TESTIMONY OF ROB LAREW

President

National Farmers Union

SUBMITTED TO THE U.S. SENATE COMMITTEE ON THE JUDICIARY

"Beefing up Competition: Examining America's Food Supply Chain"
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Chairman Durbin, Ranking Member Grassley, members of the committee, thank you for the opportunity to testify today.

My name is Rob Larew, and I serve as the president of National Farmers Union, a grassroots organization that advocates on behalf of family farmers and ranchers and rural communities. Founded in 1902, today NFU represents approximately 200,000 farmers across the country whose operations range in size, type, and production method.

NFU's policy book, established annually at our national convention by our members, states that "inadequate market competition is one of the most pressing issues facing producers across the country." Today, most sectors in America's farm and food system are heavily consolidated and dominated by a small handful of multinational corporations. As a direct result, farmers have been deprived choices, innovation, fair prices, and fair treatment.

While farm families have paid a steep price for these structural shifts, there are also broader consequences for national security and the health, safety, and economic wellbeing of all communities.

The COVID-19 pandemic and several other recent events, including the Holcomb, Kansas, meat packing plant fire and the hacking of JBS computer systems, laid bare the fragility underlying our current farm and food system. The inadequate market competition we face today must be addressed to protect our family farms and all the communities that depend on them for food, fiber, and fuel.

To ensure a more resilient food supply for consumers and a competitive marketplace for family farmers and ranchers, there are several steps that must be taken. Across the economy, there must be more scrutiny of buyer power, and regulators must consider the need for robust competition at all links of the supply chain. In the meat and poultry sector, rules must be implemented that reinvigorate the Packers and Stockyards Act (PSA), clearly delineate prohibitions on packers under the PSA, and create needed protections for farmers under contract. Market participants must be provided with reliable information through mandatory price reporting and accurate labeling. Furthermore, federal and state governments should invest in supporting more market competition in marketing and processing to build a more resilient livestock sector and to ensure greater value accrues to local and regional food systems.

The state of competition in America's farm and food supply chain

Today, a small handful of dominant firms control the market for most farm inputs (such as seed, crop protection, fertilizer, and in equipment manufacturing), processing (including livestock slaughter and processing), food manufacturing, wholesale distribution, food service, and retail grocery. Family farmers and consumers sit on either end of this consolidated supply chain and are comparatively numerous and decentralized. Thus, the small set of large, consolidated firms in the middle of the supply chain wield immense market power, as oligopolists or oligopsonists (and in fewer cases as monopolists or monopsonists), compared to farmers and consumers.

The incentives for firms to merge or acquire rivals are strong, since getting bigger can increase bargaining power relative to customers and suppliers. Firms also gain market power through vertical integration, where they control multiple links in the supply chain to their advantage. Consolidation, both horizontally and vertically, can help firms exclude smaller rivals from accessing markets, increase barriers to enter markets and compete, and create the conditions for large rivals to work together to manipulate markets to their shared advantage.

The trend toward greater consolidation of our farm and food system is striking. The four-firm concentration ratios (CR4), a commonly used metric for illustrating market concentration that specifies the market share for the top four firms in an industry, has risen precipitously among meat packers and poultry processors. Between 1977 and 2018, the CR4 for beef packers slaughtering steers and heifers rose from 25 to 85 percent[1]; for pork, the CR4 rose from 33 percent in 1976 to 70 percent in 2018[2]; for broiler chickens, the CR4 rose from 34 percent in 1986 to 54 percent in 2018.[3] [4] While the magnitude of national-level industry consolidation may be lower for broilers, concentration is often higher in more localized markets.[5]

The trend toward increasing consolidation and declining competition is stark in other sectors as well. As of 2015, the top four firms for corn and soybean seeds controlled 85 percent and 76

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[1] Cai, X., K. W. Stiegert, and S. R. Koontz, "Oligopsony Fed Cattle Pricing: Did Mandatory Price Reporting Increase Meatpacker Market Power?" Proceedings of the NCCC-134 Conference on Applied Commodity Price Analysis, Forecasting and Market Risk Management. St. Louis, MO. https://legacy.farmdoc.illinois.edu/nccc134/conf_2011/pdf/confp24-11.pdf

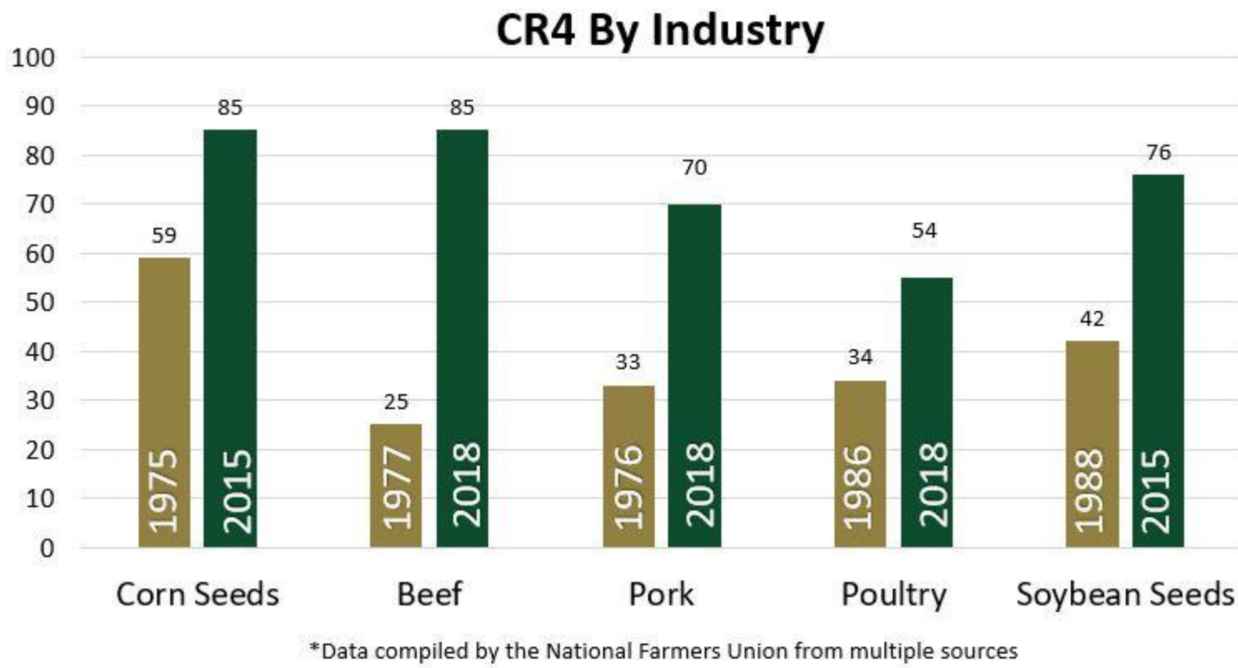
[2] Clement E. Ward, "Economics of Competition in the U.S. Livestock Industry," January 2010. https://www.justice.gov/sites/default/files/atr/legacy/2011/09/09/AGW-15639-a.pdf

