# 1AC

### 1AC

#### Contention One is Food Security:

#### Agriculture markets have become heavily consolidated through anticompetitive behavior, threatening the stability of the US agricultural supply chains.

Diana L Moss and Laura Alexander 20, President of the American Antitrust Institute and Vice President of Policy at the American Antitrust Institute. “When COVID-19 is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains,” American Antitrust Institute, 5-7-2020, https://www.antitrustinstitute.org/work-product/when-covid-19-is-the-symptom-and-not-the-disease-consolidation-competition-and-breakdowns-in-food-supply-chains/

The integrity and stability of the food system is a matter of national health, safety, and security. Disruption of the meat or any other food supply chain is potentially catastrophic. But few analysts have looked beyond the immediate COVID-19 pandemic to isolate one of the deep-rooted causes of weakness, or even breakage, in supply chains. Were our food processing, manufacturing, and distribution markets more competitive, the current crisis (and government intervention) would be neither necessary nor warranted. Much like AAI’s recent commentary on COVID-19 and consolidation in medical equipment markets, this commentary explains how a lack of competition can imperil the stability and security of the food system.[3]

THE ROLE OF COMPETITION IN ENSURING STABLE, RESILIENT FOOD SUPPLY CHAINS

COVID-19-related disruptions are, in part, a symptom of underlying competition problems in our food system, and an early warning sign of the harms yet to come. Competition benefits consumers and producers in myriad ways. These include fair prices, high quality products and services, and incentives to innovate. Another key benefit of competition is promoting diversity and redundancy in sources of agricultural inputs, processing, manufacturing, and distribution. This promotes resiliency and stability in the interconnected markets that form the food system.

Supply chains are routinely subjected to shocks such as extreme weather, disease, and conflict.[4] But those that feature robust competition at various levels are far more likely to ensure the reliable and stable distribution of essential food products. If some parts of the supply chain are disrupted, competition works to ensure that rival suppliers fill the void to meet demand.

As the COVID-19 pandemic illustrates, food supply chains can fail the “resiliency” test. While a number of factors may account for this, we cannot ignore the role played by the wave of consolidation that has fundamentally reshaped the food system in the U.S. over the last two decades. Consolidation has diminished competition in the agricultural inputs, processing, manufacturing, and distribution segments. As the closures of meat processing plants demonstrate, when the few large firms that control these critical segments fail, the supply chain can break.

#### Specifically, Ag firms take advantage of lackluster antitrust merger enforcement efforts and favorable law to engage in anticompetitive mergers.

Diana L Moss and Laura Alexander 20, President of the American Antitrust Institute and Vice President of Policy at the American Antitrust Institute. “When COVID-19 is the Symptom and Not the Disease: Consolidation, Competition, and Breakdowns in Food Supply Chains,” American Antitrust Institute, 5-7-2020, https://www.antitrustinstitute.org/work-product/when-covid-19-is-the-symptom-and-not-the-disease-consolidation-competition-and-breakdowns-in-food-supply-chains/

Merger control is designed to prevent acquisitions that are likely to substantially lessen competition. This includes acquisitions of head-to-head rivals; customers or suppliers; and potential rivals. Vigorous enforcement prevents harmful outcomes by stopping illegal mergers in their “incipiency.” The U.S. antitrust agencies have historically divided up the food supply chain for the purposes of reviewing food and agriculture mergers. The Federal Trade Commission (FTC) reviews most proposed transactions involving the downstream part of the supply chain, including food manufacturing and retail grocery.[9]

The U.S. Department of Justice (DOJ) reviews mergers in the upper part of the supply chain, such as food processing (e.g., grain milling and meat packing), producers (e.g., cattle feeders and chicken growers), and biotechnology inputs such as GMO traits, seeds, and agrochemicals. It is not clear how the FTC and DOJ coordinate with each other in reviewing mergers along the supply chain, so that the proverbial “right hand knows what the left hand is doing.”

IS MERGER ENFORCEMENT KEEPING UP WITH CONSOLIDATION IN FOOD?

Between 1998 and 2018, almost 1,300 mergers in the processing, manufacturing, and food distribution sectors were reportable to the U.S. antitrust agencies under federal guidelines.[10] Government data reveals that about one-quarter of those transactions were cleared to either the DOJ or FTC for further review. About one-quarter of those “clearances,” in turn, received a request from either agency for additional information. This is a slightly higher rate of “Second Requests” for food mergers, as measured by the percentage of total clearances that received a Second Request, than for mergers across all sectors in the economy. The majority of these deals involved consolidation in the middle part of the supply chain—food processing and manufacturing.

Only a small fraction of the food mergers that were cleared to the DOJ and FTC between 1998 and 2018 were actually challenged by the government. Merger challenges can result in a number of outcomes: successfully enjoining a merger, unsuccessfully enjoining a merger (which then proceeds), forced abandonment of a transaction, and an order containing requirements to remedy competitive harms raised by a deal. The rate at which the government challenged food mergers, as measured by the percentage of total clearances that were challenged, is just below the average across all sectors. More than one-half of the merger deals that were challenged by the agencies were in the retail grocery segment where significant competition has been eliminated over time. The remainder include mergers in beef packing, poultry processing, and dairy, other food products, and broadline foodservice distribution.

Two major government wins were the DOJ’s successful challenge to the merger of two of the largest beef packers (JBS and National Beef) in 2009 and the FTC’s move to block the merger of the two largest broadline food distributors (Sysco and US Foods) in 2015.[11] U.S. consumers and producers need more of this type of aggressive, successful enforcement. But a major failure was the FTC’s approval of the merger of Safeway and Albertsons. The merger was allowed to proceed, subject to the divestiture of almost 150 stores to a regional west-coast grocer, Haggen. The failure of Haggen to maintain the divested stores led to their shuttering only a few months later.[12] In 2019, the DOJ declined to challenge the acquisition of Iowa Premium by one of the largest packers, National Beef, a deal that was opposed by numerous advocacy groups. The merger was projected to adversely affect the important cash market, which determines the base price for cattle sold on contracts or formulas.[13]

As shown in the figure below, over the last 20 years, the intensity with which the agencies have looked harder at food mergers through the Second Request process appears to have waned. The apparent downward trend in Second Requests over the past two decades is troubling. It may signal chronic resource constraints at the agencies. But it also likely reflects the view that has dominated enforcement for the last four decades. Namely, most deals are viewed as pro-competitive because cost-savings and consumer benefits are claimed to outweigh any anticompetitive, harmful effects.

Chart, line chart

Description automatically generated

Regardless of the reason, U.S. consumers are still faced with a swath of mergers that have created larger integrated companies that reach to almost every part of the supply chain. These food goliaths can exercise their market power to suppress competition, which is problematic in its own right. But as the COVID-19 crisis has demonstrated, the lack of competition in food processing, manufacturing, and distribution has also created a fragile and unreliable supply chain.

POLICING ANTICOMPETITIVE CONDUCT IN THE FOOD SYSTEM

It should come as no surprise that in a supply chain with less and less competition, other violations of the antitrust laws, including collusion and monopolization, become more commonplace. Indeed, the dominant firms and oligopolies in food processing, manufacturing, and grocery have given rise to numerous concerns. The public and private antitrust cases in the food industry in recent years reflect both the rising incidence of troubling behavior and the challenges and limitations of antitrust enforcement.

The DOJ, for example, has prosecuted violations of Sections 1 and 2 of the Sherman Act in almost 20 cases in the food industry over the last 20 years. Notably, however, the Sherman Act claims appeared to be an afterthought in the majority of these cases, which were motivated principally by kickback schemes that defrauded the public. Competitive injury, and core antitrust concerns such as collusion or exclusionary conduct, did not feature prominently.[14] Smithfield, one of the largest pork processors in the U.S., which was acquired by the Chinese food behemoth Shuanghui International in 2013, was charged with violations on two separate occasions involving failure to comply with requirements under the Hart Scott Rodino Act before purchasing stock in a rival and pursuing an acquisition.[15] DOJ has launched several cartel investigations in food over the last two decades, but, with few exceptions, those investigations have yet to yield indictments or civil complaints.[16]

#### These anticompetitive mergers force farmers into unsustainable farming practices, such as monocultures, by limiting the variety of ag inputs and by forcing farmers to scale operations to remain in business.

