

President Joseph R. Biden, Jr.
Attention: Susan Rice, Director Of The Domestic Policy Council
Executive Office of the President
1600 Pennsylvania Avenue NW,
Washington, DC 20500

January 28, 2021

Re: Executive Order to Address Harmful Consolidation in the Agricultural and Food Sectors

Dear President Biden,

Congratulations on winning the 2020 Presidential election, and thank you for your promises to take swift executive action to address many of the challenges facing America today. After decades of extreme consolidation in the food sector and with the COVID-19 pandemic laying bare the fragility of our current food system, now is the time to put a hold on approving large agribusiness mergers and acquisitions and to undertake a comprehensive evaluation of how consolidation has impacted farmers, rural communities, workers, consumers, the environment, and food system resilience. Any companies engaged in anticompetitive practices or having excessive market share should be investigated, and if appropriate, broken up.

Toward this end, the undersigned organizations, on behalf of our members and supporters, urge you to issue the following Executive Order. This Order will help rein in the rampant consolidation that has plagued America's agricultural sectors and overall food system, resulting in a profound loss of independent, family farmers and hollowed-out rural communities.

Executive Order to Address Harmful Consolidation in the Agricultural and Food Sectors

By the authority vested in me as the President by the Constitution and the laws of the United States, it is hereby ordered as follows:

Sec. 1. Policy.

It is the policy of the United States that fair and competitive markets are essential to the nation's agricultural and food sectors. Farmers are the bedrock of a sustainable and equitable food system, and fair markets are critical to ensuring that farmers and rural communities can thrive. Excessive market control consolidated in the hands of a small number of large companies has resulted in anti-competitive, unfair, and abusive markets that harm farmers and rural communities.

Sec. 2. Findings.

The United States food system is heavily consolidated across all levels of the supply chain. Such consolidation affects all aspects of the U.S. food system, from the seeds farmers plant and the inputs they purchase to the wholesale buyers of grains, meat and poultry to the grocery stores bringing food to consumers. Today's farmers buy from and sell into highly consolidated markets, resulting in rising costs, stagnant farmgate prices, and the loss of independent farmers across the United States. Extreme consolidation now typifies the U.S. agriculture and food systems, with devastating consequences for farmers, rural communities, consumers, food chain workers, and the environment.

Decades of mergers and acquisitions have resulted in a handful of firms wielding extraordinary market

power across U.S. agricultural sectors. This concentration in the food and agricultural economy has accelerated at a rapid pace since the 1980s, and particularly since the 2007 through 2009 recession. The four largest processors slaughter 83 percent of beef cattle, 66 percent of hogs and half of all broiler chickens. Just two companies—Arden Mills and ADM Milling—mill half of all U.S. wheat. Local and regional markets where farmers sell their products can be even more consolidated, with many farmers increasingly facing a monopsony. These firms exercise their excessive market power through various means, including abusive production contracts and alternative marketing agreements that circumvent price discovery, driving down farm income. Similarly, a few seed and agrochemical firms effectively control the market, with the largest four companies controlling 67 percent and 70 percent of those sectors, respectively.

Agribusinesses have also vertically integrated, meaning that they control successive stages of the food chain. Many livestock farmers rely on a single firm from start to finish, from genetics to feed to the slaughterhouse. Vertical integration has given rise to one-sided contracts that require farmers to take on enormous amounts of debt, pits farmer against farmer, and can result in unfair and abusive practices.

This trend toward extreme concentration has important and far-reaching implications for farmers, food chain workers, food safety, community health, and the integrity of the natural environment upon which we all depend. For example, consolidation and vertical integration have enabled agribusinesses to exert their market control to maximize corporate profits at the expense of producers and local economies, depriving rural communities of crucial revenue. Today's farmer earns just 15 cents per food dollar. And the median farm household income in 2019 was a mere \$297—the first time the figure has been positive in over 20 years.

More and more revenue from rural economies is funneled to corporate headquarters and Wall Street investors, causing local infrastructure like processing plants and flour mills to shutter and bankrupting Main Street businesses. Moreover, consolidation impacts every consumer and is a threat to food security and access: just four firms control two-thirds of all grocery sales, and supermarket mergers have raised food prices and wiped out local grocery stores in rural and urban areas alike. While agribusiness mergers have been justified on the basis of cost savings for consumers, the Justice Department's recent indictments of poultry executives for price-fixing reveal that large food corporations have power to conspire together and cheat consumers. Private litigators have also levied price-fixing charges against meatpackers in every major protein sector.

Agribusiness consolidation also makes economic recovery from the COVID-19 pandemic all the more difficult, and could open the door to even more consolidation as powerful corporate players buy out their struggling competitors.

In light of the foregoing, any further consolidation in the U.S. agricultural and food systems resulting from large agribusiness mergers or acquisitions is likely to substantially lessen competition or will tend to create monopolies.

Sec. 3. Immediate moratorium on agribusiness mega-merger approvals; investigations.

