

# Why Antitrust Laws Matter More Than Ever in Agriculture and Food

Over the last few decades, the vast majority of industries in the U.S. have experienced significant market consolidation, and agriculture is no exception.<sup>1</sup> Today's food monopolies mirror the industry monopolies of more than a century ago, before the start of the antitrust regulation era. As in the late 1800s and early 1900s, when the original agricultural antitrust legislation was passed,<sup>2</sup> swift action is needed today to once more level the playing field for independent farmers and break up the corporate food monopolies gutting our nation's food system. In 2022, just four companies controlled more than 85 percent of the beef market, 70 percent of the pork market, and 54 percent of the poultry market.<sup>3</sup> Outside of the meat industry, the top four companies controlled 85 percent of corn and 76 percent of soybean seeds, 84 percent of the pesticide market, and 90 percent of grain trading.<sup>4</sup>

In the early 1900s, agricultural antitrust legislation was enacted to help farmers regain economic autonomy in deals with monopolistic grain purchasers and meatpackers. Between 1950 and 1980, many potential mergers and acquisitions were blocked by the federal government to protect farmers, consumers, and fair market competition. However, since then, corporate-backed legislators and regulators from both parties have pushed to interpret these laws with a narrow focus on "economic efficiency."<sup>5</sup> This focus on efficiency has led to markets for both crops and livestock with levels of consolidation similar to, if not worse than, those that were the catalyst for antitrust acts a century ago.

There are currently numerous legislative proposals and ongoing rule-making processes that are vital to fair and functional agricultural markets in the U.S.

## The History of Antitrust: Past and Present

Initial antitrust legislation in the U.S. came in response to the trusts formed by steel, railroad, and oil titans J. P. Morgan, Andrew Carnegie, and John D. Rockefeller in the late 1800s. In addition to the monopolization of the railroad and oil industries, trusts for commodities such as tobacco, cotton, and sugar squeezed profits from farmers.<sup>6</sup> These trusts attempted to achieve

supracompetitive profits, which are profits that could not be sustained in a competitive market. They did this by consolidating producers in a given industry, artificially lowering supply, and raising the prices of goods.<sup>7</sup>

The first act to address uncompetitive markets was the **Sherman Antitrust Act (1890)**. Adopted following political organizing by farmers across the country, the Act prohibits price fixing, monopolies, and any other actions that restrict trade or commerce across states or nations.<sup>8</sup> It gives the government authority to dissolve trusts and to punish offenders with fines and jail time.<sup>9</sup> Unfortunately, due to loose definitions of the terms “trust” and “monopoly,” the Supreme Court sided with large agricultural manufacturers in the 1895 case *United States v. E. C. Knight Company* and all but stripped the Sherman Antitrust Act of its authority shortly after its inception.<sup>10</sup> However, in the first two decades of the twentieth century, the Act was used by presidents Theodore Roosevelt and William Taft to break up the Northern Securities Company, the Standard Oil Company, and the American Tobacco Company.<sup>11</sup>

The **Clayton Antitrust Act (1914)** was the next major piece of legislation to address the lack of competition in many markets across the country. This Act allowed the U.S. Department of Justice to review proposed mergers and block or modify any mergers that would significantly reduce competition. Soon after enactment of the Clayton Antitrust Act, the U.S. Department of Agriculture (USDA) was given authority through the **Packers and Stockyards Act (1921)** to oversee unfair and deceptive practices by meatpackers and processors.<sup>12</sup>

In 1916, the “Big Five” meatpackers — Swift & Company, Armour & Company, Cudahy Packing Company, Wilson & Company, and Morris & Company — controlled 82 percent of the market for cattle, 79 percent for calves, 87 percent for sheep, and 63 percent for swine in the U.S.<sup>13</sup> Although both the Clayton Antitrust Act and the Packers and Stockyards Act were aimed at dismantling those high levels of concentration, still today a handful of giant corporations control agriculture — thanks to years of legislative and regulatory focus on “economic efficiency.”<sup>14</sup>

## Iowa Case Study

As of 2022, one out of every four U.S. hogs came from Iowa.<sup>15</sup> Yet few Iowans reap the benefits of the hogs, although it is a lucrative industry across the state. This is because the hog industry in Iowa, like other agricultural sectors across the country, has become so consolidated and vertically integrated that just a handful of large corporations benefit the most from raising hogs.<sup>16</sup> Recent consolidation in Iowa is apparent in the rapidly declining number of independent growers — farmers who own their hogs and facilities, are responsible for production costs and risks, and receive full market price for their hogs.

