



ADDRESS
P.O. BOX 640
PITTSBORO, NC 27312

PHONE
919.542.1396

WEB
RAFIUSA.ORG

Written Testimony Of:

Margaret Krome Lukens, Policy Director, RAFI-USA
Aaron Johnson, Challenging Corporate Power Program Manager, RAFI-USA

Submitted To:

Subcommittee on Antitrust, Commercial and Administrative Law
Committee on the Judiciary, U.S. House of Representatives

For a Hearing On:

Revising Competition, Part 5: Addressing the Effects of Economic Concentration on America's Food Supply

January 19, 2022

Chairman Cicilline, Ranking Member Buck, and Members of the Subcommittee:

On behalf of the Rural Advancement Foundation International - USA (RAFI-USA), we thank you for holding this hearing.

RAFI-USA is a nonprofit organization which challenges the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. We envision a thriving, sustainable, and equitable food system: where farmers and farmworkers have dignity and agency; where they are supported by just agricultural policies; and where corporations and institutions are accountable to their community. We work directly with farmers: we help farmers find markets, advocate for and with farmers who are experiencing financial crisis, convene a Farmers of Color Network, work with farmers markets and rural faith communities to increase food access, provide infrastructure and emergency grants to farmers, and help coordinate a seed breeding cooperative. Our recommendations for addressing corporate consolidation within the food system come directly from this work.

Our Challenging Corporate Power Program (formerly known as Contract Agriculture Reform program) has worked with contract poultry growers for more than 30 years to fight for better treatment from, and regulation of, giant meatpacking companies. In that time period we have only seen consolidation (both vertical and horizontal) of industrial animal agriculture get worse. Giant meatpacking companies have honed a business model which depresses prices and reaps huge profits by externalizing the costs and risks of its production onto farmers, workers, rural communities, and the environment.

RAFI-USA works with both contract poultry producers and independent poultry and livestock farmer and ranchers. Contract poultry producers are farmers who sign contracts to raise birds for giant meatpacking companies (“integrators”), investing large sums of money to construct single-function facilities for the purpose. All of their inputs - from chicks to feed to medicine - are owned and provided by the integrator, and the integrator also picks up the grown birds and transports them for processing. Growers never own the birds they raise, and have very few protections against abusive practices by those companies, as detailed below. If dropped from their contracts they can be left with huge amounts of debt and no way to make money from their poultry houses.

We are grateful for the opportunity to provide supplemental testimony on these issues. Below we provide our assessment of the effects of corporate concentration in the food system, and then describe measures we believe are necessary to counteract corporate power abuse.

Impacts of Corporate Concentration in Our Food System

Today, a “big four” cluster of giant corporations exert coordinated oligopolistic¹ and oligopsonistic control over 82% of the beef market, 66% of the hog market, 54% of the poultry market,² 90% of the corn market, and 70% of the soybean market.³ Furthermore, this year’s announced merger between Sanderson Farms and Cargill/Continental Grain will not only further consolidate the poultry industry, it will also position Cargill, the second largest privately held U.S. corporation, as the only corporation with a top-four controlling interest in all five sectors mentioned above. Cargill’s unique position as a dominant grain trader and animal feed processor raises concerns⁴ about vertical integration, monopsony, and price manipulation across multiple protein and grain markets and supply chains.

Such consolidation also creates ripe conditions for corruption. Take the corporations involved in the Sanderson Farms merger, all of which are currently implicated in price fixing lawsuits, as an example. Cargill, Sanderson Farms and Wayne Farms (the Cargill/Continental Grain-owned poultry company into which Sanderson Farms would be merged) are currently defendants in both consumer price fixing suits and/or wage fixing suits in Alaska⁵, Arkansas⁶, Illinois⁷, Maryland,⁸ Minnesota⁹, and Oklahoma.¹⁰