Patrick Woodall 18, Research Director at Food & Water Watch, “Monopoly Power Corrodes Choice and Resiliency in the Food System,” The Antitrust Bulletin, 63.2, https://doi.org/10.1177/0003603X18770063

But already high and increasing levels of economic concentration in the agricultural and food sectors impact far more than consumer and farmer prices. Consolidation has substantially curtailed the choices available to consumers and farmers. Grocery stores now teem with an illusory cornucopia of different products, but the vast majority of the supermarket items are manufactured by a few firms with dominant market positions.

Horizontal and vertical concentration in the agriculture sector has constrained farmers’ choices and autonomy. Concentration in the seed and fertilizer industries has significantly limited farmers’ cultivation options. Perhaps more importantly, the larger, vertically integrated agribusinesses have pushed farmers to increase the size, scale, and intensity of their farms in order to sell their crops or livestock and maintain economic viability. This limits farmers’ options and autonomy to control production decisions on their farms.

#### Those practices guarantee that our food sector will collapse---lack of variety in ag inputs means our entire supply line can be wiped out by a single crop disease, which will inevitably come.

Martin 13. DePaul JD, “Seed Savers v. Monsanto: Farmers Need a Victory for Wilting Biodiversity,” 24 DEPAUL J. ART TECH. & INTELL. PROP. L 95, HeinOnline

IV. “PLAGUE OF SAMENESS”: BIODIVERSITY CONSEQUENCES Many describe the increasing genetic uniformity as a “plague of sameness,” overtaking vast fields of crops with monoculture agriculture.’16 The economic effect of this “plague of sameness” is enormous: “pest[] and plant diseases are . . . estimated to exact a toll of $20-33 billion each year nationwide.”’ However, the dangers of this plague are not limited to economic concerns. When crops are threatened by pests or disease, genetically uniform crops could be wiped out. Without the ability to locate genetic resistance in any varieties, the world could lose entire major food crops, such as soybeans, corn, rice, and wheat. A. Genetic Resistance According to Cary Fowler and Pat Mooney, “today’s plant breeder will search for one major gene to confer resistance for the new variety.”’ One-gene resistance provides that there will be only “one line of defense” against pests and diseases.’59 When overcome by pest or disease, the gene can no longer provide resistance. 6 0 Breeding, then, is a “step by step evasion of the pathogen,” and the use of one-gene resistance lacks an “ultimate vision of permanent or stabilized resistance.”’6 ‘ In contrast, the traditional “landrace” confers resistance on a new variety as the product of a large number of genes working together.’6 2 The resistance conferred by the traditional “landrace” is long-lasting, because these varieties have survived among pests and diseases “in the center of diversity.”’ 3 Additionally, heirloom varieties, discussed above, are used to breed insect, disease, and drought tolerance into modern crops.’” In contrast to the conventional three- or four-way hybrid varieties, GE varieties, such as Roundup Ready soybeans, are “single-cross hybrids.”1 65 The “plague of sameness” becomes even riskier when farmers plant pure line varieties instead of a mixture of varieties, or where a “few successful crop varieties replace the great diversity of crop and types found in farmers’ fields.” 66 Monoculture agriculture is prominent in developed countries,’16 largely because of the predictability that single cross varieties offer farmers and the agricultural industry.16 1 With this monoculture agriculture, however, when part of the uniform crop is wiped out by pests or diseases, the entire crop is wiped out.’69 Furthermore, when the neighbor farmer plants the same variety, his crop is also wiped out.’ Finally, “when virtually every farmer plants the same variety or group of varieties, the risk becomes dangerous.””’ The lack of resistance and genetic variability leads to the vulnerability of crops to pests and diseases. B. Pest Management First, the “plague of sameness,” or monoculture agriculture, threatens crop resistance to pests. Specifically, “[p]athogens or insect pests that mutate to overcome a crop’s innate resistance or to escape the effects of fungicides or pesticides, together with monoculture conditions, heighten the risk that such novel pests could rapidly spread and cause great losses in crop yield and quality.”’ 72 In recent years, the percentage of annual crop lost to insects has doubled,’7 3 and global crop loss due to pests.’74 The rise of pest problems is an estimated 30-40% of potential yield is also evident through increased pesticide use: from 1945 to 1975, the amount of pesticide employed rose from less than 200 million pounds to 1600 million pounds.’75 Genetic mutations in these pathogens or pests require quick replacement with varieties that have resistance. 76 These replacements require the screening of gene resources to find new resistance. 7 7 However, with a narrowing genetic resource base, varieties that have resistance are slowly disappearing. C. Vulnerability to Diseases Second, monoculture agriculture increases vulnerability to disease causing widespread damage. Two historical examples show the dangers of monoculture agriculture in the face of disease. Ireland’s potato blight in 1846 that led to the Great Famine, was a result of a lack of crop diversity.”’7 The Irish were dependent on the potato for food, and about 90% of the potatoes eaten were a variety called “Lumper. “l79 When blight infected the potatoes, the Lumper variety lacked resistance in the tubers.’” This lack of resistance and the uniformity of the potatoes allowed the blight to dramatically wipe out Ireland’s potato supply. Potatoes “were the first crop in modem history to be devastated by lack of resistance.””’ Not only were potatoes nearly lost as a major food crop, but 1 to 2 million Irish people died or left Ireland as a result of the famine.18 2 In more recent history, the U.S. corn leaf blight of the 1970s provides another example of the dangers of “monoculture” agriculture. Similar to the uniformity of the Irish potato crop, in 1970, almost 85% of U.S. cornfields were planted with one corn variety, Texas cytoplasmic male sterile.’ This type of corn was highly susceptible to a new type of fungus that wiped out 15% of the corn crop and resulted in a $1 billion loss in the United States.’84 While the U.S. hybrid corn industry only “[took] one year to correct the problem and get resistant varieties back on the market,” Fowler and Mooney point out that biodiversity crises such as these raise many “unanswered questions.”’ One of the most troubling questions is: with such a narrow genetic base, will the seed industry be able to find a quick solution the next time a crisis occurs?’86 A potential soybean “rust” crisis in 2004, with a disease “that could ruin a field in two weeks, and . .. up to 80 percent of yield,” spurred plant scientists to screen seed samples in the USDA U.S. crop gene banks.’ Scientists identified some soybean varieties with weak resistance, but mostly found that none was fully immune to the rust.’ As a result, the scientists had to find resistance in wild relatives of soybeans from China, Taiwan, and Australia-countries where soybeans were first domesticated.’89 The dangers of the “plague of sameness” show that crop diversity needs to be preserved for future generations. The Genetic Resources Conservation Program has found that “[n]early every major U.S. food or fiber crop is battling pests and diseases against which it has no resistance.”’ Without resistant varieties from a diverse genetic resource pool, future plant scientists will not be able to locate or introduce resistance into modem crops. As a result, “without these infusions of genetic diversity, food production is at risk from epidemics and infestations.””’ The Food and Agriculture Organization of the United Nations has found that the Earth’s population will grow by 50% in the next fifty years; thus, “crop diversity must be managed in a manner that promotes productivity with reducing diversity.” 92

#### That alone causes extinction

Carr 10 – Gad Loebenstein, Professor of Plant Pathology at the Agricultural Research Organization and John P. Carr, Head of the Department of Plant Sciences at the University of Cambridge, Advances in Virus Research, Volume 75, 2009, Pages ix–x, Science Direct

