Bruce Summers
Administrator
Agriculture Marketing Service
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, D.C. 20250

Re: Request For Public Comments, Supply Chains for the Production of Agricultural Commodities and Food Products, Docket No. AMS-TM-21-0034 (86 FR 26689, May 17, 2021)

Dear Mr. Summers:

The American Antitrust Institute (AAI) appreciates the opportunity to submit comments in the U.S. Department of Agriculture (USDA), Agriculture Marketing Service (AMS) proceeding: *Supply Chain for the Production of Agricultural Commodities and Food Products* (Docket: AMS-TM-21-0034). AAI's comments address the importance of competition in promoting stable and resilient food and agricultural supply chains and suggest ways in which USDA-AMS can advance this essential public policy goal.

I. AAI's Interest in Competition in the Food and Agriculture Supply Chains

AAI has a more than 20-year history of research, education, and advocacy on the importance of vigorous antitrust enforcement and constructive competition policy in the food and agricultural sectors.[1] AAI has provided legal, economic, business, and institutional analysis of the adverse effects of consolidation and concentration on producers, consumers, independent business, and the stability and security of the food supply chains. This work spans various sectors, including agricultural inputs such as fertilizer, crop traits, and seed; protein and grain processing; food manufacturing; broadline food distribution; and retail grocery.

AAI is uniquely positioned to provide insight into the structure of agricultural and food markets, strategic anticompetitive practices in those markets, remedies designed to restore competition from harmful mergers and anticompetitive conduct, and policies that promote competition and the protection of producers and consumers. The integrity and stability of the food system is a matter of national health, safety, and security. Disruption of any food and agriculture supply chains is potentially catastrophic, as became apparent during the COVID pandemic. As the economic recovery puts increased pressure on demand for agricultural commodities and food products, those risks remain very real. AAI's comments in this proceeding highlight a lack of competition as a major cause of instability and lack of resilience in U.S. food supply chains.

[1] The American Antitrust Institute (AAI) is an independent, nonprofit organization devoted to promoting competition that protects consumers, businesses, and society. For more information, please visit antitrustinstitute.org.

II. The Trump Administration's Roll-Back of Important Competition Safeguards

The AAI applauds USDA under the Biden administration for focusing on promoting competition and protecting consumers and producers in food and agricultural markets. In its 2020 report THE STATE OF ANTITRUST ENFORCEMENT AND COMPETITION POLICY IN THE U.S., AAI expressed deep concern about the deregulatory initiatives taken under the Trump Administration.[2] In late 2017, for example, USDA cancelled the proposed Fair Farmer Practices (FFP) rules.[3] The FFP rules were the outgrowth of a 2008 Congressional mandate that USDA use its rulemaking authority to clarify the application of the Packers and Stockyards Act (PSA).[4]

The FFP rules were an important policy response to claims of unfair and discriminatory conduct resulting from transformational, consolidation-driven changes in commercial livestock and poultry production. This includes the shift to the "tenant farmer" model of raising chickens owned by integrators and meatpackers' practice of awarding supply contracts to selected producers at the same time their purchases set the base price for contract sales.[5] The PSA prohibits any unfair or discriminatory conduct affecting farmers, but numerous requirements limit the protections afforded by the statute.[6] For example, judicial interpretation of the PSA has evolved to encompass numerous restrictive requirements, including that: (1) any unfair or discriminatory act must also harm competition, not just a competitor; (2) resulting losses must be experienced by consumers and not just by farmers; and (3) conduct for which a plausible business justification might exist (even if a less restrictive alternative was also available) is exempt from "unfairness."[7]

The FFP rules would have clarified that certain conduct by meatpackers and poultry dealers may violate the PSA without necessarily being anti-competitive and rejected the requirement that any unfair or discriminatory action must also affect competition.[8] Cancellation of the FFP rules involved, notably, withdrawal of the rule that reversed judicial interpretation requiring competitive harm as a prerequisite to any unfairness claim.[9] Revocation of the FFP rules therefore left independent farmers and ranchers vulnerable to exploitation while insulating powerful processing corporations from liability.[10]

In response to objections to withdrawing the FFP rules, the Trump administration issued much different, weaker regulations in late 2021.[11] Combined with the withdrawal of the FFP rules, the