At the same time, Iowa has seen an increase in contract growers — farmers who own their facilities but do not own the actual hogs they raise. These growers contract with large, often corporate, integrators, who own the hogs, pay for feed and veterinary care, and ultimately pay the contract growers a price set by the integrators, not by the open market.<sup>17</sup> It is these vertically integrated, corporate contractors or integrators that take home the lion's share of profits in the hog industry.<sup>18</sup>

Fluctuating prices originally kept corporations out of the hog industry, but once the corporations became both the buyers (slaughter and processing) and sellers (concentrated feeding operations), in the late 1980s and early 1990s, they were able to weather low prices for hogs. Independent farmers, who did not have the necessary collateral to face ongoing losses, were not able to endure the same low prices of hogs. Between 1982 and 2007, Iowa lost 82 percent of its hog farms, even as the total number of hogs sold doubled.<sup>19</sup> Between 2002 and 2017, the number of independent hog producers in Iowa fell by over 62 percent.<sup>20</sup>

The split between Iowa's independently sold and contracted hogs was 50/50 in 2002, but by 2017 contracted hogs made up over 70 percent of the hogs sold in Iowa.<sup>21</sup> A similar pattern exists in hog inventory across the state, as independent hog farmers went from owning the majority of hog inventory in 2002 to only owning 32 percent in 2017.<sup>22</sup> This shift to a majority of hogs raised under contract gives greater leverage to a handful of large producers and processing corporations, which in turn can drive down the market price of hogs and squeeze out the remaining independent farmers.<sup>23</sup>

A hog market dominated by a few corporations has economic impacts beyond the farm. Between 1982 and 2017, Iowans in counties with large corporate hog operations saw decreases in both real median household income and total wage jobs.<sup>24</sup> On top of decreasing wages, over the same period, the number of on- and off-farm jobs in counties with high hog production dropped more than the average Iowa county.<sup>25</sup> As these trends continue in the Iowa hog market, and in many other agricultural markets across the U.S., the need for regulatory intervention on behalf of small independent producers becomes increasingly apparent.

## Current Legislation and Rulemaking

The modern food system is defined by corporate oligopolies. Much like the circumstances at the turn of the twentieth century, this environment is ripe for comprehensive legislation and regulation to reset the balance and break up the monopolistic practices strangling independent producers. Fortunately, a number of bills have been introduced recently to address the issues of market consolidation and monopolistic behavior by large corporations, which the original antitrust bills were unable to control.

One example is the **Food and Agribusiness Merger Moratorium and Antitrust Review Act**, which puts a pause on large agribusiness, food and beverage manufacturing, and grocery retail mergers. It also sets up a commission to monitor the level of concentration in American agriculture to keep markets fair and competitive for small family farms across the country.<sup>26</sup> The Act is inspired by the alarming levels of concentration in meatpacking industries as well as in the baby formula industry, in which the top four companies control nearly 90 percent of the market, and which is currently in a year-long shortage.<sup>27</sup>

Another comprehensive bill is the **Farm System Reform Act (FSRA)**, recently re-introduced by Sen. Cory Booker (D-NJ) and Rep. Ro Khanna (D-CA-17).<sup>28</sup> In addition to strengthening the Packers and Stockyards Act, the FSRA aims to level the playing field between farmers and corporations by instituting a moratorium and phase-out of large factory farms, and by reinstating mandatory Country of Origin Labeling (COOL) for beef and pork and extending it to dairy products.<sup>29</sup> These actions will have a wide range of positive effects, as factory farms not only force closures of family farms and reduce employment on- and off-farm, but are also major polluters and significant drivers of climate change.<sup>30</sup>

Rather than wait for new legislation, the Biden administration's USDA pursued a package of rules to breathe new life into the **Packers and Stockyards Act (PSA)** and increase its ability to "promote inclusive competition and market integrity in the livestock, meat, and poultry markets." The USDA deemed regulatory reform necessary to respond to pervasive deceptive, discriminatory, and retaliatory practices by meat companies, fundamental unfairness in the poultry tournament system, and court decisions requiring producers to demonstrate market-wide harm to competition to enforce the Act.<sup>31</sup>

## Looking Ahead

With extremely high levels of concentration in virtually all sectors of agriculture, it is imperative that the U.S. Congress act to restore competition to markets, as well as block any mergers that would increase the control of large corporations over farmers. Congress must also strengthen the Packers and Stockyards Act to ensure safe and fair working conditions for meatpacking workers. Failure to act will lead to higher levels of concentration at the top of these already top-heavy industries, which can lead to economic hardship both for independent small- and medium-sized farms and for surrounding communities. Moreover, these concentrated industries entrench the ecologically harmful practices that the current factory farm system relies on, which in turn exacerbate the climate crisis that is already affecting farmers, big and small, across the country.

