Testimony of the
National Sustainable Agriculture Coalition

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

at the hearing on
**Addressing the Effects of Economic Concentration on America's Food Supply**

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Recent estimates indicate that just four corporations are responsible for 65 percent of sales in the global agrochemicals market, 50 percent of the seed market, and 45 percent of farm equipment sales. In the United States, just four companies represent 73 percent of beef processing, 67 percent of pork processing, 54 percent of chicken processing, and 45 percent of the retail grocery market.

Economists agree that an industry is no longer competitive when the market share of the top four companies is 40 percent or higher, and that ceiling has been clearly exceeded across the agriculture industry. This concentration – which does not even account for rising consolidation, or vertical integration – hurts farmers and consumers while returning maximum profits to corporations. For farmers, it has inflated the costs of inputs, driven down commodity prices, and restricted the ability to compete in the marketplace.

We bear witness to the product of intentional design. To maximize their bottom-lines, multinational agribusiness corporations must generate and maintain a constant state, or at least a general trend, of overproduction and depressed commodity prices. Input suppliers, including biotechnology and seed corporations, can sell their patented products to a client (farmers) always seeking to expand their operations. Meanwhile, on the other end of harvest season, a concentrated number of food and meat processors purchase commodities for a price driven down by excess supply.

Farmers may indeed experience lucrative years and rising commodity prices, often due to increased demand from international export markets. This is an exception, however; it is not a rule. While farmers win on occasion in this system, it is always as the industry collectively spirals downward.

Farmers whose primary occupation is farming represented 1.3 percent of the U.S. workforce in 2019 – down from 41 percent in 1900. Though there are fewer farms, production nearly tripled between 1948 and 2017. The 2017 Census of Agriculture revealed that, of the 2.04 million remaining farms

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and ranches, just five percent represented a staggering *75 percent* of this production. In addition, while the 3.7 percent of farms that make above $1 million represent over ⅔ of the $389 billion value of production, the 76 percent of farms that make below $50,000 represent *under three percent* of production.

These numbers reflect the shift in farming from a diversified, localized industry where small, midsized, and large producers competed in the marketplace, to a system where many small farms directly serve local markets and far fewer very large farms serve national markets through a complex web of distribution and manufacture. In today's farm landscape you are either big or small, and the hollowing of the farm spectrum has created a bifurcated food system that is neither sustainable nor resilient, as the COVID-19 pandemic revealed.

The actions taken to stem the pandemic – closing schools, institutions, and halting public gatherings – were precisely what robbed smaller, direct marketing farmers of their markets. Farmers who served local markets could not easily sell the goods they grew and produced into the national distribution network meant for large farms, as they lacked relationships with buyers and frequently the certifications necessary to sell to them. The small farmers that did manage to access commodity-oriented markets were frequently offered prices well below their cost of production. Many small farmers with ripening produce and no outlet watched their crops literally rot on the vine.

On the other end of the spectrum, the pandemic impacted the largest producers in different ways. As millions of people stopped going to work, school, or restaurants and began eating more meals at home, the food manufacturing industry found that it could not easily pivot from supplying institutional customers to the consumer at home. This was most evident in the meat supply chain, where early outbreaks of COVID-19 at several of the country's major processing plants – where laborers were compelled to work despite unsafe conditions – severely diminished the ability of farmers to get their animals processed. Small meat processors faced a sudden surge in demand but did not have the resources necessary to rapidly expand their operations. This all meant that some farmers were forced to euthanize their livestock while less beef and chicken were available in markets, and that at a heightened price for consumers.

While food was being destroyed, tens of millions of Americans struggled to feed their families. This stunning juxtaposition led consumers to realize that our food system rests on a few disconnected, parallel systems that risk collapse when faced with any disruption. It failed farmers and consumers at this critical moment, despite being hailed by apologists as "too big to fail."

The modern, consolidated food system was not designed to serve these groups. Food insecurity, malnutrition, and diet-related health issues already affected millions of Americans *pre*-pandemic, and today's farmers receive less than 15 cents per dollar that consumers spend on food.

Rather, it was designed to maximize the efficiency and profits of multinational food corporations. These agribusiness "middlemen" (e.g., corporate processors, retailers, etc.) accrue more than 80 cents of every food dollar spent and are emerging insulated – even profitable – amidst the economic devastation wrought against small, independent restaurants and food businesses during the pandemic.

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The practice of limiting the size and market share of massive corporations for the preservation of competition, once a core tenant of American free market economic policy, has faded to relative

obscurity through a combination of lax regulatory enforcement and a proliferation of consumer facing brands that obscure the degree to which many market categories lack real choice.

In the 1980s, the Federal Trade Commission and Department of Justice eviscerated the antitrust policies built over 60 years. The intent of Congress to preserve competition in the marketplace to prevent a new Gilded Age was reimagined, and merger guidelines were narrowly re-written such that *only* consumers may be considered victims of monopoly. It was thus established that mergers may only be harmful and thus warrant antitrust enforcement if they led to a rise in retail cost to the consumer. The new guidelines prompted an unparalleled number of food mergers and acquisitions that continues today, giving consolidated agribusiness corporations the ability to buy-out potential competitors or otherwise expand their services and markets unchallenged.

Farmers and consumers are trapped by today's unparalleled consolidation of the food system.