Since the very earliest developments in agriculture, and probably even before then, diseases affecting crop plants have posed an ever-present, yet ever changing, threat to human survival. The Bible, for example, explicitly mentions blights, blasts, and mildew diseases of wheat. Not surprisingly, people sought to understand and mitigate the effects of disease on crop productivity, and many earlier cultures have sought divine aid in the fight against crop disease. The Romans, according to some historians, celebrated the festival of Robigalia: an attempt to mollify Robigus, the god thought to protect crops from disease, and his less benign sister Robiga (or Robigo), a primary goddess of Roman farmers, known as the spirit of mildews and rusts. However, even during this period there were attempts to understand plant diseases through the application of reason: an approach exemplified in the writings of Theophrastus (372–287 BC), who theorized about the nature of the diseases of cereals and other plants. Meanwhile, over many centuries farmers all over the world practiced domestication of plants from wild populations and selected the best and hardiest plants grown under agricultural conditions, thereby incidentally breeding plants resistant to disease. In the modern world the deployment of crops possessing genetically based resistance is generally considered the best and most economical approach for disease control. This is especially true for protection against viruses because, so far at least, no chemicals are available that could provide the same degree of protection in the field against these pathogens, as fungicides do against fungi and oomycetes. The transfer by breeding of naturally occurring resistance genes from wild plants or land races to cultivated lines is still an ongoing process, and has been supplemented with other methods such as mutation, polyploidy breeding, and the generation of haploids. Genetic resistance against virus diseases can be surprisingly durable. A good example is that of cucumbers bred for resistance to Cucumber mosaic virus. This resistance, which depends on several genes, was found to be stable for many decades against different strains of this virus. Even though the majority of plants are resistant to most viruses (the phenomenon of non-host or basal resistance), when viruses are able to infect a crop plant, obtaining durable resistance by breeding is not always possible. In certain cases, new virus strains overcome the resistance and once again may cause severe crop losses. In addition, for some crops and viruses, no suitable sources of resistance can be identified among the wild relatives of a crop plant. Hence the need for greater understanding of natural resistance, and for the insights its study can provide for the development of novel crop protection approaches. In the last few years, much has been learned concerning the mechanisms underlying several natural resistance mechanisms including inter alia RNA silencing, induced resistance, and resistance conferred by recessive and dominant genes, which will be discussed in this and the following volume of the Advances. In addition, research over the last two decades has made it possible to move resistance–conferring gene sequences between plants from different botanical genera, or into plants from other organisms, and even from the viruses themselves (pathogen-derived resistance). This work opened a new vista for plant virus control, and if combined with engineering for insect resistance could potentially provide protection not only against the viruses themselves, but also against their vectors. The work on pathogen-derived resistance also led directly to the discovery of a natural resistance and gene regulation mechanism, RNA silencing, that has ramifications throughout the whole of biomedicine. Nevertheless, these technologies face technical and sociological challenges, which are also addressed in these volumes. In all parts of the world, but especially among the developing nations, agriculture faces the looming problems of emerging virus diseases, population growth, and ecological change. We hope that the articles in this volume and the following one will inform and stimulate research on natural and engineered resistance, and thereby contribute to the development of new approaches to disease control and the creation of new resistant varieties that are desperately needed.

#### Independently, market concentration ensures the failure of anyone ag producer will doom the entire sector---only the plan can rebuild resiliency to withstand inevitable food supply shocks.

Patrick Woodall 18, Research Director at Food & Water Watch, “Monopoly Power Corrodes Choice and Resiliency in the Food System,” The Antitrust Bulletin, 63.2, https://doi.org/10.1177/0003603X18770063

Concentration can also reduce quality and compromise safety. According to the U.S. Department of Agriculture (USDA), high concentration levels allow the largest companies to extract more economic value from food purchases, but “consumers typically bear the burden, paying higher prices for goods of lower quality.”7 The substantial scale combined with highly concentrated chokepoints make the food system vulnerable to potentially larger, more widespread food safety problems.

The scale of plants in a heavily consolidated industry means that a single problem in one larger plant can now impact the entire food chain. In 2011, Cargill voluntarily recalled more than 36 million pounds of ground turkey after an illness outbreak caused by antibiotic-resistant salmonella.8 The recall represented several months’ worth of production from a single plant in Arkansas in an industry where the top four firms processed 55% of turkey meat.9 In total, 136 people across thirty-four states were infected, causing thirty-seven hospitalizations and one death, disproportionately caused by the bacteria’s resistance to antibiotics.10

Food safety problems at even modestly sized suppliers can infiltrate a significant portion of the food system, when ingredients pass through the highly consolidated food processing sector. In 2007, the Food and Drug Administration (FDA) received reports of 17,000 pet illnesses, including 4,000 dog and cat deaths, believed to be the result of melamine contamination in imported Chinese gluten ingredients used to make pet food.11 Sixty million packages of over 150 brands of pet food were recalled in the United States, the largest recall in history—and all the pet food originated from one Kansas facility that had used the contaminated wheat gluten.12

A year later, the problem of consolidation and chokepoints struck the human food supply. A 2008 peanut butter salmonella outbreak led to nine deaths and more than 700 illnesses in forty-seven states.13 The problem began at a single company’s filthy plants that manufactured 3% of peanut products—but the company’s peanut ingredients passed through a highly consolidated food industry, leading to a recall of over 3,600 products.14

#### U.S. food shocks reverberate globally---causes multiple hotspots to escalate

Castellaw 17 – John Castellaw, National Security Lecturer at the University of Tennessee, Founder and CEO of Farmspace Systems LLC, Former President of the Crockett Policy Institute, Retired Lieutenant General in the United States Marine Corps, “Food Security Strategy Is Essential to Our National Security”, Agri-Pulse, 5-1, https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence.

Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability.

The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom.

Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs.

This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people.

Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population.

Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being.

Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

#### Also, food insecurity collapses U.S. global influence

Olufunke Adebola, 2021, PhD International Affairs, Science, and Technology, Deloitte Senior Consultant, Analyzing the Threat, Vulnerability, and Consequences of Agroterrorism, DOI: 10.1007/978-3-030-73655-2\_14

In addition to this, food plays an essential role in global politics. Rothschild argues that the rise of the United States’ as a global hegemon results from its role as the world’s largest food exporter [14]. During the global food crisis of the 1970s, the U.S. role “as custodian of the bulk of the world’s exportable grain” [15] helped the U.S. maintain its global political powers as many developed, developing, and the least-developed world looked to the U.S. for food, particularly grains. The United States has used food as a tool for foreign diplomacy since World War 1. During the War, Herbert Hoover, the Director of Food Administration, promoted the “FoodWill Win the War” slogan as a strategy for victory. Hoover’s effort aimed at boosting national food production to ensure that the U.S. allies in the war had access to food supplies [16].

#### **Great power conflict.**

Christina L. Lyons 17. Graduate degree in political science, American University; Former editor for the Congressional Quarterly; Journalist. “Military Readiness: Is the Pentagon prepared for future threats?” CQ Researcher. November 3. <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2017110300>.

The U.S. military also responds to humanitarian crises, including the recent hurricanes that devastated Puerto Rico. Responding to such emergencies is expected to become more challenging as climate change contributes to more natural disasters, potentially sparking international conflicts over fresh water, food and other resources.14

Defense spending in recent years peaked in fiscal 2010 at $691 billion, and Trump's proposal would not bring it up to that level. Some of the country's potential adversaries, meanwhile, have stepped up their military outlays and activities.15

China's defense spending increased 26 percent between 2013 and 2016. In addition, since 2014, China has built 3,200 acres of military bases on artificial islands in the South China Sea that U.S. officials say are part of Beijing's plan to dominate Asia.16

Russia's military also has become increasingly aggressive, raising alarms among NATO countries in Europe that the United States is pledged to protect under Article 5 of the organization's charter. In September, Russia conducted its largest military exercise in recent history in an area that included the Arctic, the Far East, the Black Sea and Russia's border with Ukraine. The exercise involved tens of thousands of troops, along with warships, submarines, fighter jets, helicopters, tanks, artillery, anti-ship missiles, intercontinental ballistic missiles and swarms of drones.17

Another U.S. foe, Iran, says it has increased domestic weapons production 69 percent in the last three years. In January, it conducted its 10th ballistic missile test in two years, raising concerns that it had violated a 2015 agreement with the United States and other world powers to limit its nuclear program in exchange for relief from economic sanctions. According to military reports, 36 U.S. military bases overseas are within range of Iran's missiles.18

Joint Chiefs Chairman Dunford last year identified Russia, China, Iran and North Korea, along with Islamic extremism, as the country's top military threats.19

But none of those countries matches the United States in military might, analysts say. China, for example, is at low manpower levels, and troops have not faced sustained combat since the Vietnam War and are weak on training, coordination and logistics, according to the Congressional Research Service (CRS), the research arm of Congress.20

As the debate about U.S. military readiness continues, here are some of the questions that policymakers and defense experts are asking:

Is the U.S. military too small?

President Trump announced in January that he wanted to oversee “a great rebuilding” of the U.S. military, detailing plans for 540,000 Army troops, 350 Navy ships and a modernized nuclear arsenal.

Pentagon officials and congressional Republicans praised the proposal, although they said it could take years to rebuild the military to something close to Cold War levels, when the Army had more than 750,000 active-duty troops.