Therefore, by the authority vested in me by the Constitution and the laws of the United States, including the Clayton Antitrust Act, 15 U.S.C. §§ 12–27, I hereby direct the Antitrust Division of the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) to strictly scrutinize any mergers or acquisitions involving large agribusinesses, and to bring antitrust enforcement proceedings to the fullest extent authorized by law to safeguard fair and competitive agricultural and food markets in the United States. I further direct the DOJ and the FTC to withhold approval of any new or pending merger or acquisition notifications submitted pursuant to the Hart-Scott-Rodino Act, 15 U.S.C. § 18(a).

Furthermore, pursuant to the Federal Trade Commission Act, 15 U.S.C. § 46(d), I hereby direct the Federal Trade Commission to thoroughly investigate and report the facts regarding any merger or acquisition involving a large agribusiness to identify any potential violations of the antitrust Acts. Such investigations shall be based on the finding herein that further consolidation in the agricultural and food sectors are likely to substantially lessen competition or will tend to create a monopoly.

For the purposes of this Order, “large agribusinesses” shall mean any agricultural dealer, processor, integrator, commission merchant, agricultural input supplier, broker, retailer, warehouse operator, or similar company with annual net sales or assets exceeding \$160,000,000 annually and that is engaged in interstate or foreign commerce.

Sec. 4. Creation of a commission to review current agribusiness concentration.

Furthermore, I hereby establish a Food and Agriculture Concentration and Market Power Review Commission within the Department of Justice, in consultation with the General Services Administration, to study the impacts of current levels of concentration in the food and agricultural sectors, and to make recommendations on changes to federal laws and regulations to promote fair and competitive markets for farmers and rural communities, and safe working conditions and fair wages for food chain workers.

Commission members shall be appointed by the President or, if authorized by the President, the United States Attorney General, and shall include 12 appointees. Commission membership shall include the following: at least four members shall be actively engaged in farming or ranching, at least one member shall represent organized labor, and at least one member shall represent independent, U.S. farmers. The Commissions shall convene within 30 days of its establishment, and submit their final report to the President and Congress within one year of the initial meeting.

Commission members shall be persons who have experience in farming or ranching, expertise in agricultural economic and antitrust, or have other pertinent qualifications or experience related to food and agriculture industries. In appointing Commission members, every effort shall be made to ensure that the Commission represents a broad cross section of agricultural, labor, and antitrust perspectives within the United States. The commission shall consult with relevant agencies including the Department of Labor and the Environmental Protection Agency when assessing labor, environmental and worker impacts relating to antitrust.

Sec. 5. Additional actions to address corporate concentration

Furthermore, I hereby direct the Agricultural Marketing Service of the United States Department of Agriculture (“USDA”) to investigate complaints under the Packers and Stockyards Act (P&S Act), as amended, 7 U.S.C. §§ 181-229c, and to enforce said Act to the fullest extent of the law to ensure that producers are not subject to unfair practices or undue preferences. To provide clarity and enforceability, USDA shall undertake rulemaking pursuant to 7 U.S.C. § 228 to strengthen protections for farmers. This shall include, but shall not be limited to, defining “unfair practices” to comprehensively protect the interests of farmers engaged in commerce with large agribusiness, withdrawing the Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act Final Rule, 85 Fed. Reg. 79,779 (Dec. 11, 2020), restoring “USDA’s long standing interpretation” ignored by the previous administration that allows individual complaints be addressed and enforced in absence of proof of competitive harm to an entire industry under section 202(a) and (b) of the P&S Act, and defining the “undue preference” standard to sufficiently protect farmers engaged in commerce with large agribusiness, and adopting the findings of the Food and Agriculture Concentration and Market Power Review Commission as established herein to identify and implement the most effective ways to strengthen the

Packers and Stockyards Act protections.

USDA shall also promptly report any violations of the Packers and Stockyards Act to the United States Attorney General, and the United States Attorney General shall initiate enforcement proceedings against said violators, pursuant to 7 U.S.C. § 224.

Sec. 6. Effective Date

The above directives shall be effective as of the date this Executive Order is published in the Federal Register and shall remain in effect until comprehensive federal legislation is passed that adequately addresses the problem of market consolidation in the agricultural and food sectors.

Sec. 7. General provisions.

Nothing in this Order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof. This order shall be implemented consistent with applicable law and subject to the availability of appropriations. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Signed,

American Federation of Government Employees Council 45
American Grassfed Association
Animal Legal Defense Fund
Buffalo River Watershed Alliance
Dakota Resource Council
Dakota Rural Action
Green State Solutions
HEAL (Health, Environment, Agriculture, Labor) Food Alliance
Family Farm Action
Farm Aid
Food Animal Concerns Trust
Food & Water Watch
Friends of the Earth
Institute for Agriculture and Trade Policy
Idaho Organization of Resource Councils
Iowa Citizens for Community Improvement
Johns Hopkins Center for a Livable Future
Land Stewardship Project
Missouri Rural Crisis Center
National Family Farm Coalition
Natural Resources Defense Council
Open Markets Institute
Organization for Competitive Markets
Public Justice Food Project
Rural Advancement Foundation International - USA (RAFI-USA)
Socially Responsible Agriculture Project
Western Colorado Alliance
Western Organization of Resource Councils (WORC)