



VIA ELECTRONIC MAIL

January 19, 2022

The Honorable David Cicilline
Chair, Subcommittee on Antitrust, Commercial,
and Administrative Law
Judiciary Committee
U.S. House of Representatives
Washington DC 20515

The Honorable Ken Buck
Ranking Member, Subcommittee on Antitrust,
Commercial, and Administrative Law
Judiciary Committee
U.S. House of Representatives
Washington DC 20515

Dear Chair Cicilline and Ranking Member Buck:

Thank you for the opportunity to submit comments on the “Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on Americas Food Supply” hearing. Concentration is only one part of the food supply chain puzzle and the **United Food and Commercial Workers International Union (UFCW) believes that supporting meat and poultry slaughter and processing workers and retail grocery store workers with good paying jobs, a union voice, and strong health and safety standards will help ensure a resilient, diverse, and secure food supply chain.**

The UFCW represents 1.3 million workers along the food supply chain in grocery and retail stores and food processing and meatpacking industries throughout the United States and Canada. America’s grocery, meatpacking, and food processing workers have been on the frontlines of this deadly pandemic since day one, putting themselves in harm’s way to feed our families during this crisis. As the pandemic continued, hundreds of essential workers died and thousands more were infected as they served our country by keeping our food supply secure.

The COVID-19 pandemic exposed vulnerabilities within the meat processing and grocery industries and illustrates why supporting workers, by bolstering labor standards, is imperative for supply chain resiliency. **If the government supports workers, we will create a robust supply chain that can withstand future disruptions.**

COVID-19 exposed the vulnerability of workers along the U.S. food supply chain.

UFCW has been tracking the impact of COVID-19 on frontline workers. According to UFCW estimates, among the union's members nationwide, there has been at least:

- 501 frontline worker deaths and at least 111,642 frontline workers infected or exposed
- 208 grocery worker deaths and at least 54,226 grocery workers infected or exposed
- 135 meatpacking worker deaths and 23,580 meatpacking workers infected or exposed

The impact of COVID-19 in meatpacking plants was devastating. During the COVID-19 pandemic, meatpacking workers reported to crowded, enclosed facilities where they got sick and died in numbers disproportionately high relative to other industries. As of June 21, 2021, at least 1,451 meatpacking and food processing plants (574 meatpacking and 877 food processing) have had COVID-19 outbreaks, 91,140 workers (58,856 meatpacking workers, 18,619 food processing workers, and 13,665 farmworkers) have tested positive for COVID-19 and at least 465 workers (297 meatpacking workers, 60 food processing workers, and 107 farmworkers) have died.¹

U.S. supply chains are more vulnerable to disruptive shocks than in other countries.

The COVID-19 pandemic exposed the underlying fragility and unsustainability of poultry and meat supply chains under the current U.S. deregulatory approach. The pandemic drove home how susceptible the U.S. meat supply chains are to shocks like pandemics or extreme weather, and that vulnerability puts workers' health, safety, and indeed their lives, at risk.

The European Union's (EU) cautionary approach to food supply chain regulation proved dramatically more effective during the COVID-19 pandemic than the U.S. deregulatory approach. The EU experienced neither the degree of plant shutdowns, nor the meat shortages at the retail level, as was experienced in the U.S. In June 2020, 24,715 meatpacking workers in the U.S. had been infected with COVID-19, and at least 86 had died.² By contrast, in European meatpacking plants there were only 2,670 COVID-19 cases reported in June 2020, and only four workers had died.³ U.S. COVID-19 cases were nine times higher than the EU's, and U.S. deaths were 21 times higher.

The EU has two-thirds fewer meatpacking workers than the U.S. and there are no updated reports on EU deaths in meatpacking plants. However, an international association of investigative journalists tracks COVID-19 outbreaks and "workers affected" in meatpacking and other frontline sectors. The association's latest count in November 2020 lists a total 77

¹ Mapping COVID-19 outbreaks in the food system; Food and Environmental Reporting Network; accessed 21 June 2021 at: <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

² Mapping COVID-19 outbreaks in the food system; Food and Environmental Reporting Network; accessed 21 June 2021 at: <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

³ How Did Europe Avoid the COVID-19 Catastrophe Ravaging US Meatpacking Plants? *Mother Jones*, June 13, 2020; accessed June 14, 2020 at: <https://www.motherjones.com/food/2020/06/meatpacking-plants-COVID-19-hotspots-europe-regulations-line-speed/>

- 3 -

outbreaks and 8,854 affected workers among EU meat producers.⁴ This compares to FERN's last count in June 2021 of 58,886 U.S. meatpacking workers infected over six times the EU count.

The EU avoided the meat supply chain disruptions that resulted in retail shortages in the U.S. in part due to the greater number of smaller and mid-sized plants. EU meat processors could shutdown infected plants and shift production without the major disruptions in their supply chain.