[3] Joel Greene, "USDA's 'GIPSA Rule' on Livestock and Poultry Marketing Practices." (Washington: Congressional Research Service, 2016), https://www.everycrsreport.com/files/20160107_R41673_e1d67b445c928f46a6b23a04c38d116fdb819c93.pdf

[4] USDA, Agricultural Marketing Service (AMS), Packers and Stockyards Division, "Annual Report 2019." https://www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2019.pdf

[5] James M. MacDonald, "Technology, Organization, and Financial Performance in U.S. Broiler Production" (U.S. Department of Agriculture Economic Research Service, 2014), https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=0

percent of the market, respectively; this compares to 59 percent for corn seed in 1975, and 42 percent for soybean seed in 1988.[6] [7] Four firms account for approximately 84 percent of the global herbicide and pesticide market,[8] and just two companies manufacture about half of the tractors and other essential farm machinery used by farmers.[9] Market share in retail grocery is also heavily consolidated, with the top four retailers controlling approximately 65 percent of sales in 2018.[10] As corporate consolidation of our food system has marched steadily forward, farmers have watched their choices and their market power dwindle.



The rise in consolidation and decline in competition we see today in America's food supply chain has several explanations. In part, the issue has been the result of a shift in thinking regarding the interpretation of our existing antitrust laws.[11] This, in turn, has led to anemic merger enforcement across the supply chain. As companies have gotten larger and competition

[6] Jorge Fernandez-Cornejo, "The Seed Industry in U.S. Agriculture: An exploration of data and information on crop seed markets, regulation, industry structure, and research and development," *USDA Economic Research Service*, https://www.ers.usda.gov/webdocs/publications/42517/13616_aib786_1_.pdf?v=3857.1
[7] James MacDonald, "Mergers and Competition in Seed and Agricultural Chemical Markets," *USDA Economic Research Service*, 2017, https://www.ers.usda.gov/amber-waves/2017/april/mergers-and-competition-in-seed-and-agricultural-chemical-markets/
[8] Claire Kelloway and Sarah Miller, "Food and Power: Addressing Monopolization in America's Food System," *Open Markets Institute*, May 13, 2019. https://www.openmarketsinstitute.org/publications/food-power-addressing-monopolization-americas-food-system
[9] Ibid.
[10] CBRE, "2019 U.S. Food In Demand Series: Grocery," May 2019.
[11] Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age*, 2018.

has declined, anticompetitive conduct by dominant firms has received insufficient scrutiny.[12] Additionally, with respect to livestock and poultry, the Packers and Stockyards Act (PSA) has seen significant failures in enforcement.[13] And despite direction from Congress in the 2008 Farm Bill to develop new rules to clarify the PSA, the more robust rules that were promulgated – the "Farmer Fair Practices" rules – were either not finalized or shelved,[14] and a subsequent rule that was finalized provides no meaningful protections for farmers.[15]

Examining competition in the livestock and poultry sectors

While there are some important differences between the structure of the industries that produce cattle, hogs, and poultry, farmers and ranchers raising these livestock all face a shared challenge: slaughter and processing sectors that are more concentrated today than they were several decades ago. These industries are also more vertically integrated, eroding farmers' control over their livelihoods. Furthermore, farmers and ranchers face thinning or nonexistent cash markets, which can hamper price discovery and suppress prices.

Competition problems facing cattle producers

Corporate consolidation in the beef packing industry was a severe problem in the early 1900s, which precipitated antitrust enforcement that resulted in more competitive markets in beef slaughter and processing. But in the mid-1970s, the trend shifted back toward greater concentration with the consummation of a slate of mergers and acquisitions. Whereas the top four beef packing firms accounted for about 25 percent of the market for steer and heifer slaughter in the 1970s, by 1990, the top four firms controlled approximately 70 percent of the market. During this same period, the number of cattle feeding operations in the top 13 cattle feeding states declined approximately 40 percent, despite a relatively stable number of fed cattle marketed during this period.[16]

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[12] Diana L. Moss and Laura Alexander, "When COVID-19 is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains," *American Antitrust Institute*, May 7, 2020.
[13] United States Government Accountability Office (GAO), Testimony before the Committee on Agriculture, Nutrition, and Forestry, United States Senate, "Packers and Stockyards Programs: Continuing Problems with GIPSA Investigations of Competitive Practices," March 9, 2006. https://www.gao.gov/assets/gao-06-532t.pdf
[14] National Farmers Union, "NFU Deeply Disappointed by USDA Decision to Terminate Farmer Fair Practices Rules," October 17, 2017. https://nfu.org/2017/10/17/nfu-deeply-disappointed-by-usda-decision-to-terminate-farmer-fair-practices-rules-2/
[15] National Farmers Union, "Rule Fails to Protect Farmers from Discriminatory Practices, According to Farmers Union," December 10, 2020. https://nfu.org/2020/12/10/rule-fails-to-protect-farmers-from-discriminatory-practices-according-to-farmers-union/
[16] United States General Accounting Office, "Beef Industry: Packer Market Concentration and Cattle Prices," December 1990, GAO/RCED-91-29. https://www.gao.gov/assets/rced-91-28.pdf

Today, just four companies control most of the beef slaughter and processing. While vertical integration in beef has not been as pervasive as in the hog and broiler chicken industries, the large beef packers have incorporated more processing activities into their own operations. There has also been a shift toward greater alternative marketing arrangements and a thinning cash or spot market, that give packers greater control over the cattle supply. AMAs in the form of formula pricing averaged nearly 65 percent of total fed cattle procurement, compared to about 45 percent a decade earlier. By comparison, the negotiated grid and cash market for fed cattle declined to an average of about 24 percent nationally in 2019, compared to over 45 percent in 2009.[17]