¹ Oligopolies or oligopsonies arise when just a few buyers or sellers operate in a market. In oligopolies and oligopsonies, the few companies operating in a market can more easily act as price setters by coordinating with each other to dictate prices and the quantity of goods and services they sell or buy. ([Rebecca Boehm, Tyson Spells Trouble for Arkansas, Published Aug 11, 2021](#))

²<https://www.whitehouse.gov/briefing-room/blog/2021/09/08/addressing-concentration-in-the-meat-processing-industry-to-low-food-prices-for-american-families/>

³ <https://www.foodandpower.net/grains-produce>

⁴ <https://www.foodandpower.net/latest/cargill-conti-sanderson-merger-2021>

⁵<https://www.meatpoultry.com/articles/24664-alaska-files-1-billion-poultry-price-fixing-lawsuit-against-21-companies>

⁶<https://www.foodbusinessnews.net/articles/17726-tyson-foods-to-pay-2215-million-to-settle-price-fixing-lawsuit>

⁷<https://www.foodbusinessnews.net/articles/18704-tyson-to-pay-46-million-to-settle-turkey-price-fixing-case>

⁸<https://news.bloomberglaw.com/antitrust/tyson-pilgrims-hormel-to-face-poultry-worker-wage-fixing-suit>

⁹<https://www.foxbusiness.com/lifestyle/tyson-cargill-meatpackers-price-fixing-lawsuit>

¹⁰<https://apnews.com/article/business-fa91f3a79e4eb9aa5e3d0046e4f16d85>

Giant meatpacking “integrators” shaped the structure and rules of our food system by design to secure the greatest possible profits for themselves, while treating people, land, and animals as disposable units of production. The result is a system which is not adaptable or diverse and lacks sufficient redundancy at many points in the supply chain, to have the capacity to resiliently feed Americans in hard times. This all in the name of efficiency, which unfortunately cuts two ways; while efficiently producing meat, the industry also efficiently harms farmers and workers, their communities, and the land, air, and water we all rely on.

The Impact of Monopsony Power

Monopsony, concentrated buyer power (as opposed to monopoly, concentrated seller power) has historically been less of a focus for antitrust regulators, but it makes a huge difference for farmers, including contract poultry growers, and it contributes to the incredible power imbalance they experience. It is vital to understand that within the current industry structure, many farmers are not, in reality, independent economic entities selling livestock into markets, but rather are going into debt to contract their *labor* and *land* to integrator corporations to grow livestock they do not own.

For many contract poultry growers, the integrator (who owns the chickens, delivers the feed, supplies the chicks, and provides the transportation which picks up the grown birds) may be the only integrator in an area, making them literally the sole possible “buyer” for a flock. The impact of this is that a farmer has no, or few, other options for making money with the facilities they have gone into debt to construct. Even in areas with multiple integrator companies, shifting between integrators is not always a good or viable option: new integrators may require expensive updates to equipment, and many farmers report informal no-poach agreements, where companies decline to take on “each other’s” growers - which is one focus of the lawsuit by growers filed in Oklahoma.¹¹

National consolidation trends in beef, pork, and poultry processing are even more pronounced on regional levels, where practical constraints often limit farmers’ ability to negotiate between more than one or two buyers. For example, in poultry, live chickens are trucked just 34 miles on average from farms to processing plants to minimize the transportation costs and associated economic losses farmers may incur due to chicken injury or death during transit. This means that the radius within which a poultry grower can practically seek other buyers or contracts is extremely limited. In practical terms, it is quite common for poultry growers to be situated in the “territory” of only one integrator, and research shows that “growers facing a single integrator are paid 7–8% less on average.”¹² The Arkansas poultry industry - which is dominated by Tyson which controls 67% of that state’s poultry market - serves as an excellent case study of the regional macro-effects of these realities. A recent report published by the

¹¹ <https://www.harvestpublicmedia.org/post/tyson-perdue-farms-shell-out-36-million-settle-antitrust-claims>