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[2] *The State of Antitrust Enforcement and Competition Policy in the U.S.*, AM. ANTITRUST INST. (Apr. 14, 2020).
[3] *Id.*
[4] Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, § 11006 (2008).
[5] *See*, Christopher Leonard, THE MEAT RACKET: THE SECRET TAKEOVER OF AMERICA'S FOOD BUSINESS (2014).
[6] 7 U.S.C. §§ 201–217a. *See also* Peter. C. Carstensen, *How to Assess the Impact of Antitrust on the American Economy: Examining History or Theorizing*, 74 IOWA L. REV. 1175, 1198–1210 (1989).
[7] 7 U.S.C. §228b. *See*, e.g., *London v. Fieldale Farms Corp.*, 410 F.3rd 1295, 1302–1305 (11th Cir. 2010); *Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355 (5th Cir.2009) (en banc); *Pickett v. Tyson Fresh Meats*, 420 F. 3d 1272 (11th Cir. 2005); and *Terry V. Tyson Farms*, 604 F.3d 272, 277-279 (6th Cir. 2010).
[8] 81 Fed. Reg. 92566, 92594 (Dec. 20, 2016) creating 7 F.C.R. §201.3(a) ("A finding that the challenged conduct or action adversely affects or is likely to adversely affect competition is not necessary in all cases.").
[9] 82 Fed. Reg. 48,594-01 (Oct. 17, 2018).
[10] *See* Press Release, Roger Johnson, Pres. National Farmers Union (Oct. 17, 2017), ("With this decision, USDA has given the green light to the few multinational meatpackers that dominate the market to discriminate against family farmers.")
[11] Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act, 85 FR 79779 (Dec. 11, 2020).

elimination of the Grain Inspections, Packers, and Stockyards Administration and assignment of its functions to AMS, the regulations make the PSA even less likely to have any useful effect in protecting livestock growers. The AAI applauds USDA for recently announced planned steps to reverse the damage of regulatory rollbacks and to strengthen enforcement of the PSA using the agency's rulemaking authority.[12]

III. The Role of Competition in Ensuring Stable and Resilient Food Supply Chains

Food supply chain disruptions can result from human pandemic, animal disease, extreme weather, and conflict. [13] But disruptions also result from competition problems in the food system. Competition benefits consumers and producers through fair prices, high quality products, incentives to innovate, and choice. Another key benefit of competition is promoting diversity and redundancy in the supply chains that link together the markets for agricultural inputs, processing, manufacturing, and wholesale and retail food distribution. Supply chains that feature robust competition at individual levels are far are more likely to ensure the reliable and stable production and distribution of essential food products. If some parts of the supply chain are disrupted, competition works to ensure that rival suppliers fill the void to meet demand, thereby promoting resiliency and stability.

The consequences of monopolized and cartelized food and agriculture markets are abundantly clear. For example, near the beginning of the COVID pandemic, the largest beef, pork, and poultry processing companies warned of supply chain failures. Indeed, disruptions to the meat supply left wasted food and empty grocery store shelves.[14] This was followed by then President Trump's invocation of the Defense Production Act to force meat processing plants to stay open to ensure supply during the public health crisis.[15] As discussed next, the massive consolidation that has fundamentally reshaped the food system in the U.S. over the last two decades has played a major role in the failure of food supply chains to pass the "resiliency" test.

IV. Unpacking the Competition "Bottleneck" in the Food Supply Chains

There are any number of incentives for consolidation, both pro-competitive and anticompetitive. In the food and agriculture sector, two are particularly problematic. One is the incentive to "bulk up" to gain bargaining power vis-à-vis customers and suppliers. For example, powerful beef, pork, and poultry processors drive down prices paid to ranchers and growers. Likewise, large grocery chains drive down prices charged by powerful processors and manufacturers. These incentives have created a domino-like effect of "reactive" consolidation along the food supply chain, resulting in dominant firms and oligopolies in processing, manufacturing, and retail grocery.[16] The result is a "squeeze" on producers, who receive less for their commodities, but also on consumers, who pay higher prices and receive lower quality. Reactive consolidation is exacerbated by a lack of clear coordination