Heavy corporate consolidation in beef packing, and the shift toward fewer, very large plants, makes the industry more vulnerable to shocks. This puts producers at greater risk of experiencing lower prices and consumers are more likely to see high prices at retail. In the weeks and months following the fire that shut down the Tyson beef packing plant in Holcomb, Kansas, in August 2019, and following disruptions caused by the COVID-19 pandemic in 2020, the spread between the Choice boxed beef cutout values and fed cattle prices reached record levels.[18] This means that packers were purchasing cattle at relatively low prices and selling them for relatively high prices. Additionally, in July 2020, the price received for steers and heifers dropped to a recent historic monthly low, below $100 per cwt, which had not happened at any other time over the period from 2012 to the present.[19]

While many variables influence the prices for farm products and the retail cost of food, the large price swings caused by recent disruptions are in large part a function of disrupted supply chains. The vulnerability of these supply chains to shocks is a feature of the extreme concentration in the middle of the supply chain between farmers and consumers. The rapid consolidation of packing and processing, driven by mergers and acquisitions by the Big Four, made the supply chain prone to breakdowns and bottlenecks. This, in turn, put more pressure on farmers and ranchers, who often operate on razon-thin margins. Significant price declines and volatile markets can threaten their livelihoods.

Ultimately, this confluence of factors – fewer meatpackers, vertical integration, a thinning cash market, which would typically assist with price discovery, and a hyper-concentrated supply

[17] USDA, Agricultural Marketing Service (AMS), Packers and Stockyards Division, “Annual Report 2019.” https://www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2019.pdf
[18] USDA Agricultural Marketing Service (AMS), “Boxed beef and fed cattle price spread investigation report,” July 22, 2020. https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf
[19] USDA, NASS, “Prices Received: Cattle Prices Received by Month, US,” June 30, 2021. https://www.nass.usda.gov/Charts_and_Maps/Agricultural_Prices/priceca.php

chain vulnerable to shocks – leaves producers at a significant disadvantage relative to the packers.

Competition problems facing pork and broiler (chicken) producers

The term "chickenization" is used to refer to increasing vertical integration and the trend for companies to maintain near total control over all stages of their supply chain. While these structural shifts initially occurred in broiler chicken production and are most extensive in that industry, the challenges facing hog farmers and contract poultry growers have many similarities. Hog and poultry growers alike have faced large increases in processor buyer power due to increasing industry concentration, the vertical integration of supply chains, and the dominance of production contracts. Hogs produced under contract effectively doubled from 34 percent in 1996/1997 to 63 percent in 2017.[20] The remainder were raised by packer-owned and operated feedlots.[21] Contracting is even more prevalent in broiler chickens, where by 2011, 97 percent of broiler chickens were raised on contract operations.[22] Both of these sectors also feature thinning or nonexistent cash markets, which may hamper price discovery. By 2014, negotiated cash markets for hogs had effectively vanished,[23] and there is practically no cash market for poultry.

The problems with production contracts are best known and documented in broiler chicken production. For broilers grown under production contracts, integrators control the inputs provided to the grower, including live chicks, feed, and medication, and dictate transportation and processing. Specifications for grow houses and equipment are set in contracts, and integrators typically retain the right to require updates to these facilities. The grower typically provides housing, equipment, labor, and fuel – at their own risk – to grow out the birds. The payment received by poultry growers for their birds is typically determined by a tournament, or grower ranking system, even though growers have no control over the inputs and conditions that determine the quality of the birds they grow.[24]

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[20] "America's Diverse Family Farms: 2018 Edition," *USDA, Economic Research service*, EIB 203, December 2018, https://www.ers.usda.gov/webdocs/publications/90985/eib-203.pdf?v=9520.4

[21] Zoe Willingham and Andy Green, "A Fair Deal for Farmers: Raising Earnings and Rebalancing Power in Rural America," May 7, 2019, https://www.americanprogress.org/issues/economy/reports/2019/05/07/469385/fair-deal-farmers/

[22] James M. MacDonald, "Technology, Organization, and Financial Performance in U.S. Broiler Production" (U.S. Department of Agriculture Economic Research Service, 2014), https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=0

[23] Mathews, Brorsen, Hahn, Arnade, and Dohlman, "Mandatory Price Reporting, Market Efficiency, and Price Discovery in Livestock Markets," *USDA, Economic Research Service (ERS)*, LPDM-254-01, September 2015.

[24] C. Robert Taylor and David A. Domina, "Restoring Economic Health to Contract Poultry Production," May 13, 2010 – prepared for the joint DOJ and USDA Public Workshop on Competition Issues in the Poultry Industry, May 21, 2010, Normal, AL.

Even though the broiler industry does not appear as consolidated at the national level as some other livestock markets, lack of competition is evident at more localized levels. More than half of all poultry farmers report having only one or two poultry integrators in their area with whom they can contract their services. In 2011, 21.7 percent of growers reported only having one integrator in their area. Research by USDA using 2006 ARMS broiler survey data indicated that integrators in highly concentrated local markets exercise local monopsony power, driving down pay for contract poultry growers. Markets with only one integrator experienced receiving pay about 8 percent lower, on average, compared to growers in markets with four or more integrators.[25] There is documented evidence of monopsony power in hog processing as well, which results in diminished pay for producers,[26] and might even have resulted in the demise of relatively large firms.[27]

Price-fixing in the livestock and poultry industries

Concentrated market structures also increase opportunities for market manipulation and coordinated behavior. There has been a spate of price fixing litigation brought against major livestock industry companies since 2016, with multiple indictments and guilty pleas. Allegations have touched all three major meat sectors – beef cattle, pork, and broiler chickens.

Accusations of collusion began to shadow the broiler chicken industry in late 2016 with the filing of the Maplevale lawsuit. [28] The suit alleged that large poultry companies coordinated prices between 2008 and 2016, resulting in a 50 percent price increase for broiler chickens, despite a roughly 20 to 23 percent decrease in input costs over the same period.[29] There have been several follow-on suits from other companies that purchase poultry making the same allegations.

