Koch Industries’ Fertilizer Plant Purchase Sparks Antitrust Plea

Koch’s $3.6 billion deal prompts lawmaker letter to DOJ, FTC
Iowa Democrats flag potential harm to workers, farmers
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Iowa state lawmakers are highlighting potential harm to workers from Koch Industries Inc.‘s $3.6 billion acquisition of a fertilizer plant in the state.

All 36 Democratic state representatives this week called on the Federal Trade Commission, the Justice Department, and Iowa Attorney General Brenna Bird (R) to examine how the purchase could further entrench Koch’s market power, posing the risk of not only higher fertilizer prices but also job losses.

Their plea could be buoyed by the federal agencies’ new focus on labor markets when assessing deals. The federal government has scrutinized consolidation in the agricultural industry, and particularly probed how mergers and acquisitions affect labor markets.

“They’re definitely paying more attention to labor market effects of mergers and other types of business behavior that might be anticompetitive,” said Eric Posner, a professor at the University of Chicago Law School who advised the DOJ’s Antitrust Division on labor issues last year. “If this is the type of merger that would reduce the number of employers in a labor market, like a city or rural area in which people commute, then it would definitely be a concern to the FTC and DOJ.”

This week, the FTC condemned Microsoft Corp.‘s plans to cut 1,900 jobs from its video game division following its acquisition of Activision Blizzard Inc. The DOJ has also opened an investigation into the University of Pittsburgh Medical Center over alleged abuse of its labor market dominance, according to reporting from the Capitol Forum, following a complaint filed by unions last summer.

President Joe Biden’s 2021 executive order to bolster competition specifically identifies concentrated market power in agricultural input industries—including fertilizer—as a threat to farmers’ livelihoods, suggesting the letter from state lawmakers could capture regulators’ attention.

Labor and Monopoly
Along with questions about short and long-term fertilizer costs for farmers, Iowa Democrats say Koch has yet to disclose whether the roughly 250 fertilizer plant workers could risk losing their jobs as a result of the acquisition.

Consolidation in agriculture is “squeezing farmers, it’s suppressing workers, and consumers are having to pay the most they ever have for groceries,” said Iowa State Rep. J.D. Scholten (D), who spearheaded a letter to the agencies on Feb. 5. “We as a society need to start judging some of these mergers.”

The labor movement “goes hand in hand with the anti-monopoly movement,” Scholten said. A federal probe would put a “huge spotlight” on the fertilizer deal, he added.

Herbert Hovenkamp, a professor at the University of Pennsylvania Carey Law School focused on antitrust law, said federal antitrust enforcers are more aggressively scrutinizing mergers over labor impacts. But regulators must distinguish job losses resulting from violations of antitrust law from those that constitute lawful elimination of duplication in the wake of a merger or acquisition.

“When the government says it’s opening up an investigation, that doesn’t mean it’s made up its mind—it means it wants more information,” Hovenkamp said, referring to the potential for federal agencies to probe the Koch deal.

$3.6 Billion Purchase

Koch Industries subsidiary Koch Ag & Energy Solutions announced in December its purchase of the Iowa Fertilizer Company plant in the town of Wever from Dutch chemical company OCI Global. Koch, the second-largest private company in the US, is one of five companies that dominate the US fertilizer market, according to Mordor Intelligence.

Koch Fertilizer spokesperson Greg Lemon said the acquisition is “consistent with the significant investments we have made in our business to increase production, improve reliability, and expand our customers’ access to the products and services they need.”

The FTC and DOJ under the Biden administration have focused on labor market impacts, a departure from past decades of a narrower focus on consumer welfare. New merger guidelines finalized by the agencies in December include, for the first time, the effect of corporate mergers on workers. The FTC’s proposed updates to its merger review process also require standard disclosures from deal-making companies on how their workers will be affected.

Iowa State Rep. Megan Srinivas (D) said the antitrust agencies’ focus on investigating labor impacts “coincides nicely” with the potential harm to workers lawmakers have identified in connection with the Koch acquisition. A key motivation for the letter was to ensure job opportunities for the Iowa workforce, she said.

In their letter, the Iowa lawmakers argued workers, farmers, consumers, and taxpayers could all be harmed by concentration of market power resulting from Koch’s fertilizer acquisition.

DOJ and FTC spokespeople confirmed both agencies received the lawmakers’ letter but declined to comment on whether they intend to take action.

The Iowa Fertilizer Company plant Koch plans to acquire was built with more than $100 million in state tax subsidies and additional federal tax benefits, according to news reports and government announcements. When the project was announced in 2012, state officials said it would promote competition against companies like Koch and benefit local farmers. Srinivas linked lawmakers' push for an antitrust investigation to the plant's reliance on taxpayer dollars.

"We owe it to our constituents and Iowans that we decide whether the previous tax incentives will now unfortunately be undermined in their intent," Srinivas said.

Agriculture and environmental groups also urged the FTC and DOJ to investigate the deal in a letter to the agencies in January.

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