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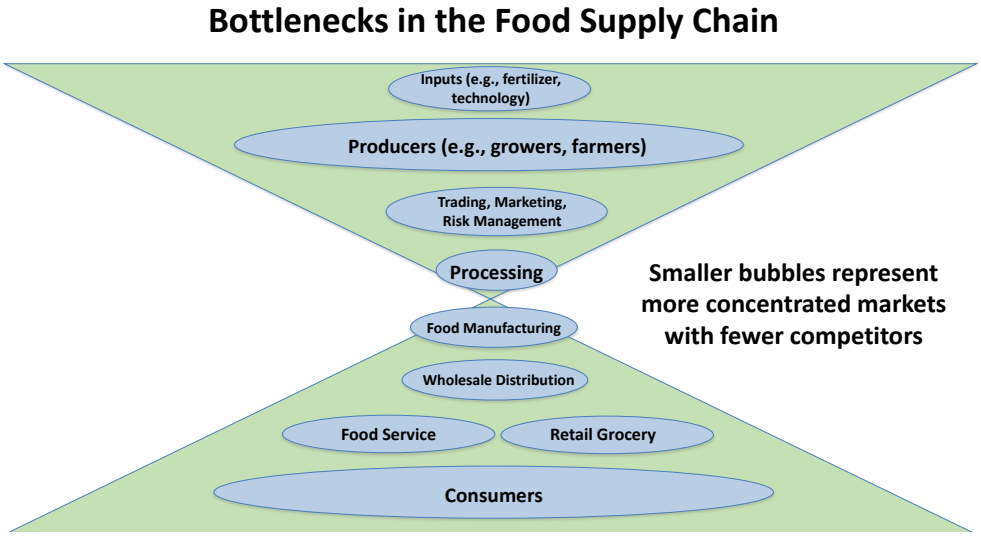
[12] USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act, U.S. DEPT. AGRIC. (Jun. 11, 2021).
[13] Diana L. Moss & C. Robert Taylor, *Short Ends of the Stick: The Plight of Growers and Consumers in Concentrated Agricultural Supply Chains*, 2014 Wis. L. Rev. 337 (2014).
[14] Sanya Mansoor, *'The Food Supply Chain Is Breaking.' Tyson Foods Warns of Meat Shortage as Plants Close Due to COVID-19* (Apr. 26, 2020).
[15] Taylor Telford, Kimberly Kindy & Jacob Bogage, *Trump orders meat plants to stay open in pandemic* (Apr. 29, 2020).
[16] *See, e.g.,* Letter to FTC Chairwoman Edith Ramirez re: Proposed Merger of Sysco and US Foods, AM. ANTITRUST INST. (Feb. 25, 2014).

between the Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) in reviewing mergers along the supply chain.

The graphic below illustrates the bottlenecks that result from a lack of competition in the food supply chain. When markets are concentrated, the failure of one supplier means few are left to take up the slack, imperiling the entire system. Beef is a leading example, where the four largest firms (Tyson Foods, JBS SA, Cargill, and National Beef Packing Co.) control over 80% of the national beef packing market.[17] The beef processing bottleneck highlights the dangers to upstream producers, and downstream consumers.



A second incentive for consolidation is for firms to integrate horizontally and vertically to expand and solidify economic control over multiple markets in the supply chain. The results are enhanced market power and stronger incentives to exclude smaller rivals. For example, major beef packers have integrated upstream into cattle supply and ownership of feedlots, increasing incentives to exclude independent cattle producers.[18] Producers and consumers suffer directly from the anticompetitive effects of integration in concentrated markets. Horizontal integration that leaves only a few rivals in a market also creates strong incentives to collude, rather than compete, as we have seen in the numerous antitrust cases alleging price fixing and dividing up markets.

V. Merger Enforcement Is Not Keeping Up With Consolidation

Merger control is designed to prevent acquisitions that are likely to substantially lessen competition. This includes acquisitions of head-to-head rivals, customers or suppliers, and potential rivals. Vigorous enforcement prevents harmful outcomes by stopping illegal mergers in their "incipiency." The U.S. antitrust agencies have historically divided up the food supply chain for the purposes of reviewing food and agriculture mergers. The FTC reviews most proposed transactions involving the

[17] *Annual Report 2018*, U.S. DEPT. AGRIC., AGRIC. MKTG. SERV., PACKERS & STOCKYARDS DIV., at Table 5. *See also,* U.S. Government Accountability Office, Structure of U.S. Cattle Markets, Report: GAO-18-296 (Apr. 2018), and *2019 Top 100 Meat & Poultry Processors*, PROVISIONERONLINE.COM.