The Department of Justice (DOJ) later intervened in the Maplevale case, and in June 2020 the first indictments of chicken-industry executives related to the case were announced.[30] In

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[25] https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=
[26] Zoe Willingham and Andy Green, "A Fair Deal for Farmers: Raising Earnings and Rebalancing Power in Rural America," May 7, 2019, https://www.americanprogress.org/issues/economy/reports/2019/05/07/469385/fair-deal-farmers/
[27] Sarah Mock, "How does one of the world's biggest pork firms go bust during a boom?" October 27, 2020. https://www.theguardian.com/environment/2020/oct/27/how-does-one-of-the-worlds-biggest-pork-firms-go-bust-during-a-boom
[28] Maplevale Farms, Inc. vs. defendants; case: 1:16-cv-08637, United States District Court for the Northern District of Illinois, https://www.locklaw.com/wp-content/uploads/assets/090216-complaint-maplevale-farms.pdf
[29] Leah Douglas, "Justice Dept. intervenes in major poultry price-fixing case," *FERN*, June 24, 2019.
[30] Brent Kendall and Jacob Bunge, "Chicken Industry Executives, Including Pilgrim's Pride CEO, Indicted on Price-Fixing Charges," *Wall Street Journal*, June 3, 2020. https://www.wsj.com/articles/chicken-industry-executives-including-pilgrim-s-pride-ceo-indicted-for-price-fixing-11591202113

October 2020, Pilgrim's Pride, which is majority owned by JBS, plead guilty to one count of conspiracy in restraint of competition, and agreed to pay a fine of $110.5 million.[31] Additional settlements by chicken companies about price-fixing claims followed,[32] and an indictment, of Claxton Poultry Farms, followed in May 2021.[33]

Multiple lawsuits were also brought against beef packers[34] and the pork industry[35] in August 2019. In the case of pork, multiple settlements were subsequently announced, including $24.5 million from JBS in December 2020, another $20 million in March 2021, and $12.75 million in April 2021. It was announced in June 2021 that Smithfield Foods would pay $83 million to settle its case.[36]

These instances of market manipulation are a symptom of concentrated markets. While the pursuit of these cases by federal regulators is a welcome development, the need for these actions is a product of under-enforcement of existing antitrust laws.

The COVID-19 pandemic and disruptions to supply chains

Livestock slaughter and processing is heavily consolidated. Today, there are approximately 835 federally inspected slaughter facilities and 1,938 other slaughter facilities in the United States.[37] In 1968, there were nearly 10,000 total slaughtering establishments across the country.[38] As the number of plants decreased, many remaining plants have become bigger; for example, just 50

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[31] Pilgrim's Pride Corporation, Quarterly Report Pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, for the period ended September 27, 2020. https://ir.pilgrims.com/static-files/4f802b29-38d5-4474-8581-6a12d0b545b1?source=email

[32] Lillianna Byington, "Pilgrim's Pride pleads guilty to price fixing with DOJ and agrees to pay $108M fine," *FoodDive*, January 11, 2021, updated February 24, 2021. https://www.fooddive.com/news/pilgrims-pride-to-pay-75m-price-fixing-settlement-to-chicken-buyers/593154/

[33] Department of Justice, "Broiler chicken producer indicted for price fixing and big rigging," May 20, 2021. https://www.justice.gov/opa/pr/broiler-chicken-producer-indicted-price-fixing-and-bid-rigging

[34] Leah Douglas, "Multiple lawsuits allege price-fixing by big beef companies," *FERN*, October 28, 2019. https://thefern.org/ag_insider/multiple-lawsuits-allege-price-fixing-by-big-beef-companies/

[35] Leah Douglas, "More antitrust lawsuits hit the meat industry. This time, it's pork," *FERN*, November 7, 2019. https://thefern.org/ag_insider/more-antitrust-lawsuits-hit-the-meat-industry-this-time-its-pork/

[36] Jessi Devenyns, "Smithfield Foods will pay $83M to settle pork price-fixing claims," *FoodDive*, Nov 6, 2020, updated June 30, 2021. https://www.fooddive.com/news/jbs-settles-a-portion-of-pork-price-fixing-lawsuit/588514/

[37] "Livestock Slaughter: 2019 Summary," *USDA National Agricultural Statistics Service (NASS)*, April 2020, https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/34850245n/5712mr72x/lsan0420.pdf.

[38] "Livestock Slaughter: 1969," *USDA Statistical Reporting Service*, April 1970. https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/ht24wp48q/9k41zj37t/LiveSlauSu-04-00-1970.pdf

plants slaughter and process 98 percent of all cattle in the United States.[39] While these larger plants may create certain efficiencies, they also create serious supply chain vulnerabilities.

During the COVID-19 pandemic, extreme concentration in agricultural supply chains was most evident in the disruption in the meat and poultry industries, where the closures or slowdowns at several massive meatpacking plants resulted in lost markets for farmers, constrained supplies, and higher prices for consumers. As of June 16, 2021, nearly 60,000 meatpacking plant workers at 574 meatpacking plants tested positive for COVID-19.[40] Many of these cases were part of outbreaks that led to temporary closures, greatly reducing processing capacity. At the peak of closures, beef and pork facilities were operating at 25 percent[41] and 40 percent[42] below average, respectively. This bottleneck stranded farmers with animals that were market-ready but had nowhere to go, leading to euthanized animals and depressed prices.

A telling example of the potential consequences of supply chain vulnerabilities, even before the COVID-19 pandemic, was the fire that shut down operations at Tyson Foods' Holcomb, Kansas, beef processing plant for months. The plant at the time ranked as one of the eight largest plants in the United States in terms of daily harvest capacity; the fire eliminated approximately 30,000 head per week of capacity. While the company was ultimately able to shift some production to other plants, the event precipitated market reactions that lowered prices paid to ranchers, and increased prices for consumers, for several months.[43] [44]

A more recent demonstration of supply chain vulnerabilities was the cyberattack in late May and early June of 2021 that shuttered plants operated by the world's largest meat processor. JBS, which controls approximately one fifth of U.S. cattle slaughter, was hacked by a Russian-based ransomware group, forcing all nine of its beef plants in the U.S. offline.[45] JBS's poultry

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[39] Michael Corkery and David Yaffe-Bellany, "The Food Chain's Weakest Link: Slaughterhouses," *The New York Times*, April 18, 2020, https://www.nytimes.com/2020/04/18/business/coronavirus-meat-slaughterhouses.html.