Another failure to protect the health and safety of meatpacking workers came in the form of OSHA and CDC voluntary guidelines that rendered worker protections such as social distancing, testing, tracking, and quarantining unenforceable. In addition, the USDA continued to approve waivers that allowed dozens of poultry plants to run their processing lines at higher speeds, severely undermining efforts to require social distancing and protect workers from COVID-19. The U.S. deregulatory approach failed to protect workers and other stakeholders along food supply chains and was exacerbated by overlapping and disjointed agency jurisdictions that hinder a coordinated, coherent approach to regulating food supply chains in the face of disruptive shocks like COVID-19.

To ward off potential food supply shortages during the height of the pandemic, President Trump invoked the Defense Production Act to classify meat processing plants as essential infrastructure stating that plants should be permitted to remain open consistent with the voluntary Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) guidance. This was and is the wrong approach to supply chain management. Such actions undermined any real response to the pandemic, effectively leaving decisions on whether to protect the health and safety of workers and their communities in the hands of private meatpacking company CEOs.

Increase labor standards for food chain workers to improve supply chain resiliency.

1. Procurement reform that gives preferential market access for companies who respect the right to organize and other sustainability measures.

Through procurement contracts, grants, loans, loan guarantees, and tax breaks the federal government funds work performed by millions of people. The federal government's procurement contracts make it a major purchaser of a wide variety of goods and services across many industries, including a significant percent of meat, poultry, and other processed food. While food procurement contracts account for a small portion of all federal procurement spending each year, those dollars represent significant income to food processing companies.

Federal procurement contracts are used to purchase food to feed our troops, our schoolchildren, as well as our federal workforce. Vulnerabilities due to over-concentration in the procurement supply chain are exacerbated when those contracts are awarded to the lowest

⁴ *Outbreaks of COVID-19 Among [Meat Producing] Firms in Europe*; Investigative Journalism for Europe; website accessed on June 14, 2021 at: <https://covid19.euromoves.eu/blog/2020/11/17/outbreaks-of-covid-19-among-firms-in-europe/>

- 4 -

bidders who do not meet certain labor standards. A non-union, low-wage workforce is vulnerable to outside economic incentives and pressures. Such potential weaknesses in the quality and flow of goods could have serious repercussions for Americans depending on these foods.

America benefits when the federal government supports a secure, resilient, and diverse food supply chain. This goal can only be achieved by purchasing from a diverse set of companies that meet safety and labor standards. **No single company should receive all food procurement contracts; having a larger number and variety of producers ensures that resiliency is built into the system.** The federal government can protect national security interests with a safe yet nimble food supply chain. When federal food procurement contracts are concentrated in only in a few hands, a single natural or man-made disaster could seriously jeopardize the supply chain. One plant being taken off-line could slash the supply of foods procured through those contracts. Among contracts for meals ready to eat (MREs), only three companies produce the majority of the MRE supply. In analyzing the food procurement contracts issued by the federal government over the last four years (2017 to 2020, inclusive), the data revealed that the top three recipients of all federal food contracts alone accounted for 12 percent of ALL federal food procurement.

Concentrating 12% of all food procurement dollars in three companies creates supply chain vulnerabilities. Mechanical, technical, or natural disasters could seriously impact the flow of food resources purchased by the federal government.

The addition of labor standards in food procurement contracts would improve economic value to the federal government. Only relying on the “sticker price” of procurement contracts to achieve economic efficiency hides the true cost of those contracts to the federal government. The goal of economic efficiency appears to be achieved when the federal government awards contracts to companies making the lowest bids. However, many studies have shown that low-cost contracts are filled by low-wage employers.⁵ Many low-wage workers qualify for a variety of federal safety net benefit programs, such as EITC, Medicaid, and WIC.⁶ As a result, the true cost of contracts that appear on their face to be “economical” is distorted because the low bid omits the other costs the federal government must bear. Not conducting a true cost-benefit analysis hides the larger impact these low-cost contracts have on the federal government.

The lack of union contracts in food procurement is a missed opportunity for the federal government to ensure it sources quality products made by reputable companies that treat their workers well.

The UFCW supports federal food purchasing practices that expand opportunities to create good quality jobs in the food processing sector including ensuring that all food procurement contracts go to food processing companies that respect workers’ rights, pay living

⁵ Sonn P., Gebreselassie T., National Employment and Law Project (NELP), “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services.” June 2009, pages 3-4. www.nelp.org, Accessed April 28, 2021.

⁶ Sonn P., Gebreselassie T., National Employment and Law Project (NELP), “The Road to Responsible Contracting: Lessons from States and Cities for Ensuring That Federal Contracting Delivers Good Jobs and Quality Services.” June 2009, pages 3-4. www.nelp.org, Accessed April 28, 2021.