The popular narrative in agriculture is that the rapid concentration of the industry is a natural consequence of advancing technology, not the result of conscious decisions made by agribusiness and government leaders. The contemporary food system is hailed as better for consumers, demonstrated by a lower cost for food. Its efficiency is similarly hailed as better for farmers, demonstrated by rising yields.

But these arguments ignore the rising diet-related health issues, rural depopulation, degradation of soil health, and loss of biodiversity which are the direct consequences of an agricultural model where efficiency, measured as the greatest annual yield of a single crop per acre, is the most important and often single metric that matters. These hidden challenge mainstream rhetoric about an efficient food system's superiority when chased at the expense of building resilience and promoting innovation through competitive markets.

To elaborate on one such consequence, a 1983 report by the Rural Advancement Foundation International (RAFI-USA) revealed that the United States lost 93 percent of its agricultural genetic diversity in the twentieth century. That was *before* the consolidation of the seed and biotechnology industries in the mid-1990s, which has accelerated this trend. This genetic uniformity rooted in the concentration of input providers poses a significant threat to the U.S. food supply. The more that the agriculture sector relies on a few uniform patented seed varieties, the more susceptible conventional farms become to epidemic pathogens, market fluctuations, and unexpected or extreme weather events. (We saw what happened during the Dust Bowl when traditional foodways were replaced with industrial, monocrop farming.)

Beyond the broader threat to food system security, it threatens the ability of farmers to farm. In 2019, U.S. farmers spent $118 billion to purchase seed and plants, fertilizers, animal feed, and agricultural chemicals. The total cost of these farm input expenditures has increased almost $80 billion since 2009, a classic symptom of an industry that has become too concentrated. Bayer, Corteva, Limagrain, Chem-China, and BASF can exclude competitors with their collective control of at least 50 percent of the seed and agrochemicals markets by raising the price of inputs for farmers (including with a novel "technology fee") without risking their own market dominance.

To strictly analyze the cost of seed, consider that corn farmers who paid $26.65 per planted acre of seed in 1990 paid $93.48 in 2019. This represents a dramatic increase of roughly 350 percent,

beyond the rate of inflation, following the biotechnology merger-mania and the co-opting of the seed industry.

Genetically engineered (GE) seed mass-produced by these corporations has indeed taken over. The Food and Drug Administration (FDA) reports that GE soybeans comprise a stunning 94 percent of all soybeans planted in the United States, GE cotton accounts for 94 percent of all cotton planted, and 92 percent of corn planted was GE corn. The multinational corporations that produce and market these GE seed varieties do not only place their products on the market but remove non-GE varieties of seed inherited from acquired seed companies. The result has been an alarming reduction in farmer choice – despite the *illusion* of many unique seed brands – as well as the decimation of crop biodiversity (as discussed above).

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The loss of farmer agency because of the concentrated food supply chain is perhaps nowhere as clear as it is in livestock and poultry markets. Growing vertical integration in these industries means that manufacturers, processors, and packers increasingly control all stages of production and inventory through commodity ownership and one-sided contracts. This corporate control of production eliminates market transparency, creating an environment ripe for price manipulation and discrimination. It replaces farm-level decision making with centralized corporate planning and leaves farmers trapped in long-term debts tied to short-term, non-negotiable production contracts. In addition, top retailers and packers increasingly engage in relationships with dominant suppliers that exclude smaller competitors and minimize price competition. Because the same few players in the market control both supply and demand, the basic principles of supply and demand cannot function.

In many cases, particularly in the livestock and poultry sector, the farmer never actually owns the animals they produce, but instead makes extremely large capital investments on their own land to build the facilities necessary to raise animals for an "integrator." Under such arrangements, farmers and growers are often given take-it-or-leave-it, non- negotiable contracts, with language drafted by the integrator in a manner designed to maximize the company's profits and shift risk to the grower.

In many parts of rural America, farmers have few options but to do business with livestock and poultry integrators. The combination of industry consolidation and vertical integration creates the opportunity for abusive contract terms.

Due to the extreme investments made in a contract livestock facility, farmers often have little choice but to sign the contract presented to them or accept bankruptcy. The legal term for such contracts is "contract of adhesion." As contracts of adhesion become more commonplace in agriculture, the abuses that often characterize such contracts are also becoming more commonplace and more egregious.

While the Packers and Stockyards Act (PSA) was passed a century ago to combat anticompetitive practices in the livestock and poultry industries, it needs to be updated the meet the challenges of today. NSAC is heartened by the Biden Administration's announcements that they intend to strengthen the PSA and work more closely with the Department of Justice to enforce its provisions. We look forward to monitoring the implementation of such plans in conjunction with any complimentary measures which may be taken by Congress.

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Is the concentrated food system worth defending? It is for the multinational corporations who amass power from excessive, subsidized commodity production, are free to consolidate operations and concentrate market share, and bear no responsibility for hidden costs. It is *not* for the farmer whose input costs are rising and who sells their product into a marketplace with fewer buyers for a lower price, the consumer with heart disease or diabetes forced to pay untold sums for treatment, or even the policymaker sworn to represent these people.

NSAC applauds the Subcommittee on Antitrust, Commercial and Administrative Law for creating space to explore the impacts of concentration across the food supply chain and implores members of Congress to take this opportunity to act. This issue has not yet fallen victim to crippling hyper partisanship, nor should it be allowed to. The simple truth is farmers and consumers are facing tough times, and they should be given a fair shake.