[40] Leah Douglas, "Mapping COVID-19 outbreaks in the food system," *Food and Environment Reporting Network*, April 22, 2020, accessed June 16, 2021, https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/

[41] Laura Reiley, "Meat processing plants are closing due to COVID-19 outbreaks. Beef shortfalls may follow." *The Washington Post*, April 16, 2020, https://www.washingtonpost.com/business/2020/04/16/meat-processing-plants-are-closing-due-covid-19-outbreaks-beef-shortfalls-may-follow/

[42] Laura Reiley, "Tyson says nation's pork production is down 50%, despite Trump's order to keep meat plants open," *The Washington Post*, May 4, 2020, https://www.washingtonpost.com/business/2020/05/04/tyson-says-nations-pork-production-is-down-50-despite-trumps-order-keep-meat-plants-open/

[43] "The smoldering impact of Tyson's Holcomb fire," *Meat+Poultry*, October 14, 2019. https://www.meatpoultry.com/articles/22036-the-smoldering-impact-of-tyson-holcomb-fire

[44] Elliott Dennis, "A historical perspective on the Holcomb fire: Differences and similarities to the COVID-19 situation and other significant market events," September 11, 2020. https://farm.unl.edu/historical-perspective-holcomb-fire-differences-and-similarities-covid-19-situation-and-other

[45] Rebecca Robbins, "Meat processor JBS paid $11 million in ransom to hackers," *New York Times*, June 9, 2021. https://www.nytimes.com/2021/06/09/business/jbs-cyberattack-ransom.html

and pork plants were disrupted as well.[46] While the long-term effects of this break in the supply chain are yet to be fully felt and understood, market analysts reported anticipating higher consumer prices and backlogs that would negatively impact ranchers.[47]

While many meat processing plants were shuttered or had reduced capacity during the pandemic due to outbreaks among workers, dairy processing was impacted by COVID-19 because unprecedented demand shifts emerged nearly overnight in March 2020. Consumer spending on food away from home plummeted as restaurants and food service facilities were closed, and demand for more traditional at-home dairy products spiked.[48] The relative efficiencies of the dairy supply chain were a liability during these times, and even with extremely high demand for some products there was very little demand for others. Backlogs ensued, and 2.5 percent of all milk produced in the U.S. in April 2020, or about 40.6 million gallons, was dumped. At the same time, in late spring and early summer of 2020, farm prices for milk dipped while retail prices rose.[49]

Reliable, accurate, and robust market information

Fair and competitive markets rely upon transparency and equitable access to reliable and accurate information. For farmers and ranchers to bargain effectively with packers and integrators, they need true price transparency in the marketplace. For consumers to make informed choices about the food they are buying, labels need to accurately represent the nature of the product. We must address current shortcomings related to price discovery and reporting in the livestock and poultry sectors, as well as inaccurate origin labeling.

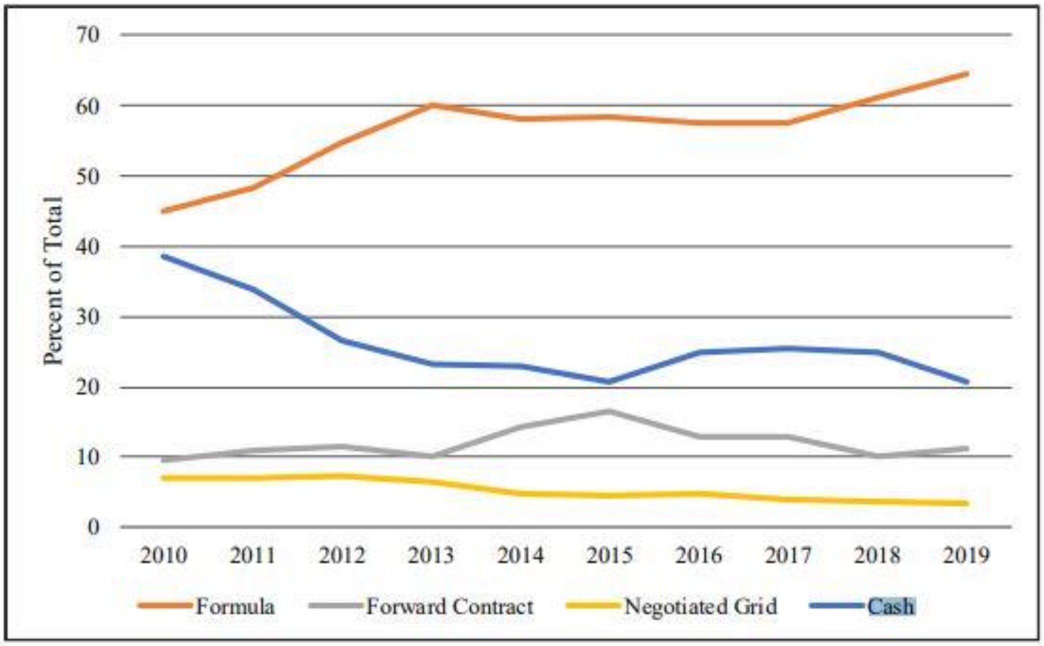
Price transparency, discovery, and reporting

Fed cattle procurement has continued to trend toward formula pricing and other alternative marketing arrangements (AMAs), and away from the cash market. Congress passed the Livestock Mandatory Reporting Act (LMRA) in 1999 in response to concerns about AMAs as well

[46] Julie Creswell, Nicole Perlroth and Noam Scheiber, "Ransomware disrupts meat plants in latest attack on critical U.S. business," *New York Times*, June 1, 2021.
[47] Jacob Bunge, "Meat buyers scramble after cyberattack hobbles JBS," *Wall Street Journal*, June 2, 2021. https://www.wsj.com/articles/meatpacker-jbs-hit-by-cyberattack-affecting-north-american-australian-operations-11622548864
[48] USDA Economic Research Service, "COVID-19 Economic Implications for Agriculture, Food, and Rural America," accessed June 15, 2021. https://www.ers.usda.gov/covid-19/food-and-consumers/
[49] Christopher A. Wolf, Andrew M. Novakovic, and Mark W. Stephenson, "COVID-19 and the U.S. Dairy Supply Chain," *Choices*, Quarter 3. https://www.choicesmagazine.org/choices-magazine/theme-articles/agricultural-market-response-to-covid-19/covid-19-and-the-us-dairy-supply-chain

as rising concentration in the meat packing industry. LMRA resulted in mandatory price reporting (LMR) of most transactions for livestock, and it has been renewed and amended multiple times.[50] While LMR has been beneficial for price discovery in general, the continued erosion of the cash market for cattle is undermining its benefits. There is also relatively little price transparency in hogs and poultry, where cash markets have dwindled further, or been eliminated altogether.