[18] *Horizontal Consolidation and Buyer Power in the Beef Industry,* Food & Water Watch (Jul. 2010).

downstream part of the supply chain, including food manufacturing and retail grocery.[19] The DOJ reviews mergers in the upper part of the supply chain, such as food processing (e.g., grain milling and meat packing), producers (e.g., cattle feeders and chicken growers), and biotechnology inputs such as genetic traits, seeds, and agrochemicals.

Between 1998 and 2019, almost 1,300 mergers in the processing, manufacturing, and food distribution sectors were reportable to the U.S. antitrust agencies.[20] About one-quarter of those transactions were cleared to either the DOJ or FTC for further review. About one-quarter of those clearances, in turn, received a request from either agency for additional information. This is a slightly higher "second request" rate for food-related mergers than for mergers across all sectors in the economy. The majority of these deals involved consolidation in the middle part of the supply chain (i.e., food processing and manufacturing).

Only a small fraction of the food mergers that were cleared to the DOJ and FTC between 1998 and 2019 were actually challenged by the government. Merger challenges can result in a number of outcomes: successfully enjoining a merger, unsuccessfully enjoining a merger (which then proceeds to consummation), forced abandonment of a transaction, and a consent order containing requirements to remedy competitive harms raised by the merger. The rate at which the government challenged food mergers, as measured by the percentage of total deals cleared to the agencies, is *below the average* across all sectors. More than one-half of the merger deals that were challenged by the agencies were in the retail grocery segment where significant competition has been eliminated over time. The remainder include mergers in beef packing, poultry processing, and dairy, other food products, and broadline foodservice distribution.

Two major government wins were the DOJ's successful challenge to the merger of two of the largest beef packers (JBS and National Beef) in 2009 and the FTC's move to block the merger of the two largest broadline food distributors (Sysco and US Foods) in 2015.[21] But a major failure was the FTC's approval of the merger of Safeway and Albertsons, where required divestitures of almost 150 stores to regional west-coast grocer, Haggen, failed after only a few months.[22] In 2019, the DOJ declined to challenge the acquisition of Iowa Premium by one of the largest packers, National Beef, a deal that was opposed by numerous advocacy groups. The merger was projected to adversely affect the important cash market, which determines the base price for cattle sold on contracts or formulas.

As shown in the figure below, over the last 21 years, the intensity with which the agencies have looked harder at food mergers through the second request process has waned. The downward trend in second requests is troubling. It may signal chronic resource constraints at the agencies. But it also likely reflects the view that has dominated enforcement for the last four decades; namely, that the claimed cost-savings and consumer benefits from mergers outweigh any anticompetitive, harmful effects. Regardless of the reason, U.S. consumers are still faced with a swath of mergers that have

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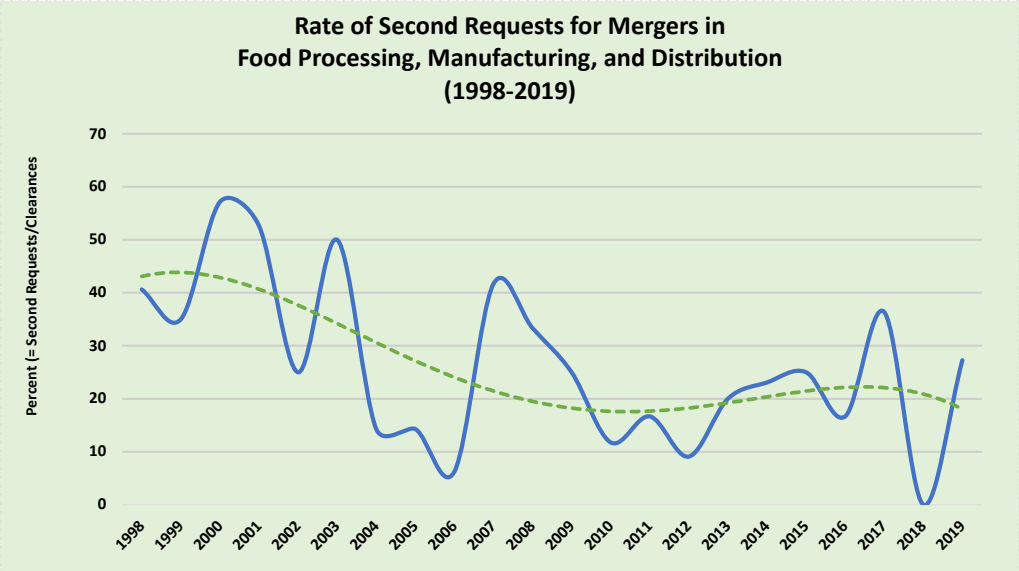
[19] The FTC also reviews mergers relating to agricultural inputs such as fertilizers.