That number decreased to about 480,000 during the 1990s, rose after the 2001 terrorist attacks and dropped again beginning in 2011. The Army had 475,000 troops on active duty in fiscal 2016.21

As troop numbers have declined, however, their quality has improved, said Steven Kosiak, an adjunct senior fellow at the Center for a New American Security. Higher spending on military health care and veterans’ benefits has attracted more high-quality recruits as measured by “education, aptitude and level of experience,” he said.22

But demands on U.S. soldiers are increasing, which means troop strength also should increase, some defense experts say.

Since the end of the Cold War, “the range of potential conflicts we have to be ready for has grown exponentially,” says Todd Harrison, director of defense budget analysis at the Center for Strategic and International Studies, a Washington think tank that researches national security and other issues.

In addition to conducting counterterrorism operations, today's soldiers must be ready to fight “old-fashioned” conventional wars in places such as North Korea, while also preparing for a potential cyberwar, says James F. Cunningham, a former senior research associate at the American Enterprise Institute, a conservative think tank in Washington.

Yet keeping a full brigade trained and ready is difficult when troops constantly rotate out for home leave or are lost through attrition, Cunningham says. “What we have right now is not sufficient,” he says.

Dan Goure, senior vice president of the Lexington Institute, a conservative think tank in Virginia focused on national security and other issues, said today's military “is too small, with too few technological advantages and facing too many threats.”

“There is now a very real possibility that in a future conflict … U.S. forces could suffer such high casualties that regardless of the outcome, this country will lack the capabilities needed to deal with any other major contingency,” Goure said.23

#### The plan’s market wide approach solves---it changes the institutional and legal framework for evaluating mergers

Peter Carstensen et al 08, PROFESSOR OF LAW, UNIVERSITY OF WISCONSIN LAW SCHOOL, MADISON, SENATOR HERBERT H. KOHL (D-WI) WITNESSES PANEL I: DOUGLAS ROSS, SPECIAL COUNSEL FOR AGRICULTURE, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC; PETER CARSTENSEN, , WI.; PANEL II: WESLEY M. BATISTA, CEO, NORTH AMERICA, JBS SWIFT AND COMPANY, GREELEY, CO; STEVE HUNT, CEO, U.S. PREMIUM BEEF, KANSAS CITY, MO; BILL BULLARD, CEO, RANCHERS-CATTLEMEN ACTION LEGAL FUND, UNITED STOCKGROWERS OF AMERICA, BILLINGS, MT; DILLON M. FEUZ, PH.D., DEPARTMENT OF ECONOMICS, UTAH STATE UNIVERSITY, LOGAN, UT; MICHAEL STUMO, LEGAL COUNSEL, ORGANIZATION FOR COMPETITIVE MARKETS, LINCOLN, NE; DAVID BALTO, SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS “HEARING OF THE SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS OF THE SENATE JUDICIARY COMMITTEE; SUBJECT: CONCENTRATION IN AGRICULTURE AND AN EXAMINATION OF THE JBS SWIFT ACQUISITIONS”, 5-7-2008, govinfo.gov/content/pkg/CHRG-110shrg45064/html/CHRG-110shrg45064.htm, Lexis

MR. ROSS: –- but I would like to begin with a brief statement now.

The Department of Justice is committed to maintaining an active involvement in the agricultural sector and to protecting competition there through aggressive antitrust enforcement as warranted. The department takes very seriously the concerns expressed by agricultural producers about competitive problems. In antitrust analysis and enforcement, the department carefully considers market power issues both on the sell side, which is often seen as monopoly, and on the buy side described as monopsony.

The department hears and takes into account monopsony or buy-side market power as a particular concern in merger enforcement for agricultural producers who often sell their products to large agribusinesses. The department has brought a number of enforcement actions in the agricultural sector in recent years and has undertaken special outreach to the agricultural community. We have, for many years, regularly consulted the Department of Agriculture, to obtain the benefit of their expertise in our agricultural work.

The department's legal authority in this area is the antitrust law. Other agencies have other legal authority and agricultural policy is far bigger than antitrust. In our area of authority, we are constantly on the lookout for possible antitrust violations and will not hesitate to take appropriate enforcement action when warranted.

My statement demonstrates that we have been active in enforcing the antitrust laws in the agricultural sector, having filed several important cases to remedy anticompetitive effects that were likely to resolve from proposed mergers and acquisitions, and to stop collusive anticompetitive practices that adversely affected farmers and competition in this key sector of the economy.

I look forward to your questions about our work. Thank you.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you, Mr. Ross.

Mr. [Carstensen](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0).

MR. [CARSTENSEN](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Wow, he was able to get through that in only two-and-a-half minutes. No professor is going to be able to top that performance.

I am truly honored to be offered this opportunity to express my views on the state of antitrust enforcement in markets related to agriculture. I have a longer statement which I hope will be included in the record.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): We'll do it.

MR. [CARSTENSEN](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you. In a nutshell, the government agencies charged with enforcing antitrust law have repeatedly failed to challenge or to remedy competitive problems that confront American agriculture. Most conspicuous failures come in merger enforcement, where a series of decisions either not to challenge mergers or settle for weak, even anticompetitive remedies has resulted in increased concentration on both the input and the output side of agriculture.

What we have in for the American farmer has been caught in an economic vice. When they seek to buy various inputs they need, seed, fertilizer, equipment, herbicide, they face an increasingly concentrated market and exploitive strategies by producers. When they attempt to sell their products, especially I think in the dairy, meat, and grain areas, they have only a very limited number of buyers who use their buyer power to drive down the prices paid for these products.

What I'd like to do is to give you the highlights out of a few -- out of several of the lessons that I think, and example that I think highlight this point. I want to start with the concern that Senator Grassley expressed in particular about the pork industry. Doug Ross says on page 5 of his written statement that mergers that increase market power violate Section 7, and so I want to use the pork industry as an example where there has been a failure to do this.

Smithfield bought farmland in about 2002-2003 and has recently been allowed to buy premium standard brand. First lesson: Buyer power already exists. The RTI study of livestock markets done for GIPSA found that there was statistically significant buyer power in hogs in that period 2002 to 2005 that is during the period when the acquisition of farmland occurred.

But what is important is that the PSB merger, the acquisition of PSB necessarily increased buyer power to the detriment of farmers. Yet the Department of Justice raised no objection, ignored the empirical analysis, and in its statement justifying its failure to sue it made inaccurate factual statements.

The second lesson is a very important one, is that buyer power –- and this comes from the RTI study –- buyer power rises from much lower levels of concentration when measured by the HHI index number than one would find on the -- would expect to predict buyer -- seller power on the seller side of markets. That is, the concentration was in the 1,000 to a 1,300 level in this period when the RTI study found the existence of buyer power. It's an important lesson that has been totally ignored by our law enforcers.

As to milk, Mr. Ross' statement describes the theory of the settlement, none without litigation, no -- there is no consent decree, there's no opportunity to comment on this. The theory was when Suiza bought Dean, that there would be a divestiture and no exclusive dealings. Since then DFA, Dairy Farmers of America, has both become associated with both, the successor to the Dean-Suiza facilities, also gotten linked to Hood and has managed to get exclusive dealing contracts. There is -- and I think Senator Kohl referenced this in his comments, there's an ongoing Justice Department investigation of many years standing of a number of these bad business practices. Apparently nobody has informed Mr. Ross of all the problems that came out of this consent decree.

I've got some hostile comments about the Monsanto Delta Pine and Land settlement which again results, it seems to me, in some very unfortunate results. There are several other comments about that. I will not elaborate further on that. We know that the next panel is going to deal a lot more with the beef industry. But I want to emphasize and it's clear in Mr. Bullard's testimony that the Justice Department is known about of number of anticompetitive, apparently collusive or monopolistic practices in that industry for a number of years. They're well-documented and they've done nothing.

So the bottom line here is that we have a passive and inactive antitrust enforcement process that has resulted in increased concentration, harms to producers of agricultural products, and of course harms then to consumers.

What can Congress do, because you unfortunately can't bring the lawsuits, which I'd love to have you do? First I think, hearings like this do deliver a message to Mr. Ross, and I hope you're just going to take it back to the Justice Department. Secondly, I think your staff can do more to ask for confidential briefings on some of these decisions, yourselves attend those briefings so that you are better able to understand why they are not doing the things that they ought to be doing.