¹² https://www.researchgate.net/publication/305948391_Market_Power_in_Poultry_Production_Contracting_Evidence_from_a_Farm_Survey

Union of Concerned Scientists found that since 1978, Arkansas' consolidating poultry market has lost nearly 50% of its broiler farmers, and 11 of the state's 14 poultry producing counties have only one integrator available to contract growers.¹³ When this type of consolidation happens, our food system is left with fewer, larger farms, and thus, less resilience. Every farm that shuts down in this country is another point of failure we cannot afford to lose if we hope to have a food system that can withstand future shocks. The story of Arkansas' poultry industry illuminates why farmers are right to be concerned as they see corporations in new states consolidating once again, as is occurring in the Sanderson Farms buyout by Cargill/Continental Grain.

The Tournament System: Transferring Risk onto Family Farmers

In today's meat industry, greater consolidation comes with greater power for the largest integrators. Horizontal market consolidation has effectively eliminated free market competition, while vertical integration has given integrators control of virtually every step of production, and eliminated market transparency. With the power they have, these corporations carefully and deliberately pass as much of the risk and costs of this system as possible on to the farmers they contract with.

Perhaps nothing exemplifies this dynamic more than the "tournament system" that is ubiquitous within the poultry industry. The tournament system is a payment scheme designed by poultry processing corporations that transfers the financial risk involved with growing chickens onto growers they contract with, who are placed in "tournament" groups and pitted against each other. Contract poultry growers do not own the chickens they raise, nor do they choose or provide the feed or medicine they use to raise them. Rather, because of vertical integration, these are all provided by the integrator that they contract with. When growers return flocks of fully grown chickens to their integrator for processing, the corporation averages various statistics about the value of the flocks in the tournament group. It then docks the pay of the growers whose flocks were found to be below average and transfers that money to growers of above-average flocks as bonuses. This results in unpredictable and unstable incomes for poultry growers — who often carry huge debts from building or upgrading their chicken houses — and farm losses.

Poultry corporations cast this system as encouraging healthy competition, but in reality, the factors that could lead to a flock being above or below average, like the health of chicks or quality of food or medicine provided, are never in the control of growers, because all of these inputs are provided by their integrator. Thus, instead of a legitimate competition, the tournament system functions as a way for poultry companies to transfer the risk and cost of any problems with the chicks, feed, or medicine they provide onto the growers they contract with.

¹³<https://www.ucsusa.org/resources/tyson-spells-trouble#read-online-content>

Unfair Practices and the Threat of Retaliation

Many poultry growers we work with do not want to publicly criticize their integrator because they fear they will experience retaliation, either in the form of being dropped from their contract, or getting poor quality chicks or feed which - because of the tournament system - will impact their ability to stay afloat. Farmers are unprotected when they speak up to improve their conditions, or when they form associations to try to have a collective voice in conversations with integrators.

It is currently very difficult for farmers to successfully bring suits against meatpackers for violating the Packers and Stockyards Act, because many judges have required farmers to prove that the company's actions harmed competition within their entire industry. Considered in a different context, this requirement is obviously ludicrous. Imagine that your car is totaled by a driver running a red light. When you sue for damages, would any judge require you to prove that the damage you experienced will affect all commuters nationally? Likewise, since any given farmer's production only represents a tiny fraction of their overall industry, it is unreasonably difficult for a farmer's case to rise to this incoherent threshold of proof. This makes it very easy for large corporations to allege that their extractive practices against any given farmer that sues them are not hurting overall competition.

Additionally, the "undue preference" rule released by USDA in December 2020 creates a truck-sized loophole¹⁴ for integrators by stating that a "reasonable business decision" - which the agency declined to define - was a legitimate justification for their actions. In other words, it is acceptable to mistreat farmers as long as you can make money doing it. Unfortunately, the agency in charge of regulating meatpacker conduct, the Packers and Stockyards Division, has no actual enforcement authority for poultry specifically, the most the Division can do is to tell the integrator to stop doing what they are doing. This toothless oversight ensures that poultry companies can continue to act in abusive ways with no practical threats to their pocketbooks or their way of doing business.