Figure 2. Fed Cattle Procurement by Purchase Type, 2010–2019



*From: USDA, Agricultural Marketing Service (AMS), Packers and Stockyards Division, "Annual Report 2019."

USDA has determined that on a week-to-week basis, higher levels of AMA procurement is associated with lower negotiated cash prices. Ultimately, AMA prices are also negatively impacted, because many packer pricing formulas and contract prices are based on cash markets prices. This trend toward thinner and thinner cash markets is eroding cash and AMA prices alike.[51]

It is not surprising that packers prefer AMAs, because they can reduce procurement and transaction costs and allow plants to operate closer to capacity more consistently. AMAs can also help sellers lock in prices, guarantee market access, and reduce transaction costs. Yet, the fact that AMAs are eroding price discovery and depressing cash market prices for fed cattle (and in turn, AMA prices), should be cause for concern. The near elimination of a cash market

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[50] Mathews, Brorsen, Hahn, Arnade, and Dohlman, "Mandatory Price Reporting, Market Efficiency, and Price Discovery in Livestock Markets," *USDA, Economic Research Service (ERS)*, LPDM-254-01, September 2015.

[51] USDA, Grain Inspection, Packers and Stockyards Administration (GIPSA), "Investigation of Beef Packers' Use of Alternative Marketing Arrangements," July 2014.

for hogs, and the complete elimination of a cash market for poultry – and the negative implications for growers – should also give cattle market participants pause.

Truth In Labeling

Fair and competitive markets also require product labels that are truthful. A supply chain that contains false or misleading product labels puts domestic producers at a competitive disadvantage while preventing consumers from making fully informed decisions about the products they buy. Farmers and ranchers want to provide consumers with accurate information about the origins of the food they purchase and consume, and federal labeling laws should support farmers in achieving that goal.

Moreover, consumers consistently express a desire to know the origin of their food. A 2017 poll demonstrates that 89 percent of a representative sample of American adults favored requiring retailers to indicate on the package label the country of origin of fresh meat they sell.[52] Furthermore, 88 percent of adults favored requiring food sellers to indicate on the package label the country or countries in which animals were born, raised, and processed.[53] More recently, a survey of a representative sample of American adults showed that 87 percent of American think that beef and pork should have a label listing its country of origin, with fairly consistent support across age groups, party identification, and areas of residence (rural, suburban, and urban).[54]

NFU has been a stalwart proponent of mandatory country-of-origin labeling (COOL) for meat. NFU policy states that mandatory COOL "is a valuable marketing tool for producers, and it allows consumers to know where the meat products they consume are born, raised, slaughtered, and processed."[55] NFU also supports the mandatory COOL rules in effect for other agricultural products, such as dairy, produce, honey, and nuts.
Truthful and accurate voluntary labels are important to producers and helpful for consumers, but voluntary labeling is not a replacement or substitute for mandatory COOL. The misuse of voluntary product label claims, including "Product of USA" and "Made in USA," are highly misleading to consumers and financially injurious to family farmers and ranchers.

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[52] Consumer Federation of America. "Large Majority of American Strongly Support Requiring Origin Information on Fresh Meat." July 24, 2017. https://consumerfed.org/press_release/large-majority-of-americans-strongly-support-requiring-origin-information-on-fresh-meat/
[53] Ibid.
[54] Lake Research Partners. "Results from a National Online Survey Around Rural and Agricultural Issues." Designed by Lake Research Partners, administered by CARAVAN in a national online omnibus survey. Conducted July 20-31, 2020, using a demographically representative sample of Americans 18 years of age or older.
[55] National Farmers Union, *Policy of the National Farmers Union*, March 2019.

Currently, the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) Food Standards and Labeling Policy Book presents standards that do not require a meat product to be born, raised, and slaughtered in the U.S. to be labeled "Product of USA."[56] The standard allows imported animals that are processed in the U.S. at USDA-inspected slaughter facilities to be labeled as "Product of USA." Due to the significant number of cattle imported from Canada and Mexico, many beef products of foreign origin are being represented with some variation of a "Made in USA" claim.

In response to a petition submitted by U.S. Cattlemen's Association in October 2019, FSIS stated that:

> *"Permitting imported meat products that are further processed in a federally-inspected establishment to be labeled 'Product of USA' may be misleading to consumers and may not meet consumer expectations of what 'Product of USA' signifies. FSIS also agrees that to address these issues, the Agency needs to establish clear parameters that prescribe which meat product may voluntarily be labeled with U.S. origin statements, such as 'Product of USA' or 'Made in USA.'"*[57]

Thus, the standard used by USDA-FSIS to regulate the labeling of meat products is insufficient.

The effects of corporate consolidation and inadequate competition on rural communities

High levels of concentration and the buyer power wielded by relatively few market intermediaries put farmers operating on relatively thin profit margins, and in turn, the communities that they support, at risk. Agriculture continues to play an essential role in many rural areas; 1 in 5 rural counties are economically dependent on farming.[58] Thus, market intermediaries with even modest market power can capture market surplus for themselves, paying farmers below a competitive level, and preventing those benefits from flowing to rural communities.

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[56] USDA-FSIS, Office of Policy, Program and Employee Development. *Food Standards and Labeling Policy Book*. August 2005. https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES

[57] USDA-FSIS Final Response to Petition. March 26, 2020. https://www.fsis.usda.gov/wps/wcm/connect/dba58453-e931-4c1d-9b4e-fb36417049ce/19-05-fsis-final-response-032620.pdf?MOD=AJPERES

[58] USDA Economic Research Service (ERS), "Rural economies depend on different industries," updated October 9, 2018. https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58290

Unchecked consolidation and corporate power have other important, yet less tangible effects on farmers and rural communities. For example, farmers have less choice and autonomy in a consolidated agricultural system, and this may force farmers to make decisions they would otherwise reject for various reasons. Constrained choices and lack of options also reduce bargaining power.[59] Furthermore, there is widespread acknowledgment that a more consolidated farm and food system has had detrimental effects on communities, including population decline and increasing income inequality.[60]

Solutions: Promoting competition in America's food supply chain

In May 2021, NFU joined five other organizations[61] representing cattle producers to discuss challenges involved in the marketing of finished cattle, and to build consensus about how to ensure financial sustainability for cattle feeders and cow-calf producers.[62] This meeting reflected the fact that the power of the packers has grown too large, there is insufficient price discovery in the marketplace, and options for slaughter and processing of fed cattle are constrained. It also reflects the pressing need to act now to ensure our farmers and ranchers can participate in fair, open, and competitive markets.