You could also get a GAO study of some of these key decisions in terms of what happened afterwards. Because I think if you look at pork, if you look at dairy, you look at some of these other industries you're going to see the actual harms.

Finally, you know, I actually -- Doug's my sparring partner. We've done these kinds of shows across the country. He's a dedicated civil servant, and he comes down here and he tries his best to justify what his masters are doing. The problem is he was brought in to be a more focused person ready to engage the issues of agriculture, to make sure that the Department of Justice actually understood things. And sadly, it is just clear that those who actually make the decisions haven't got the message.

Therefore, I think it is really time to change the institutional and legal framework for evaluating mergers and anticompetitive conduct in agricultural markets. I think the Grassley-Kohl bill, the Agricultural Competition Enhancement Act, S. 1759 is a really necessary step in that direction. I congratulate you Senator Kohl for being a sponsor of that legislation. It's a great contribution.

Farmers need workably competitive markets. They need a kind of antitrust enforcement that will control both the structure of those markets and the conduct that is allowed to occur.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you, Professor [Carstensen](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0).

Mr. Ross, we often hear from farmers and ranchers that they have little bargaining power in comparison to the largest agribusiness conglomerates. Many of them claim that the Justice Department has not fulfilled its responsibility to prevent anticompetitive mergers and practices in the agriculture sector of the economy.

Do you believe that the farmers' concerns about increasing levels of consolidation among agribusiness firms are warranted, and if so why has the Justice Department permitted these consolidations to take place?

MR. ROSS: Senator, we hear the same concerns about market power and we take them very seriously. In fact, they have been important parts of each of the investigations that we have done. And I point, for example, to the Cargill-Continental matter in which the issue of market power was the key one.

We did an analysis and established that in nine regional markets, the buyer power of the merged firm would be anticompetitive. As a result, our relief required that 10 divestitures of port and grain elevators be done in order to preserve competitive alternatives for farmers to sell their grain and soybean.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Well, Professor, what is your view of what you've just heard. Are the farmers and ranchers concerns warranted, and in your opinion has the Justice Department done enough to stop these consolidations especially among food processors?

MR. [CARSTENSEN](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): I think the concerns are very much warranted, and as I referenced, that RTI study in the pork industry which is the most recent confirmation that we have very serious problems of buyer power that are being increased. And if you go back and look at the Justice Department's explanation for why they didn't object to the Smithfield Premium Standard Brand merger, they announced that finished hogs could be hauled 400 miles from North Carolina to Kentucky for processing, and that therefore the farmers of North Carolina were at no risk of being exploited. This is in the face of data that shows that they're at about a 10 percent discount in North Carolina whenever there is a full supply of hogs in the markets, because it's costly to haul your hogs anywhere.

So –- and I think the Continental-Cargill is another example of minimalist enforcement. It was a clearly bad merger. They did the least that they possibly could do. We've not seen a good follow-up on what the consequences of that merger are.

Anecdotally when I talked to grain farmers, what I hear is we went from having two or possibly three buyers to at most two buyers and in many more areas we're seeing only one buyer for our corn, for our soybeans et cetera. This is one of the things that's made ethanol really interesting because those plants do create a different kind of competition right now in corn markets. It doesn't do much for soybeans, doesn't do much for wheat. But it does change the dynamic because there are competitive buyers in the marketplace.

So we really need more focus on this. And again, something I said earlier, the analysis of buyer power is different. Buyers are different from sellers in terms of when they get leverage in the market, what kinds of market shares give you leverage. As a buyer, you are the decider. You're the decision maker with respect to whether or not you buy. That creates power at much lower levels of concentration. We simply have not seen from the Justice Department any recognition of that inherent economic fact.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Professor Carstensen, at this time as you know, millions of consumers all across the United States are suffering from rising food prices in many basic commodities. Do you believe that increasing concentration that we are witnessing in agriculture is a big cause of the higher food prices paid by a consumer? And if that is true, do these higher prices find their way back into the farmers' and ranchers' hands?

MR. CARSTENSEN: The first part is, yes, the concentration has two levels. It has an effect downstream or I should say upstream on the farmers. And it has an effect down stream on the consumers. That is, both ends of this process are subject to exploitation by lower prices to farmers, higher prices to consumers. Best documentation of that comes from Professor Cotterel (ph) in a hearing, I think before this committee a few years involving New England dairy products.

And again, Mr. Bullard's written statement for the committee has a number of -- has a good deal of the documentation that shows that increasing spread between what's being paid at the farm-gate, which is constant or declining, and what's being charged to consumers. So what we are seeing is no, it's not coming back to the farm-gate, it's not coming back to the farmer, but the price to the consumer is going up, it's getting caught in those two levels of concentration.

One of the things I emphasize in my written statement is concentration of retail grocery markets, which is really where you get the leverage over the consumer, and then concentration at the production level.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you.

Mr. Ross, what is your view? Does reduced competition among agribusiness companies inevitably will lead to higher prices and isn't strong antitrust enforcement very important to prevent such loss of competition?

MR. ROSS: Senator, the antitrust laws couldn't be more important to protecting consumer prices and effective competition leads to all kinds of benefits like better quality of products, greater innovation, and the ability of farmers as consumers as well as producers to benefit from a competitive economy.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you.

Senator Hatch.

SEN. HATCH: Well, thank you, Mr. Chairman. And Professor Carstensen, you have written, quote "Strategic behavior by market dominating firms as weakened or eliminated the open market process that in turn give agricultural producers the freedom of flexibility to be the genuinely independent entrepreneurs," Unquote.

Now some think that may be nostalgia for a bygone era. Has not the Department of Justice merely been fulfilling its mandate by only taking actions when it believes that a competitive market happens to be in jeopardy? Or put another way, are you not advocating the department become a regulator ensuring survival of small producers when the department's responsibilities under the law will be to ensure competitive markets, not the competitors themselves.

MR. CARSTENSEN: My father was a historian of agriculture so I -- maybe I've got some residual nostalgic genes.

No, I -- let's be clear about this. Markets are going to change, what's an efficient level of production is going to change. But the benefit of workably competitive markets is those changes are driven by economic fundamentals not by strategic behavior. What I was concerned with in the passage you quoted was the kinds of strategic behavior that adversely affects the functioning of the market and favor some players in the market not based on their inherent efficiencies.

The most recent USDA studies, for example, in pork, show that small pork producers relatively –- hog producers, I guess I should say –- have the same level of efficiency that very large ones do. The problem is going to be market access, finding fair rules. And if we're going to go to a contract world, and I'm not opposed to that necessarily, if contracts are what we do then we need proper rules for the contract market so that again it's fair, open, and efficient. And "efficient" is key here because we do want to have those markets be dynamic to change with the changing technology.

SEN. HATCH: Now, on a related point, you wrote a law review article entitled "Concentration and the Destruction of Competition in Agricultural markets: The Case for Change in Public Policy." And this article was described by the National Agricultural Law Center. It's arguing in favor of using antitrust law to protect independent farmers.

Now, there has been a tremendous amount of consolidation in the livestock markets. However, according to the Congressional Research Service, ranchers and farmers still hold fewer than the 100 cows still -- the ranchers and farmers that hold fewer than 100 cows still control half of the market.

Now, the top 30 feedlots only control 40 percent of the cattle on feed. In fact the USDA believes that there are more than 88,000 lower-capacity feedlots in operation today. Now, my question would be, why should the government interfere in a marketplace where half of the cow-calf businesses appear to be held by smaller farms, and there is more than an ample number of smaller feedlots?

MR. CARSTENSEN: Well, if we were talking about a merger among feedlots, I'd agree with you. I don't see an antitrust issue there. But we're talking about mergers among the buyers from those feedlots that are going to reduce the numbers from five to three and are going to create, I think, and certainly this is consistent with all the other data that we have, going to create substantially more buyer power.

As the next panel is going to focus I think much more on the specifics of the beef industry, the problem is access to the fodder facility. The problem is the terms and conditions under which those feedlots get to sell. We've seen a cyclical long-term decline in the number of feedlots that exist and in the number of cattle that are being put on feed, and what that tells us generally is that we're looking at the kind of situation that looks a lot like there's exploitation of monopsony power or oligopsony power, that is buyer power, on these downstream --I'm sorry -- upstream suppliers.