[20] ANNUAL REPORTS TO CONGRESS PURSUANT TO THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976, 1998 through 2019.

[21] Complaint, U.S., et al vs. JBS SA and National Beef Packing Co. LLC, Case No. 08CV5992 (N.D. Ill., Oct. 20, 2008); and Complaint, Federal Trade Commission, et al, v. Sysco Corporation and USF Holding Corp. and US Foods, Inc., Case No.1:15-cv-00256-APM (D.C.C., Feb. 20, 2015).

[22] *FTC Requires Albertsons and Safeway to Sell 168 Stores as a Condition of Merger*, FED. TRADE COMM'N (Jan. 27, 2015) and Brent Kendall, Haggen Struggles After Trying to Digest Albertsons Stores, WALL ST. J. (Oct. 9, 2015).

created large integrated companies that reach to almost every part of the supply chain. These food goliaths can exercise their market power to suppress competition, which alone is problematic. But as the COVID-19 crisis has demonstrated, such concentration has also contributed to unstable and supply chains.



VI. Policing Anticompetitive Conduct in the Food System

Violations of the antitrust laws are commonplace in supply chains characterized by waning competition. Public and private antitrust cases reflect both the rising incidence of anticompetitive conduct by dominant firms and oligopolies and the challenges and limitations of antitrust enforcement. For example, DOJ has prosecuted violations of Sections 1 and 2 of the Sherman Act in almost 20 cases in the food industry over the last 20 years.

Notably, Sherman Act antitrust claims appeared to be an afterthought in the majority of these cases, which were motivated principally by kickback schemes that defrauded the public. Competitive injury, and core antitrust concerns such as collusion or exclusionary conduct, did not feature prominently.[23] Smithfield, one of the largest pork processors in the U.S., which was acquired by the Chinese food behemoth Shuanghui International in 2013, was charged with violations on two separate occasions involving failure to comply with requirements under the Hart Scott Rodino Act before purchasing stock in a rival and pursuing an acquisition.[24] DOJ has also launched several cartel investigations in food over the last two decades.[25]

Where public enforcement cannot keep up with potential violations, private antitrust enforcement provides needed support. A strong indication of the degree to which anticompetitive conditions

[23] *See, e.g.,* "Tri-Union Admits To Blowing the Whistle in DOJ Tuna Probe," Law360 (Sept. 11, 2017). The only other major Section 1 case in this tally is the one against mushroom growers, which was based on exclusionary conduct by an agricultural cooperative organized under the Capper-Volstead Act. *See* Complaint, *U.S. v. Eastern Mushroom Marketing Coop, Inc.*, 2:04-cv-5829 (E.D. Pa. Dec. 16, 2004).
[24] Complaint, U.S. vs. Smithfield Foods, Inc. and Premium Standard Farms, LLC, Case: 1:10-cv-00120 (D.D.C, Jan. 21, 2010); and Complaint, U.S. v. Smithfield Foods, Case 1:03CV00434 (HHK) (Feb. 28, 2003).
[25] Notable examples include chicken broilers and farmed salmon.

have been allowed to develop in the food supply chain is the volume of private litigation recently aimed at food processors and manufacturers.[26] In the last decade, private antitrust suits have been filed against processors and producers in seemingly every major food product: beef, chicken, turkey, pork, tuna, farmed salmon, milk, eggs, potatoes, and mushrooms.[27] Private cases have also been brought against the shrinking pool of competitors in the grocery market.[28] Some of these litigations follow on government investigations or enforcement actions, but many were initiated by private plaintiffs with government scrutiny sometimes following.