The overall imbalance of power allows integrators to treat farmers like they are disposable. We repeatedly observe integrators cutting off farmers' contracts (often in retaliation after farmers speak out against unfair practices) and leave them with millions of dollars of debt tied up in specialized, single-use structures which do not have the ability to generate revenue, or contribute to a property's value, in the absence of an active contract. The abandoned poultry houses that litter the rural landscape across the Southeast testify to this pattern.

¹⁴ <https://www.rafiusa.org/blog/usda-harms-farmer-and-rancher-protections-in-final-rule-on-undue-preference/>

Concentrated Markets Put Crushing Pressure on Independent Farmers

Both contract poultry growers and independent farmers are hurt by corporate consolidation. In addition to issues we have raised regarding contract production, there are a multitude of farmers or would-be farmers that want to feed and support their local communities through regional supply chains that are independent of the massive meat-packers influence. However, concentration in the processing sector is largely preventing them from doing so. The decades-long vertical takeover of supply chain elements by large corporations has hollowed out the infrastructure that would enable small farmers and small processors to thrive. It has also created a chicken-and-egg situation in which farmers need more processing options, but new processors may struggle to find sufficient supply from local farmers to attain the volume they need for profitability. Both need more markets, and struggle to compete in a system that gives giant companies the edge both in terms of economies of scale and ruthless externalization of costs. The playing field is nowhere close to even.

Poor antitrust enforcement has allowed the giant meat packers to externalize their costs, while driving smaller independent processors out of business by limiting the amount of animals the small processors can secure for processing. With the vast majority of hogs being grown under contract, large meatpacking companies have control over the volume that comes to small processors.

“Most of us — we were able to kill a lot of hogs, but once [the large meatpacker] decided to only let us have the 200 pound pigs and down or the 190 pound pigs and down instead of the 250 pound pigs and down — even the barbeque pigs, a 50 lb pig we made money off of, they’d just dig a hole and kill them. Wouldn’t even let them into the market. They controlled what the little guys do.” - Former North Carolina Processor

These same corporations are also able to depress prices for farmers.

“You can tell the major players — you have producers who come in [to the stockyard] who are the guys who own the packing companies. They have trucks there, will buy the pigs, will buy them cheap and process them. [They] will buy all the pigs. Then anything under 200-300 lbs for processing, they’ll buy them for cheap.” - NC independent hog farmer

Consolidation in grocery retail is another important factor in this regard. We have heard from multiple farmers and processors about rural grocery stores formerly occupying an important part of the food supply chain. Small plants’ primary business was selling to local groceries: they would send half beef or half hogs to small groceries, who would break it down the rest of the way. Most of those groceries are now gone. Small farmers we spoke with who market to groceries are mostly finding groceries in urban areas who sell at a higher price point or are smaller, independently owned or cooperative stores or health food stores. For small processors to succeed, they will need to replace those lost marketing channels with other viable markets. As one processor noted, “We need to look at ways to support farmers for branding and distribution on a regional scale.”

Runaway Corporate Concentration Threatens U.S. Food System Resilience

The empty grocery shelves brought on by the COVID-19 crisis made clear, in a way not seen in decades, the need for more resilient regional food systems capable of feeding our nation in the midst of an unfolding crisis. Over the past two years, nothing has driven this point home more than the failures of the corporate meat industry. From malware attacks to virus outbreaks to price fixing lawsuits, the meat industry has taught us the same lesson repeatedly: having a highly concentrated meat processing sector makes our food system vulnerable to collapse during a crisis. Concentration has advanced to a point where the largest companies can now use a “too big to fail” message to hold the food system hostage or to seek federal funds or policy changes to resolve problems they themselves have created.