One of the important points that your data makes fundamentally is that if you're going to be a 100-head feeder or a 10,000-head feeder, looks like you can compete in the market as long as you have access to the meat processors, to the cattle slaughter facilities. What we're focused on here today is a merger at that buying level. That's the place where the problem will exist for all of the different feeders that you're identifying.

SEN. HATCH: Okay. And Mr. Ross, just have some questions to you. During the previous administration Cargill acquired Continental in the already concentrated grain trader market. Specifically, the number of grain traders was reduced from four to three. However, the Department of Justice insisted that the combined Cargill-Continental sell 10 percent of its operations to a competitor. Why then in 2003 did the Department of Justice decline to take action on the Smithfield-purchased Farmland Food's pork processing plants? Was this also not a highly concentrated market? And why the difference in enforcement action, just so we understand better?

MR. CARSTENSEN: Thank you, Senator. We welcome opportunities to be more transparent about the bases on which we decide to enforce or not, where appropriate.

In the Cargill matter, we did extensive analysis of the market including talking to many experts in the area including farmers, and our analysis showed that there would be the kind of any competitive consequences, that is a substantial lessening of competition in a market in nine regional markets and therefore we required relief of the sort that we have described.

By contrast, in the pork matter involving Smithfield farmland, we did a similar kind of analysis and the fact showed a different result. We looked at the procurement areas for each of Farmland's plants and how many packers would buy hogs in the same procurement areas and the slaughter capacity of each of the competing packers.

Our conclusion was that neither Smithfield nor Cargill, which you will recall was one of the potential buyers there, would make as much as 30 percent of the live hog purchases if it had acquired Farmland's assets. And our conclusion was that there would still be at least six competing packers where the acquirer had competing plants. So we thought that was a basis on which not to take action because there was no anticompetitive result.

SEN. HATCH: Thank you, Mr. Chairman. My time is up.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you, Senator Hatch.

I'd like to say that we are going to –- as a result of our concern about these mergers and their impact on higher food prices, we are asking the GAO to make a study to look at whether or not there really is a correlation between these two critical factors.

Professor Carstensen, Senator Grassley, and I have written a bill that would shift the burden of proof so that merging parties and agricultural mergers have to justify that their mergers do not harm competition rather than the other way round which is as it is now. Do you support this idea, and if you do tell us why?

MR. CARSTENSEN: I think it's a very good idea because it really requires not just the vague waving of hands in the Justice Department office saying that there are going to be no harms, but actual proof in a court of law where the defendant merging parties have to come in and genuinely justify the non-anticompetitive implication of the merger.

And especially as the court decisions have accumulated of late, courts have really been putting an extraordinary burden on the Justice Department, the Federal Trade Commission, to establish that any particular merger will tomorrow result in serious harm. The statute actually only calls for evidence that the merger may substantially lessen competition or tend to create a monopoly, so that this restores in many respects the classic statement of what the standard should be, and I think it's a wonderful idea.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Mr. Ross, I assume you agree. (Laughs.)

MR. ROSS: Senator, surprisingly enough, Professor Carstensen has also referred to me as his punching bag and here again we will disagree. (Laughs.) The Antitrust Division is satisfied that the burden of proof in all merger enforcement actions should be the same, whether for agriculture or any other part of the economy that it works effectively and I'm aware of no case in which we wouldn't decline to take a case to court because of the burden of proof.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you.

Senator Feingold?

SEN. RUSSELL D. FEINGOLD (D-WI): Thank you, Mr. Chairman. Before I get to my statement and questions let me specifically welcome Professor Carstensen. I've known him and been friends for many years with him and his wife Carol (ph) who was a distinguished and long- serving school board member in Madison.

MR. CARSTENSEN: Just finished.

SEN. FEINGOLD: I'm aware of that.

MR. CARSTENSEN: After 18 years.

SEN. FEINGOLD: I read the paper that comes to my door there -- (laughs) -- and she did a wonderful job. It's good to see you and I thank you for all -- you and all the other witnesses –- for appearing this afternoon.

Mr. Chairman, thank you for holding the hearing to shed light on an important issue for farmers and consumers.

Before I talk about agriculture specifically, I want to note the overall troubling state of concentration across multiple sectors of the economy.

Over the past few years consolidation and related competition concerns have increased a variety -- in a variety of areas including freight, railroads, food retailers, and radio stations, just to mention a few. Just two weeks ago the same subcommittee chaired by my distinguished colleague from Wisconsin considered proposed mega- mergers among airlines and now we are turning to a merger that would reduce the number of major beef meat packers from five to three. This growing concentration rates is today's question about the Department of Justice's enforcement of existing laws as well as the adequacy of those laws to ensure fair, open, and equitable markets.

Increased consolidation and market concentration are serious problems for agricultural producers throughout the nation. As I travel around our state of Wisconsin, as the chairman knows, these issues are consistently raised by farmers and growers with respect to the proposed [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)acquisition that is important to my constituents that the facilities in Wisconsin remain operational and there's no loss of jobs. I also have various concerns, serious concerns, that the combination of the third, fourth and fifth largest beef meat packers will significantly reduce the number of potential cattle buyers, and as a result depress prices.

Wisconsin is not the leader in beef cattle production. The prices for these animals form the basis for the prices paid for cull dairy cows, and could therefore have a significant impact on the bottom line of thousands of Wisconsin's family dairy farmers.

Exacerbating this horizontal concern is the significant vertical integration that the post-merger company would enjoy from the major cattle feeding operation of Five Rivers Ranch Cattle Feeding. Both the prepared testimony of Mr. Stumo and Mr. Bullard highlight how this captive supply will negatively impact competition prices paid to farmers and ranchers.

Earlier this year, I signed a letter with several of my colleagues expressing some of these concerns to the attorney general. Mr. Chairman, I would ask unanimous consent that that be included in the record.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): It will be done.

SEN. FEINGOLD: Mr. Chairman, I hope that the Justice Department will get serious of our protecting consumers and agricultural producers from increased consolidation and market concentration.

Mr. Ross, in Professor Carstensen's written testimony he says, quote, "The Antitrust Division has an open investigation of the conduct of the milk industry. But the matter has been pending for years without any action." Unquote. The statement goes on to describe the industry as rife with a panoply of anticompetitive practices that have resulted in serious losses of income and coercion of farmers.

And I have heard similar frustration directly from dairy farmers and others in the dairy industry in Wisconsin. What do you have to say with regard to the status of the investigation, and Professor Carstensen's observation?

MR. ROSS: Senator, we take concerns about the dairy industry as well as any other part of the important agriculture economy very seriously. Without confirming or denying a particular investigation which should be inappropriate, we continue to monitor any anticompetitive practices that are brought to our attention and we do an extensive analysis to determine whether an antitrust enforcement action is appropriate.

As my statement indicates, we have been active in the dairy industry involving the Suiza-Dean merger and other dairy areas. So we continue to have active knowledge and monitoring of the important sector in agriculture that involves a key industry in your state.

SEN. FEINGOLD: I look forward to following on that, Mr. Ross. Also, Professor Carstensen described the controls that DOJ placed on the Dean-Suiza merger as ineffective, specifically as written testimony says -- quote -- "In addition, the press release announcing approval implied that the new firm would not enter into a long-term exclusive dealing contract with dairy farmers of America, the largest cooperative. However, Dean and DFA quickly found a way around that commitment." Unquote. Could you shed some light on that, on the merger commitment? Did the Antitrust Division err in not making the provision broader to include partnerships and joint ventures in that prohibition?

MR. ROSS: Senator, our analysis was a careful and thorough one, and the remedy we devised before allowing that merger to go forward was one that was based on extensive analysis of the market conditions on the ground. If there are concerns about what has happened subsequently, we welcome anybody bringing that to our attention and we will examine it very seriously.

SEN. FEINGOLD: Well, it does sound like a potentially troubling oversight to me.

Professor, do you have anything to add on that?

MR. CARSTENSEN: (Laughs.) The investigation was completed. The staff recommended that there be litigation. It has been sitting, at least according to the information I have, in the assistant attorney general's office for more than a year.

The key regional attorney, I believe, has now reached retirement and retired. And the government -- this alleged complaint –- that was never a complaint in Dean-Suiza; it was what's called a "fix-it- first." They bargained for about nine months about the divestiture. More divestiture was made than originally proposed. It was settled with whatever confidential documents were exchanged between the parties.