Thankfully, the Biden administration has heard the clarion call for greater competition in agriculture, and many other sectors of the economy. On July 9, 2021, President Biden issued Executive Order 14036 on "Promoting Competition in the American Economy" which calls upon more than a dozen federal agencies to institute reforms, promulgate rulemakings, and conduct oversight, to address rising corporate consolidation in America.[63] Many of the directives in the executive order specifically address competition issues in agriculture and rural economies,

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[59] Hendrickson, M. K., and James, H. S. 2005. The ethics of constrained choice: How the industrialization of agriculture impacts farming and farmer behavior. Journal of Agricultural and Environmental Ethics, 18(3), 269–291; and Hendrickson, M. K., and James, H. S. 2016. Power, Fairness and Constrained Choice in Agricultural Markets: A Synthesizing Framework. Journal of Agricultural and Environmental Ethics, 29(6), 945–967. https://doi.org/10.1007/s10806-016-9641-8

[60] Lobao, L., and C.W. Stofferahn. 2007. "The community effects of industrialized farming: Social science research and challenges to corporate farming laws." Agriculture and Human Values 25(2):219–240. https://doi.org/10.1007/s10460-007-9107-8; and 1 Gibson, Jane W. and Benjamin J. Gray. 2019. "The Price of Success: Population Decline and Community Transformation in Western Kansas." Pp. 325–62 in In Defense of Farmers: The Future of Agriculture in the Shadow of Corporate Power, edited by J. W. Gibson and S. E. Alexander. Lincoln, NE: University of Nebraska Press

[61] American Farm Bureau Federation, Livestock Marketing Association, National Cattlemen's Beef Association, R-CALF USA, and the United States Cattlemen's Association.

[62] National Farmers Union, "National Farmers Union and Group of Cattle Producer Organizations Hold Historic Talks to Address Problems in Marketplace," May 17, 20201. https://nfu.org/2021/05/17/national-farmers-union-and-group-of-cattle-producer-organizations-hold-historic-talks-to-address-problems-in-marketplace/

[63] See https://www.federalregister.gov/documents/2021/07/14/2021-15069/promoting-competition-in-the-american-economy

including the livestock sector. Of course, many members of Congress are taking a hard look at these issues too, as reflected in this hearing.

To build a food supply chain that is resilient and a marketplace that works for family farmers and ranchers, several steps must be taken. It is finally time to revitalize the PSA by promulgating rules that make the law enforceable and that ensures specific protections for producers. Furthermore, all market participants must be able to access accurate, reliable, and timely information through price reporting and labeling. It is essential that there is robust and strategic investment in local and regional marketing and processing options for livestock and other agricultural products as well. And finally, significantly more vigorous antitrust enforcement is needed, especially greater scrutiny of buyer power.

Packers and Stockyards Act (PSA) reform

The Packers and Stockyards Act of 1921 (PSA) is a law meant to assure fair competition, safeguard farmers and ranchers, and protect consumers, from unfair, deceptive, and unjustly discriminatory and monopolistic practices of the meat and poultry industries. Unfortunately, the PSA has been underenforced,[64] and Congressional action to strengthen the law, such as through the 2008 Farm Bill, has yet to come to fruition. The PSA must be bolstered and vigorously enforced.

NFU is heartened that President Biden's executive order on competition both reaffirms the government's commitment to the principles that led to the passage of the PSA and specifically mentions the need for the Secretary of Agriculture to initiative rulemakings under the PSA "to address the unfair treatment of farmers and improve conditions of competition in markets for their products."[65] Furthermore, USDA has signaled that it will take action to strengthen the PSA.[66]

USDA should establish and clearly state through the rulemaking process that it is not necessary to show a competitive injury broadly to find an action of a packer, swine contractor, or live poultry dealer to be unlawful under the PSA. As USDA has repeatedly argued in court cases, the unambiguous language of section 202(a) and (b) of the PSA does not require any proof of an adverse effect on competition or of restraint of commerce or trade. The legislative history of

[64] United States Government Accountability Office (GAO), Testimony before the Committee on Agriculture, Nutrition, and Forestry, United States Senate, "Packers and Stockyards Programs: Continuing Problems with GIPSA Investigations of Competitive Practices," March 9, 2006. https://www.gao.gov/assets/gao-06-532t.pdf

[65] Executive order 14036 of July 9, 2021, "Promoting Competition in the American Economy," Federal Register Vol. 86, No. 132, July 14, 2021.

[66] "USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act," *USDA*, June 11, 2021. https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act

the PSA shows that Congress intended to prohibit actions that give undue and unreasonable preferences without regard to whether they restrain trade, create a monopoly or control prices.

Additionally, USDA should revisit the final rule with respect to “undue or unreasonable preference or advantage,” which failed to provide meaningful protections for producers, instead enshrining unfair, anti-competitive behavior already employed by the industry. Specifically, USDA should clarify that a “reasonable business decision” cannot justify an undue preference or advantage.

More generally, the update to the PSA should provide greater clarity about what practices in the meat and poultry industries constitute unfair, unjustly discriminatory, or deceptive practices, and thus violate the PSA. Especially close attention should be paid to prohibiting unfair practices regarding grower ranking systems or “tournaments.” PSA rulemaking should also institute anti-retaliation protections that help ensure farmers’ right to association and so that farmers can speak up about unfair treatment without fear of retribution.

Lastly, updated rules are unhelpful if they are not vigorously enforced. Consideration should be given to ensuring USDA has the resources it needs, both in terms of personnel and otherwise, to enforce the PSA, and collaborate with the DOJ and the Federal Trade Commission as appropriate.

Improving price discovery and ensuring fair and accurate market information

Problems with price discovery in cattle markets and the erosion of prices due to the ascension of AMAs should be addressed, in part, by establishing a minimum level of cash transactions in the marketplace. Since AMAs are known to erode cash prices, and since base prices for AMAs are themselves typically based on the cash market, a too thinly traded cash market will result in producer prices that are lower than they otherwise would be with a more robust cash market. Additionally, a thinly traded cash market is more susceptible to manipulation.