- 5 -

wages, provide a safe workplace, and treat their workers with dignity. Creating and enforcing labor standards in food procurement contracts will give the federal government the opportunity to encourage high-road practices among companies and ensure contracts are awarded to firms that certify they meet several basic labor standards. By conditioning contracts on labor standard requirements, the federal government can lift standards for all workers, while at the same time ensuring a safe, resilient food supply to nourish the nation. Several key protections that would improve labor standards and strengthen the resiliency of federal food purchasing contracts include:

- Establishing a minimum wage for food processing workers, a floor of \$15 per hour for poultry and \$20 per hour for red meat, to reduce employee turnover and enhance the stability of federal food purchasing.
- Creating procedures for covered food contractors to meet with worker health and safety committees.
- Ensuring workers have access to adequate paid family and medical leave.
- Maintaining appropriate whistleblower protection policies.
- Requiring food contractors to provide evidence that they have entered into labor-peace agreements with labor organizations that represent or are seeking to represent the contractor's workforce.

The federal government has an obligation to ensure that federal funds are spent not only on quality products, but quality jobs. UFCW supports using federal purchasing power to guarantee the federal government only does business with high road companies that respect workers' rights, pay living wages, provide a safe workplace, and treat their workers with dignity and respect.

2. Worker-farmer-owned co-ops with a union contract.

The pandemic has shown with brutal clarity that the meat supply chain works to the benefit of a handful of multi-national corporations, while workers are treated as expendable. Government at every level has a role to play in restoring this balance of power that has shifted too far in favor of agribusiness monopolies. UFCW supports economic development strategies that empower workers to bargain collectively for better wages and safer worker conditions. Empowering workers to get a fair wage is a trickle-up economic strategy because workers are more likely to spend that extra money with local businesses.

Supporting hybrid, multi-stakeholder union co-operatives (co-ops) provide business owners with a clear and easy path to sell their companies to their employees and provide workers a first right of refusal to buy a company.

Worker-farmer co-ops were inspired by the Farmer-Labor Alliance that passed the New Deal. These co-ops support a worker's right to organize and a farmer's right to fair prices. Cincinnati, Ohio based UFCW Local No. 75's Our Harvest Worker-Owned Union Co-op is a model for a new democratic structure of hybrid co-ops. Hybrid co-ops bring benefits to both workers and farmers because farmers' commitment to neutrality and a union contract leads to

- 6 -

better wages, a healthier and safer workplace, training, and apprenticeships opportunities, as well as a path to ownership.

3. Worker safety is linked to the production of safe and wholesome food.

Our country's food workers have been working tirelessly during the COVID-19 pandemic to ensure families get the food they need. These brave men and women are providing an essential service despite enormous risk to their own health and the health of their families. The health of these workers is essential to our communities and to the food supply.

Food processing is already a high hazard industry. Meat and poultry slaughter and processing workers face many job risks that can lead to severe injury, illness, and death.⁷ Meat and poultry workers face extreme temperatures, exposure to chemicals and pathogens, rapid work pace, ergonomic hazards, traumatic injuries such as amputations and lacerations from machines and tools, and, recently, disproportionate illness and death from COVID-19. But it does not have to be this way.

Worker injury and illness is not inextricably linked with the production of safe and wholesome food. A century ago, President Theodore Roosevelt's commission to investigate conditions in meatpacking plants resulted in the Federal Meat Inspection Act's (FMIA's) mandate that the USDA should "supervise the methods of preparing [meat], and [] prescribe the sanitary conditions under which the work shall be performed."⁸ Today, there is widespread recognition that absent regulation, difficult working conditions in slaughterhouses are "a constant menace not only to [the workers'] own health, but to the health of those who use the food products prepared by them."⁹

Having recognized that certain regulations are necessary to safeguard worker and food safety, the USDA has exercised its authority under the FMIA to ensure that food products are safe and unadulterated. For example, for more than thirty years, the USDA has set limits on slaughter line speeds. Indeed, the USDA Office of Inspector General has found that plants operating at faster speeds "may have a higher potential for food safety risks."¹⁰

We deserve safe food, and America's meat and poultry slaughter and processing workers deserve safe workplaces. Unfortunately, the industry continues to advocate for unlimited line speeds even during the pandemic. For the sake of the health of hard-working people who process our food, the safety of the food we eat, and the resiliency of the food supply chain, the USDA should not increase line speeds at pork, poultry, and beef plants.

⁷ Department of Labor, Bureau of Labor Statistics, "TABLE 1. Incidence rates of nonfatal occupational injuries and illnesses by industry and case types, 2019;" 4 November 2020, https://www.bls.gov/web/osh/summ1_00.htm, accessed 13 June 2021.