While private antitrust litigations supplement and reinforce government investigations and actions, their impact has been limited by factors that hamper private antitrust actions generally, as well as issues specific to antitrust class actions in the food industry. A major factor is that federal courts have been steadily increasing the burden on plaintiffs that plead antitrust conspiracies. This includes establishing that the defendants' conduct results from collusion and not from un-coordinated, but consciously parallel, conduct among competitors. This has, ironically, meant that it is *more* difficult for plaintiffs to successfully allege collusion where industries are highly concentrated, because where there are only a few competitors, they do not need to actually collude in order to achieve supracompetitive prices. Private claims against the major beef packers and pork producers have faced similar challenges.[29]

A second factor that limits private antitrust actions is class certification. Obtaining certification of a class has become increasingly difficult over the last several decades and presents a considerable barrier to private antitrust litigation. Because a named plaintiff in a class action is allowed to represent the interests of the entire class of plaintiffs, not just those that are actively participating in the litigation, procedural rules require that courts certify that proposed class actions and class representatives meet certain criteria before proceeding. The rules governing class certification have changed little over this time period. However, the courts' interpretations of them have become increasingly demanding to the point where obtaining certification of a class requires that a plaintiff, effectively, prove a large portion of his or her case at this preliminary stage. Certifying a class can be a significant barrier to litigation, even when evidence of wrongdoing is overwhelming.

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[26] *See, generally*, Scott Wagner & Lori Lustrin, "'Big Food' Takes Its Turn In The Price-Fixing Spotlight, Law360 (Apr. 30, 2019).

[27] *In re: Cattle Antitrust Litig.*, 0:19-cv-01222 (D. Minn.); *Peterson et al. v. Agri Stats, Inc. et al.*, 0:19-cv-0119 (D. Minn.) (beef); *In re Pork Antitrust Litig.*, 0:18-cv-01776 (D. Minn.); *In re Broiler Chicken Antitrust Litig.*, 1:16-cv-08637 (N.D. Ill.); *Sandee's Catering v. Agri Stats, Inc. et al.*, 1:20-c-02295 (N.D. Ill.) (turkey); *Olean Wholesale Grocery Cooperative et al. v. Agri Stats, Inc. et al.*, 1:19-cv-08318 (N.D. Ill.) (turkey); *In re: Packaged Seafood Prods. Antitrust Litig.*, 3:15-md-02670 (S.D. Cal.) (tuna); *In re: Farm-Raised Salmon and Salmon Prods. Litig.*, 1:19-cv-21551 (S.D. Fla.); *In re: Processed Egg Products Antitrust Litig.*, 2:08-md-020002 (E.D. Pa.); *In re: Mushroom Direct Purchaser Antitrust Litig.*, 2:06-cv-00620 (E.D. Pa.); *First Impressions Salon, Inc. v. Nat'l Mike Producers Federation, et al.*, 3:13-cv-00454 (S.D. Ill.) (milk); *Carlin et al. v. DairyAmerica, Inc., et al.*, 1:09-cv-00430 (E.D. Cal.) (milk); *In re: Fresh and Process Potatoes Antitrust Litig.*, 4:10-md-02186 (D. Idaho); *In re Mushroom Direct Purchaser Antitrust Litig.*, 2:06-cv-00620 (E.D. Pa.).

[28] *See, e.g.,* Statement of Federal Trade Commission's Acting Director of the Bureau of Competition on the Agency's Review of Amazon.com, Inc.'s Acquisition of Whole Foods Market Inc. (Aug. 23, 2017). *See also*, *In re: Wholesale Grocery Prods. Antitrust Litig.*, 0:09-md-01090 (D. Minn.) (market allocation among wholesale grocers), ended with a jury verdict for the defendants.

[29] *See,* Plaintiffs' Omnibus Opposition to Defendants' Individual Motions to Dismiss, filed Feb. 21, 2020, *In re Pork Antitrust Litig.*, 18-cv-1776 (JRT/HB) (D. Minn.). Reply in Support of Defendants' Joint Motion to Dismiss the Second Consolidated Amended Class Action Complaint, filed Jan. 10, 2020, *In re Cattle Antitrust Litig.*, 0:19-cv-01222-JRT-HB (D. Minn.).

