Coleman
Member of Congress

Eleanor Holmes Norton
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Earl Blumenauer
Member of Congress

Ayanna Pressley
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Rashida Tlaib
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Jamaal Bowman, Ed.D.
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