⁸ 59 Cong. H.R. Document 873, Message from the President of the United States transmitting the report of Mr. James Bronson Reynolds and Commissioner Charles P. Neill, the Special Committee Appointed to Investigate the Conditions of the Stock Yards of Chicago, June 4, 1906, <https://wp-cpr.s3.amazonaws.com/uploads/2019/06/rooseveltletter.pdf>

⁹ 59 Cong. H.R. Document 873, Message from the President of the United States transmitting the report of Mr. James Bronson Reynolds and Commissioner Charles P. Neill, the Special Committee Appointed to Investigate the Conditions of the Stock Yards of Chicago, June 4, 1906, <https://wp-cpr.s3.amazonaws.com/uploads/2019/06/rooseveltletter.pdf>

¹⁰ <https://www.usda.gov/sites/default/files/24601-0001-41.pdf>

- 7 -

Food workers deserve not only our gratitude, but adequate protection and provision for their health, safety, and financial security.

4. Antitrust enforcement that addresses monopsony power.

Packers and Stockyards Act: Global agriculture and food manufacturing is highly concentrated with "increasing vertical coordination across the stages of the supply chain."¹¹ In highly concentrated markets, "employers can use their monopsony power to impose non-price vertical restraints that limit workers' outside options, thus enhancing that same monopsony power."¹² In other words, workers may not receive competitive wages from monopsonist employers that unilaterally or coercively set wages in a labor market. The UFCW supports effective enforcement of antitrust laws like the Packers and Stockyards Act to promote competitive supply chains and competitive wage settings.

Misclassification: An issue of growing importance to UFCW members and other low-wage workers throughout the economy, is misclassification of employees as independent contractors. A business that misclassifies employees short-circuits workers' right to form a union, but these businesses also put firms which do not misclassify workers at a competitive disadvantage. That is why the **UFCW believes that misclassification should be regulated as an unfair method of competition.**

UFCW members experience misclassification in a direct way—particularly in the food retail sector, where the union represents 835,000 grocery store workers across the U.S. and Canada. Today, the union represents tens of thousands of workers in ecommerce fulfillment, including picking, packing, store pickup, and home delivery.

The FTC has statutory authority to investigate and address "unfair methods of competition"¹³ and "is a critical tool that the agency can and must utilize in fulfilling its congressional mandate to condemn unfair methods of competition."¹⁴ Courts have explained that "[w]orker misclassification can violate the policy or spirit of antitrust laws because it significantly threatens or harms competition."¹⁵ The FTC also has the authority to investigate whether a company's purported classification of workers as independent contractors results in an unlawful price fixing conspiracy.

Review of monopsonies even when there is no merger: There has been a rise in monopsony power among big retailers that allows them to dictate lower prices to their

¹¹ Tina L. Saitone and Richard J. Sexton, Concentration and Consolidation in the U.S. Food Supply Chain: The Latest Evidence and Implications for Consumers, Farmers, and Policymakers, p. 26, Federal Reserve Bank of Kansas City, Economic Review, Special Edition 2017, available at <https://www.kansascityfed.org/-/media/files/publications/econrev/econreview/2017/si17saitonesexton.pdf>

¹² The Roosevelt Institute, Public Comment to the Federal Trade Commission, Marshall Steinbaum, Research Director and Fellow, Roosevelt Institute, August 2018, available at https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0054-d-0006-151013.pdf.

¹³ Section 5 of the FTCA 15 USC 45.

¹⁴ https://www.ftc.gov/system/files/documents/public_statements/1591706/p210100commstmtwithdrawalsec5enforcement.pdf

¹⁵ *Diva Limousine, Ltd. v. Uber Techs., Inc.*, 92 F. Supp. 3d 1074, 1090–91 (N.D. Cal. 2019)

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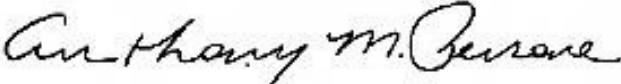
- 8 -

suppliers and lower wages of their workers. Big retailers like Walmart predatorily priced competitors out of business, including hundreds of union grocery stores; resulting in the lowering of labor standards in the grocery sector. Walmart acquired 25% of the national retail grocery sector, which was larger than its next three biggest competitors combined. Walmart acquired this stunning market share and corresponding monopsony power without merging. Walmart wielded its unprecedented buyer power to dictate ever lower prices to suppliers, squeezing all stakeholders further up supply chain.¹⁶

Conclusion

The UFCW believes that labor standards, health and safety protections, support for innovative business models like worker-farmer-owned co-ops, and strong anti-trust enforcement all contribute to a more sustainable, healthy, and resilient food supply chain.

Sincerely,


Anthony M. Berare
International President

¹⁶ UFCW, "Ending Walmart's Rural Stranglehold: A plan to rebuild rural America's food supply chain with the revival of rural economies for workers, ranchers and farmers by reinvigorating the marketplace and reining in Walmart's anti-competitive practices" (2010)