A third factor is that government investigations that overlap private suits can ultimately aid private plaintiffs, but the primacy of the government's "interest" can significantly impair the ability of private plaintiffs to effectively litigate their claims. For example, in June of 2019, the DOJ revealed its investigation into anticompetitive conduct in the chicken industry. At the same time, DOJ asked the court in an ongoing private antitrust case brought by chicken farmers and chicken purchasers against chicken producers alleging a collusive scheme to manipulate chicken prices to stay that litigation to allow the DOJ investigation to proceed. The court agreed to partially stay the private litigation, creating uncertainty for private plaintiffs.[30]

Finally, a major challenge facing consumer class actions in the food industry is identifying which consumers were harmed and by what amount. This issue is not unique to the food industry, but it is particularly acute in consumer class actions concerning overcharges for grocery items. Consumers do not keep good records of their individual food purchases, and while stores have records of sales, they are generally not traceable to particular consumers. Defendants have exploited this fact to prevent certification of consumer classes in multiple food cases.[31]

VII. Implications for USDA Policies and Priorities

The food industry has undergone sweeping consolidation in the last two decades, leading to highly concentrated markets and a significant vertical integration. Such markets are prone to both collusion and strategic conduct designed to exclude rivals. The result is food supply chains that are less stable and resilient. Courts have made it more and more difficult for public and private antitrust plaintiffs to combat anticompetitive conduct through increasingly strict interpretations of procedural rules and substantive antitrust law. Despite these challenges, private antitrust enforcement in particular has achieved significant victories against food producers.[32] But these successes cannot alone counter the anticompetitive forces in the food sector or unwind the decades of consolidation that have led us to this point.

Competitive problems in the food sector rise to the level of a public policy concern. Solutions will therefore require multiple tools. This includes stronger antitrust enforcement, but also other mechanisms for addressing harm to consumers, producers, smaller businesses, and alternative food systems. Sector regulation, trade policy, and even intellectual property law should work in concert with antitrust enforcement to create conditions in food and agricultural markets that foster competition. This will reduce the burden and challenge of bringing antitrust lawsuits to combat anticompetitive conduct *after* it has occurred. In furthering coherent public policy approaches to addressing competition in the food system, AAI respectfully suggests that USDA focus on several top-line priorities:

1. **Interagency coordination**: Even through USDA lacks statutory authority to review food mergers, the DOJ and FTC should coordinate more with the agency on mergers and harmful conduct in the food sector. USDA's broad view of the food supply chain, technical expertise,

[30] The United States' Motion to Intervene and Stay Discovery, filed Jun. 21, 2019, *In re Chicken Broiler Antitrust Litig.*, 1:16-cv-08637 (N.D. Ill.).
[31] *See, e.g.*, Order on Appeal of Denial of Motion for Class Certification, Mar. 7, 2012, at 8, *Del Monte Fresh Pineapple Cases*, A126628 (Alameda Co. Sup. Ct. JCCP No. 4446) (upholding denial of class certification in part due to impossibility of identifying purchasers).
[32] For example, dairy producers and buyers agreed to pay $220 million to settle private claims related to price fixing in the milk industry. *See* Celest Bott, *Milk Producers Agree to Pay $220M to End Price-Fixing Suit*, LAW360 (Dec. 4, 2019).

and knowledge of pro-competitive regulations make it an essential part of any assessment of how a merger will affect competition, consumers, and producers.

2. **Mandatory reporting and price transparency:** Contracting and pricing practices in many food and agriculture markets have become complex and opaque. USDA is therefore at a disadvantage in discharging its statutory responsibility in overseeing practices in the sector, identifying competitive problems, and developing new rulemakings to address concerns. USDA should consider a wholesale review of reporting requirements under PSA to consider necessary measures for increasing transparency that would allow the agency to better assess potential anticompetitive practices.

3. **Prohibitions or limits on vertical integration:** Vertical integration in concentrated markets in food and agricultural supply chains can create strong incentives to exclude smaller rivals and potential entrants. AAI urges the USDA to review the degree of integration, especially by processors, in food and agricultural sectors that display high concentration and to consider policy tools to limit or eliminate it, possibly in conjunction with stronger enforcement under PSA.

4. **Food labeling to foster competition on quality and consumer choice.** Many inputs to finished food products (e.g., cattle) consumed in the U.S. originate outside U.S. borders, but are not labeled as such. The absence of country-of-origin labeling deprives smaller U.S. producers of the ability to differentiate their U.S.-based products and foster competition on quality. It also deprives consumers who care about the origin of their food of choice, a hallmark of competition. The AAI encourages USDA to consider new initiatives that would advance the competition rationale for country-of-origin labeling.

Respectfully submitted,
/s/Diana L. Moss

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