## Endnotes

- 1 Abdela, Adil and Marshall Steinbaum. "The United States Has a Market Concentration Problem: Reviewing Concentration Estimates in Antitrust Markets, 2000-Present." *Roosevelt Institute*. Issue Brief. September 2018 at 1.
- 2 Food & Water Watch (FWW). "Why Antitrust Laws Matter for Agriculture and Food." March 2011.
- 3 The White House. [Fact sheet]. "FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain." *Statements and Releases*. January 3, 2022.
- 4 Wisconsin Farmers Union. "Farmers Union lifts farmer voices." *AgUpdate*. October 5, 2021.
- 5 Robinson, William J. and Ashley M. Koley. "Antitrust enforcement against oligopolies." *Antitrust Law Daily*. October 2019 at 1; Lauck, Jon. "Toward an Agrarian Antitrust: A New Direction for Agricultural Law." *North Dakota Law Review*. Vol. 75, No. 3. January 1, 1999 at 456 to 457 and 500 to 504; Mitchell, Stacy. Institute for Local Self-Reliance. "The rise and fall of the word 'monopoly' in American life." *Atlantic*. June 20, 2017; FWW. "The Economic Cost of Food Monopolies: The Grocery Cartels." November 2021 at 8.
- 6 Coppess, Jonathan. "On Agriculture & Antitrust: A Brief Summary of Legislative History." *farmdoc daily*. Vol. 12, No. 64. May 5, 2022.
- 7 Collins, Wayne D. "Trusts and the Origins of Antitrust Legislation." *Fordham Law Review*. Vol. 81, Iss. 5. 2013 at 2300.
- 8 Achieving the Dream. "Farmers Revolt in the Populist Era." Available at <https://library.achievingthedream.org/pimaushistory2/chapter/farmers-revolt-in-the-populist-era>. Accessed April 4, 2023 and on file with FWW; FWW (November 2011).
- 9 Coppess (2022); National Archives. "Sherman Anti-Trust Act (1890)." *Milestone Documents*. March 15, 2022.
- 10 National Archives (2022).
- 11 *Ibid.*
- 12 FWW (2011); Coppess (2022).
- 13 87 Fed. Reg. 42022 to 21114. October 3, 2022.
- 14 FWW (November 2021).
- 15 FWW. "The Economic Cost of Food Monopolies: The Hog Bosses." May 2022.
- 16 *Ibid.*
- 17 Dennis, Elliott. "Hog Barn Density and Location in U.S. and Nebraska." University of Nebraska Center for Agricultural Profitability. September 14, 2020.
- 18 FWW (2022).
- 19 Bienkowski, Brian. "Iowa Suffers from Cheap Pork." Cornucopia Institute. November 20, 2017.
- 20 FWW analysis of U.S. Department of Agriculture (USDA). National Agricultural Statistics Service (NASS). "2002 Census of Agriculture: Iowa State and County Data." AC-02-A-15. June 2004 at 22; USDA. NASS. "2007 Census of Agriculture: Iowa State and County Data." February 2009 at 23; USDA. NASS. "2012 Census of Agriculture: Iowa State and County Data." AC-12-A-15. May 2014 at 22 and 23; USDA. NASS. "2017 Census of Agriculture: Iowa State and County Data." AC-17-A-15. April 2019 at 24 and 25.
- 21 *Ibid.*
- 22 *Ibid.*
- 23 *Ibid.*; FWW (2022); Bienkowski (2017).
- 24 FWW (2022).
- 25 FWW (2022).
- 26 S. 4245. 117th Cong. (2021-2022).
- 27 *Ibid.*; Naidu, Richa. "Reckitt expects U.S. infant formula shortage until spring." *Reuters*. December 2, 2022.
- 28 FWW. "Federal Legislation for a Just Food System." May 2021.
- 29 S. 2332. 117th Cong. (2021); FWW (May 2021).
- 30 FWW (2022).
- 31 USDA. [Press release]. "Biden-Harris Administration Announces Major Actions to Spur Competition, Protect Producers and Reduce Costs." Release No. 0205.22. September 26, 2022.