Since there was no consent decree, there was no Tunney Act disclosure requirement, no opportunity for anybody to comment on this. And then all kinds of problems began to emerge for the dairy world because the -- of this relationship not only with Dean, new Dean, but also NDH, National Dairy Holdings that was owned in substantial part by DFA and then it gets linked to Hood. So you've got one, two, and three all tied together.

One credit to the Justice Department. They did go after a small dairy acquisition –- and it's in Mr. Ross' statement –- in Kentucky, that DFA attempted to pull off and one of the good things about that particular piece of litigation, because they actually went to trial on that, was that it did bring to light a good deal of the dubious transactions, the discriminatory transactions within the DFA empire. But for the Justice Department to claim that they're monitoring the situation is to say that they're doing nothing.

SEN. FEINGOLD: And in it -- although Mr. Ross indicated willingness to be open to any sort of things that have happened since, it sounds to me like this could have been prevented in the first place by proper drafting. Is that a correct statement?

MR. CARSTENSEN: If they had gone the consent decree route, yes, they could have drafted that. The state attorneys general are involved in these investigations. The Justice Department is the party that hasn't been heard from.

SEN. FEINGOLD: Chairman, may I ask one more question?

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Go ahead.

SEN. FEINGOLD: Thank you very much for the additional time. As the Chairman knows and I am grateful for his support, I have worked with Senator Grassley for a number of years on legislation called the Fair Contracts for Growers Act that would make mandatory arbitration clauses and agricultural contracts unenforceable.

Now, the Judiciary Committee passed this bipartisan bill early in this Congress by a wide margin and the farm bill seems poised to at least take a step in the right direction by requiring that growers be given a specific option to opt in or out of any mandatory arbitration clause.

But the government needs to make sure that this provision has some teeth and I'll explain why by asking our witnesses to put themselves in the work boots of a poultry grower.

So first off you've taken out a loan for several hundred thousand dollars to build poultry houses.

There's only one poultry company contracting with growers in your region and they supply you with chicks and feed and determine your payment based on the weight gain and condition of the animals at the end of each approximately seven-week flock-to-flock contract.

Your most recent contract has a new clause that commits you to mandatory binding arbitration, with arbitration of procedures dictated by the company. As required by the new farm bill language you were told you have a choice whether to opt in or opt out of this provision. You've seen some information about large upfront fees required for arbitration and don't think you have enough cash to cover them if a dispute arises. So you want to decline the arbitration clause knowing that you may have a chance to go to the arbitration if a dispute arises and the company still wants to arbitrate after the fact.

Well, what if one of your neighbors opted out earlier in the year and he has since been plummeting down the grower ranking for weight gain or is being threatened with termination as a bad, quote, "bad producer" unquote. Does that make you think twice before opting out?

Seem like law school here?

MR. CARSTENSEN: (Laughs.) Yes, yes and I'm on the wrong side of the table, suddenly.

SEN. FEINGOLD: For once -- (laughs.)

MR. CARSTENSEN: Yeah, yeah. That's -- I mean that must be the –- an enormous problem with an opt-in/opt-out legislation of this sort. It - you know I am -- arbitration, when agreed to by the parties at the time of dispute is fine. It can be actually a very efficient dispute resolution mechanism when it is imposed on parties, and especially when there is unequal bargaining power as in the poultry example that you have and that's a very real world example. Opt in, opt out, do you want to continue to be my poultry raiser, you know, in which case you're going to opt for whatever I want you to opt for, because I'm -- I as the contractor, I'm going to have the power.

So it's such a theoretically interesting step if you imagined equal bargaining power, but in the real-world terms it really doesn't solve the problem.

SEN. FEINGOLD: Mr. Ross, do you want to comment on that?

MR. ROSS: Certainly, Senator, this sounds like a provision in which there may be disagreement among farmers over whether they like it or they don't like it. Some may and some may not. In any event contract provisions really fall outside the purview of antitrust enforcement action except when they are a part of a larger analysis in a merger context.

SEN. FEINGOLD: All right. And thank you for the additional time, Mr. Chairman.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you very much, Senator Feingold. And gentlemen, we appreciate you being here today. You have brought to light many of the important issues that we're discussing and studying and thanks for coming.

(New panel introduced.)

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): We'll turn now to the second panel.

Our first witness on the second panel will be Wesley Batista. Mr. Batista is the president and the CEO of [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)and Company. Prior to becoming CEO of [JBS Swift,](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)Mr. Batista was the chief operating officer of JBS' beef operations in Brazil and in Argentina.

Our next witness will be Steve Hunt. Mr. Hunt is the CEO and cofounder of U.S. Premium Beef and chairman of the board of National Beef Packing Company. Prior to his involvement with the U.S. Premium Beef, Mr. Hunt worked in various areas of commercial banking including direct agricultural lending and credit training.

Our next witness will be Bill Bullard. Mr. Bullard is the CEO of the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America or R-CALF USA. Prior to joining R-CALF USA, Mr. Bullard served as the executive director of the South Dakota Public Utilities Commission. He's also a former cow and a calf rancher.

Our next witness will be Dillon Feuz. Professor Feuz teaches agricultural economics at Utah State University. His primary research interests are livestock marketing as well as farm and ranch marketing -- management.

Next, we'll have Michael Stumo. Mr. Stumo serves as the general counsel for the Organization of Competitive Markets which is a nonprofit research and advocacy organization with a focus on competition issues in agriculture.

And finally, we'll have David Balto. Mr. Balto's a senior fellow at the Center for American Progress where he focuses on competition policy, intellectual property laws as well as health care. He has also worked as an antitrust attorney at the Antitrust Division of the Department of Justice, Federal Trade Commission, as well as in the private sector. We appreciate all of you being here today.

If you will rise and raise your right hand?

(Witnesses sworn in.)

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Mr. Batista, we will start with you.

MR. BATISTA: Mr. Chairman and other members of the committee, thank you for the opportunity to introduce [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)to the Committee and to discuss our commitment to invest in America's meatpacking industry.

I am the CEO of [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)and want to share with you today, JBS' vision. Our goal through this transaction is to invest our skills, energy and expertise and money to grow the U.S. (meat pack?) industry. We want to expand U.S. sales of beef and pork domestically and around the world. In the process, we will keep and create U.S. jobs.

We are operators of beef, pork, and lamb processing plants, not financial investors. My father started our business in 1955 when he slaughtered just one or two animals per day to supply restaurants in the new capital city of Brasilia. We are still a family business. JBS now has global operation that we plan to use as a platform to expand the sales of U.S. beef and pork around the world.

Our history is clear. When we acquired Swift last year, we expanded operations, we added shifts -- additional shifts, we hired more employees, we improved operation, and we bought more cattle. With respect to the Smithfield and National facilities, we will do the same – buy more animals, expand operation, and hire more workers.

That's what we are doing right now. We will continue to compete aggressively for the purchase of cattle and the sales of beef by all available commercial means, and we will increase our demands and sales over time. This will benefit ranchers and feedlots.

We will keep plants open, make them more efficient, and expand sales of U.S. beef. We also look forward to hiring more workers consistent with changes in U.S. immigration law. We view the U.S. labor force as a great resource.

A couple of questions have been raised that we would like to address. The first is our relationship with producers. We will continue to work with producers as we always have. I have had meetings with employees, cattle producers, and community leaders in Kansas, Colorado, Texas, and we feel -- and feel we are being embraced. I will continue to do this.

There is one major region in the nation which contains the vast majority of all the major slaughtering plants for steers and heifers. That region is the beef belt. It includes North Texas, Colorado -- not North Texas I'm sorry, Oklahoma, Iowa, Kansas, Nebraska, and Eastern Colorado. None of the Smithfield plants are in the beef belt. Most of the Smithfield plants handle primarily Holstein steers and cows.

Regarding the crucial beef belt, after this merger, JBS, Cargill, Tyson, and the regional and local plants will continue to compete intensively for the purchase of cattle.

With cattle moving on trucks, there will be many competing plants wanting to buy animals in the beef belt.

In terms of consumer price, beef products are sold throughout the nation by numerous competitors of all size. [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)sells primarily, commodity beef and some case-ready beef and pork. In contrast, National Beef sells very successful branded beef products, and we plan to expand those operations. Swift and National will continue to sell into different and competitive national markets. In fact, when selling to large national retailers, there will be intensive competition among national, regional and local players.