Having a few giant plants owned by a few companies instead of a resilient, distributed network of smaller plants means that environmental impacts like water use and wastewater are concentrated, and farmer transportation costs are higher — both in terms of dollars and in terms of carbon footprint. As one NC farmer told us, *“We’ve sent cattle to Pennsylvania — that’s \$60/head to get them there. And that’s all going to carbon emissions. And who knows what fuel prices will be in 10 years.”* Farmers and their communities need the flexibility and sovereignty to build local and regional supply chains that work for their unique needs. Concentration in the processing sector is preventing them from doing so.

If there is one crucial lesson to draw from the events of the past two years, it is once again that no single company should be “too big to fail.” Redundancy is a key characteristic of resilience: when one component of a system fails, others should be able to fill its function: the more entities available to fill a function, the more resilient the system is. In our food supply chain, corporate consolidation (and the farm consolidation that trend also drives) endangers the resilience of our agricultural supply chains. No single company’s continued production or its cessation should endanger the health and wellbeing of huge numbers of people. Sadly, we have already reached this point.

Recommended Legislative and Regulatory Policy Changes

Poor antitrust enforcement has created the current level of market consolidation. **Now, Congress must recognize and address these root causes. Antitrust enforcement should be a top priority** of Congress for a more secure and resilient food system.

1. *Reintroduction and passage of H.R.2933 - Food and Agribusiness Merger Moratorium and Antitrust Review Act of 2019*

After decades of poor antitrust enforcement, the risks to our nation’s food system resilience posed by corporate consolidation have grown too dire to ignore - Congress must take action

now. Congress should establish an Antitrust Review Commission to study the impacts of concentration on farmers and our food system, and to make recommendations on how better antitrust laws and regulations could restore fair and competitive agricultural markets and protect farmers and ranchers and their communities. Until Congress and the Executive Branch have acted on those recommendations, a temporary moratorium on mergers of large food and agribusiness companies should be put in effect. For that reason, we urge the committee to reintroduce and pass the *Food and Agribusiness Merger Moratorium and Anti-Trust Review Act*, as introduced by Senator Booker (S. 1596) and Rep. Pocan (H.R. 2933) in 2019. A few excerpts from the Booker-Pocan bill, below, detail the need for an antitrust review commission and merger moratorium:

“Growing concentration [in] the agricultural sector has restricted choices for farmers trying to sell their products. As the bargaining power of agribusiness firms over farmers increases, concentrated agricultural commodity markets are stacked against the farmer, with buyers of agricultural commodities often possessing regional dominance in the form of oligopsony or monopsony relative to sellers of such commodities...The high concentration and consolidation of buyers in agricultural markets has resulted in the thinning of both cash and futures markets, thereby allowing dominant buyers to leverage their market shares to move those markets to the detriment of family farmers and ranchers...Buyers with oligopsonistic or monopsonistic power have incentives to engage in unfair and discriminatory acts that cause farmers to receive less than a competitive price for their goods. At the same time, some Federal courts have incorrectly required a plaintiff to show harm to competition generally, in addition to harm to the individual farmer, when making a determination that an unfair, unjustly discriminatory, deceptive, or preferential act exists under the Packers and Stockyards Act of 1921...The decline of small family farms undermines the economies of rural communities across America; it has pushed Main Street businesses, from equipment suppliers to small banks, out of business or to the brink of insolvency...The decline of family farming causes the demise of rural communities, as stores lose customers, churches lose congregations, schools and clinics become under-used, career opportunities for young people dry up, and local inequalities of wealth and income grow wider...These developments are not the result of inevitable market forces. Its problems arise rather from policies made in Washington, including farm, antitrust, and trade policies...To restore competition in the agricultural economy, and to increase the bargaining power and enhance economic prospects for family farmers, the trend toward concentration must be reversed.”