Furthermore, USDA should establish a cattle contract library, which would constitute a collection of marketing contracts between packers and producers. This library would help producers have greater knowledge of the different contract provisions that exist, so that producers can negotiate more favorable terms. Another concern in market openness is how a lack of consistency has reduced the effectiveness of LMR due to the withholding of information because of confidentiality concerns. These issues must be addressed for LMR to be an important price discovery tool for producers.

Finally, truthful product labels are also essential to promoting fair competition in the marketplace. The need for mandatory country-of-origin labeling (COOL) remains. The misuse of existing voluntary product label claims, including "Product of USA" is a significant problem, because it misleads consumers and makes it difficult for farmers and ranchers to fairly distinguish the origin of their products in the marketplace. Thankfully, USDA has announced it plans to review the current "Product of USA" label, and the FTC recently took steps to enhance its enforcement of the "Made in USA" standard more broadly. We urge USDA to act quickly to address these misleading labels.

Facilitating competition and more diverse market opportunities

The COVID-19 pandemic highlighted how large, seemingly efficient systems of production can falter when there are shocks to those systems. Local and regional food systems also faced disruptions but were often better positioned to adapt rapidly to new conditions and protect against shocks, given their shorter supply chains and more direct connection to consumers.[67] Thus, there is a need to strengthen local and regional food systems, which can also help promote greater competition in farm and food supply chains.

Local and regional food systems have grown tremendously in recent decades. Nationally, between 1992 and 2007, direct-to-consumer sales of unprocessed products approximately doubled from $706 million to $1.4 billion (in 2017 dollars).[68] The number of farmers' markets in the United States grew from fewer than 2,000 in 1994 to more than 8,600 registered in the USDA Farmers' Market Directory today.[69] This growth can be attributed to many factors, including federal investment and support for local and regional food systems, and growing consumer interest in the source of their food.

Despite the positive trends in local and regional food systems, a major gap remains: a lack of local and regional meat and poultry processing infrastructure. Many farmers are forced to schedule access to slaughter facilities years in advance and have no choice but to transport their livestock hundreds of miles to the nearest facility. The rise in massive slaughter and processing facilities and decline in smaller-scale facilities makes our food system more vulnerable to disruptions that can and have occurred at a small number of facilities. Farmers

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[67] Dawn Thilmany, Elizabeth Canales, Sarah A. Low, and Kathryn Boys, "Local Food Supply Chain Dynamics and Resilience during COVID-19," *Applied Economic Perspectives and Policy*, October 26, 2020. https://onlinelibrary.wiley.com/doi/10.1002/aepp.13121

[68] Jeffrey K. O'Hara and Matthew C. Benson. "Where have all the direct-marketing farms gone? Patters revealed from the 2017 Census of Agriculture." *Journal of Agriculture, Food Systems, and Community Development*. August 23, 2019.

[69] Farmers Market Coalition. https://farmersmarketcoalition.org/education/qanda/

Union members and state divisions have led campaigns to help achieve greater access to state and local funds to foster new marketing options for family farmers and ranchers. [70]

Thankfully, action is being taken on this front. Recently, USDA announced an investment of more than $150 million to help existing small and very small processing facilities weather the challenges they have faced because of the COVID-19 pandemic as well as expand capacity.[71] USDA also announced its intention to invest $500 million in American Rescue Plan funds to expand meat and poultry processing capacity.

USDA should continue its work to develop detailed guidance to help new or existing small meat and poultry slaughter and/or processing establishments comply with regulations, and to evaluate how current regulations or fees may create unnecessary barriers for those facilities that may seek federal inspection. Investment of financial and technical resources to expand meat processing training programs is sorely needed, and USDA should prioritize this in future efforts. The department should also facilitate the development of mobile slaughter units that can fill gaps in slaughter where appropriate. When offering financial assistance to the development of new processing facilities, particular emphasis ought to be placed on producer- or worker-owned cooperative business structures. Finally, USDA should ensure it is setting up new or expanded plants for success, including by taking steps to prevent the use of predatory practices by dominant market participants.

Reinvigorated antitrust enforcement

There is increasing recognition that concentrated economic power has reached dangerous levels in many sectors of the American economy and that corporate consolidation is a threat to democracy itself. Agriculture is one of those sectors that has seen enormous levels of consolidation, as outlined earlier in this testimony. In addition to buttressing the PSA, ensuring more transparency in markets, and promoting competition and new market opportunities, federal regulators must vigorously enforce existing antitrust laws, including looking back at the potential anticompetitive effects of many consummated mergers and acquisitions in agriculture.

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[70] https://www.wisconsinfarmersunion.com/processing

[71] Approximately $55 million is dedicated to the new Meat and Poultry Inspection Readiness Grant (MPIRG) program and includes the Planning for a Federal Grant of Inspection (PFGI) project for processing facilities currently in operation and working toward Federal inspection, as well as the Cooperative Interstate Shipment (CIS) Compliance project for processing facilities located in states with a Food Safety and Inspection Service (FSIS) CIS program. Another $100 million is dedicated to helping small and very small processing facilities deal with overtime inspection fees incurred due to increased slaughter and processing demand during the COVID-19 pandemic. More here: https://www.usda.gov/media/press-releases/2021/06/21/usda-invests-552-million-grants-increase-capacity-and-expand-access.

An important piece of legislation that can help promote increased and more effective antitrust enforcement is S.225, Senator Amy Klobuchar's "Competition and Antitrust Law Enforcement Reform Act of 2021."[72] This bill would address DOJ and FTC enforcement budgets that are incommensurate with the number of merger filings and other demands of agency resources. The bill would also strengthen prohibitions against mergers. This includes updating the legal standard for permissible mergers, including by making clear that monopsony, or buyer power, should be a key consideration. And it would also shift the burden to merging parties to prove their mergers are not anticompetitive. Finally, the bill would establish a new FTC division that would conduct merger retrospectives, which is especially important given the series of mergers in agriculture over the past several decades.

Conclusion

Over the decades, the entire farm and food supply chain has become highly consolidated and uncompetitive, much to the detriment of family farmers, ranchers, rural communities, and consumers. While competition in America's food supply chain may be perilously low, renewed attention to these problems gives us hope.

Thank you for holding this hearing today and for the opportunity to testify. I appreciate the committee's attention to this important issue and look forward to answering any questions you may raise.

[72] S.225 - 117th Congress (2021-2022): Competition and Antitrust Law Enforcement Reform Act of 2021. (2021, February 4). https://www.congress.gov/bill/117th-congress/senate-bill/225