2. *Introduction in the House of companion legislation and passage of S.225 - Competition and Antitrust Law Enforcement Reform Act of 2021 submitted by Senator Klobuchar.*

Beyond the food system-specific action outlined above, it is also necessary for Congress to reform core antitrust statutes to strengthen the Department of Justice’s capacity to arrest corporate consolidation. First, clarify that a merger which increases monopsony power violates the Clayton Act. Second, the burden of proof for proposed mergers and acquisitions should be shifted onto the firms in question. These issues, and many others, are addressed by legislation introduced in the Senate by Senator Klobuchar, the Competition and Antitrust Law Enforcement Reform Act (S. 225). This act would:

- Clarify via amendment that an acquisition that tends to create a monopsony violates the Clayton Act.
- Clarify that, in addition to increased price to buyers or reduced price to sellers, that potential effects that may justify prohibiting a merger under the Clayton Act include lower quality, reduced choice, reduced innovation, the exclusion of competitors, or increased entry barriers.
- Shift the burden of proof to the merging parties to prove their merger will not violate the law for acquisitions by dominant firms, mergers that significantly increase concentration, and mega-mergers.
- Authorize the seeking of civil monetary penalties, in addition to existing remedies, by the Department of Justice and the Federal Trade Commission in their enforcement of the Sherman Act.
- Appropriate additional financial resources and enforcement tools to craft remedies for individual violations that are effective to deter future unlawful conduct and proportionate to the gravity of the violation
- Reinforce protections for those who provide evidence of anticompetitive conduct to government enforcers and establish financial rewards for whistleblowers who provide information to the government about exclusionary conduct by dominant firms that harms competition.
- Establish a right to obtain prejudgment interest on damages awards on the part of antitrust plaintiffs to further deter anticompetitive conduct and more fully compensate injured parties.

We urge the introduction of a House companion to the Senate Competition and Antitrust Law Enforcement Reform Act, and for the Subcommittee to pass such legislation.

3. Sustained and Durable Congressional Support of Packers and Stockyards Act Reforms & Enforcement:

In addition to the specific antitrust actions outlined above, it is crucial that the members of the committee strongly support upcoming Packers and Stockyards rules soon to be issued by USDA. These rules serve as a key form of protection from corporate power abuses that are specific to livestock producers.¹⁵ These rules must:

- Ensure that the re-proposed rule clarifying the “competitive injury” standard as it applied to Sections 202(a) and (b) of the Packers and Stockyards Act (PSA) states that conduct can be found to violate the PSA without a finding of harm or likely harm to competition.
- Clearly designate any tournament system, or any payment system that bases farmer income on factors outside a farmer’s control, as one providing an undue preference.

¹⁵ For a more in-depth primer on the importance of the upcoming Packers and Stockyards Act rulemaking process, read our recent article: <https://www.rafiusa.org/blog/packers-and-stockyards-act/>

- Strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices. Specifically, the rule should be revised to add the following farmer protection provisions:
 - Clarify that it is unlawful for packers to provide preferential marketing arrangements to large-volume livestock producers over smaller producers.
 - Provide protection based on the right to association and communication.
 - Provide protection based on protected class.
 - Clearly state that there is no requirement to prove competitive injury.
 - Clarify that a reasonable business decision does not justify an undue or unreasonable preference or advantage.
 - Existing recordkeeping requirements under Section 401 of the PSA should be strengthened to increase market transparency and facilitate appropriate USDA enforcement actions.
 - Establish methods to continuously review and monitor industry practices to ensure that new practices do not result in violations of the Act.

Additionally, Congress should amend the law to grant the Packers and Stockyards Division enforcement authority for poultry under the Packers and Stockyards Act. Currently, from the poultry company's perspective, breaking the law through fraudulent or deceptive practices carries little legal or financial risk.

Family farmers and the nation they feed depend on stronger antitrust enforcement. Thank you for the opportunity to provide testimony on this important issue.

Sincerely,



Margaret Krome-Lukens
Policy Director
margaret@rafiusa.org



Aaron Johnson
Challenging Corporate Power Program Manager
aaron@rafiusa.org