I want to end with one final point. The JBS history in the U.S. is before you. Swift was floundering, had reduced its work force shutting down shifts, and sold plants before JBS purchased Swift. Then, after we bought Swift, we expanded operation, added additional shifts and hired more workers. We kept local managers.

We are investing billions of our company's money in the United States with a goal to grow the industry, to hire more U.S. workers, and increase demand for U.S. beef and pork around the world. We are fully cooperating with the Department of Justice review and hope that the review can conclude as swiftly as possible so that we can implement our growth strategy on beef and pork.

We appreciate this opportunity to tell our story before this committee and looking forward to answering your questions.

On a personal note, my family and I greatly enjoy living in America, in our home in Fort Collins. This is a great country.

Mr. Chairman, thank you very much.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you Mr. Batista.

Mr. Hunt.

MR. HUNT: Chairman Kohl, I appreciate this opportunity to come before you today to talk about JBS' proposed transaction to carve National Beef from U.S. Premium Beef.

I'm the CEO of U.S. Premium Beef and the chairman of National Beef, but most importantly, I'm a fifth generation cattle producer. I speak to you today on behalf of U.S. Premium Beef owners and independent producers, which on March 14th overwhelmingly voted to favor proceeding with this transaction. They believe the livelihood of all cattle producers is dependant upon health and growth of the beef industry and that's why we agree with JBS' vision.

U.S. Premium Beef is a one-of-kind producer-owned beef processing company, formed to link producers with consumers through ownership of processing. As a result, we've been able to design a supply of cattle specifically bred and managed to meet consumer preferences, which results in premiums back to the producers and the processing company.

U.S. Premium Beef was formed in 1997. In addition to processing customer cattle throughout the United States, we have processed over six million cattle of U.S. Premium Beef members. In addition to that we have paid out over $117 million in cash premiums to our members since we began. We've also paid an additional $87 million in cash dividends. That was the result of our ownership in processing.

In other words, our producer owners have become beef processors through U.S. Premium Beef. We have been able to realize the financial rewards from the ranch to the consumer's plate. Simply put, through value-based pricing our company gives producers economic incentive to deliver more valuable consumer-preferred beef.

Since our formation, we have been working to diversify our business geographically through expansion, acquisition of other protein businesses, and pursuit of businesses in markets outside the United States. This has been essential in managing risks our owners take in ownership of processing. This is a strategy that our producers pursue on the ranch and other producers and other businesses pursue as well.

Since the discovery of BSE in the United States in 2003 and a subsequent loss of the export market, losses and prospects of the declining herd have left the beef industry in a position where few want to invest. In 2006, Hicks Muse announced that they were selling Swift. Smithfield Foods has also made the decision to exit the beef processing industry.

Whereas prior to 2003, our company was routinely approached by willing investors and partners, today we witness very few, if any, parties willing to invest in the U.S. beef processing industry, except one.

JBS, a family owned business based in Sao Paolo, Brazil –- you've just heard from Wesley Batista –- with U.S. headquarters in Greeley, Colorado, is willing to invest over $3 billion dollars in our U.S. meat processing industry. They believe that by putting our companies together, we can create more value and increase efficiencies not only necessary to sustain our industry, but to begin growing it again.

More importantly, JBS has the same vision for industry growth and success as we do. Since acquiring Swift last year, JBS has expanded production and purchased more cattle. They also have looked for ways to expand demand for U.S. beef by pushing into new international markets. They're able to use their unique perspective to introduce U.S. beef to foreign companies and new customers.

For U.S. Premium Beef, this partnership with JBS is a natural decision that enables our producer owners to broaden our investment into a well-diversified, multi-protein world leader in value-added products while at the same time we're able to maintain our founding principles of value-based pricing and dissemination of valuable carcass data to every single producer on every single animal.

JBS respects what we have accomplished at U.S. Premium Beef/National Beef, and wants to build upon value-added strategy to help bring more value to producers so we can begin expanding production once again. After completion of our proposed transaction with JBS, more producers will have the ability to market through our unique producer-owned company by delivering cattle to more plants, thus reducing freight costs and improving efficiencies for producers and the processing company. Our confidence in JBS' dedication to expanding demand for U.S. beef through this strategy is exemplified -- is a strategy that is exemplified by U.S. Premium Beef's agreement to become a substantial investor in JBS.

The farmer and rancher owners of U.S. Premium Beef have a right and an obligation to pursue sound business strategies employed by our competitors, recommended by universities and applauded by Congress. These include value-added strategies through vertical integration from the bottom up, product diversification to lay off risk and foreign investment to participate in a growing consumer global market.

As you know, the Department of Justice is reviewing the proposed transaction. I am confident its review will be thorough and when complete will lead to and will recognize the benefits of this transaction.

The beef processing industry is highly competitive, with Cargill, Tyson, JBS and a number of other processors remaining to compete fiercely for cattle and to sell beef to our sophisticated customer base. This transaction will enhance this competition by allowing the combined company to perform more efficiently and provide a platform for growth in the future.

Mr. Chairman, thank you for this opportunity, and I look forward to answering questions later.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you Mr. Hunt.

Mr. Bullard.

MR. BULLARD: Mr. Chairman, thank you for this opportunity.

I represent the thousands of men and women who own and operate cattle operations all across this country. As the CEO of R-CALF USA our organization endeavors to ensure that our independent cattle producers can remain profitable long into the future.

I want to describe our industry to you. United States cattle industry is the single largest segment of American agriculture.

It produces $50 billion annually, 11 states produce over a $1 billion a year. This industry is intrinsically important to the overall prosperity of rural America. It's important that the subcommittee realize that while the four major packers do control the steer and heifer market, that steer and heifer market represents only 27 million of the 45 million cattle that are sold every year.

Our U.S. cattle industry is a dynamic industry and in that industry we have various value-added segments. So while we have 45 million cattle sold every year, 27 million are sold into this highly concentrated marketing structure consisting of just four firms. And it is at this segment of the industry that –- which serves as the portal to actually cause harm throughout the industry if there's any price distortion that occurs within that segment.

Our industry can be viewed as a pyramid. At the base of the pyramid you have the seed stock producers, the breeders. The breeders sell breeding animals to the cow-calf producers. The cow-calf producers produce a new calf every year. They'll keep that calf for four to six months. That calf is then sold to a backgrounder. A backgrounder will grow that animal to what might be called its adolescent years. The backgrounder could then sell that animal to a stocker. The stocker would run that animal for about four months. So it takes about 18 months from the time that an animal is birthed until it's actually sold in the steer and heifer market to one of these four (animals?).

Our industry in this pyramid, those segments that I described, the breeder, the cow-calf producer, the stocker, the feeder, we have about 970,000 of them left in the United States. And as you move up this pyramid you get closer to the feeding sector, there's about 93,000 feeders left in the United States. But that industry is becoming increasingly consolidated as well, because there's now fewer than 2,500 feeders that actually sell approximately 23 million cattle to these four meat packers.

So what I've described is an industry, a dynamic industry that is intrinsically important to the prosperity of rural America, that's valuable in every state of the union. But this industry has the price-making segment at the top of the pyramid, and any distortion in that price will reverberate all the way down through the industry.

A 3 percent reduction in price, for example, which is about what they found in terms of detrimental impacts of further concentrations in this industry, a 3 percent impact would reduce that $50 billion annual revenue generations down to $1.5 billion, a loss of $1.5 billion. This would be damaging to the 970,000 independent producers as well as damaging to the rural communities that they support.

This industry has been besieged by market power for quite some time. And we have ample evidence to demonstrate this and I've provided that in my written testimony. For example we've lost 40 percent of our producers just since 1980. We had 1.6 million cattle producers in 1980; we're down to about 975,000 today.

Our size of the U.S. cattle herd has been reducing for many, many, years. We have decreased the size of the herd today to where it was about back in 1950s. And while we have reduced the size of our production capacity by reducing our herd size, we have also been experiencing a disruption of the historical cattle cycle. That cattle cycle has provided a bellweather indicator of the competitiveness of this industry. And recently, USDA acknowledged that the analogous hog industry that is also experiencing a loss in its hog cycle, that loss is attributed to a changing market structure, a market structure that is evident by further consolidation in concentration.

I want to leave you with this: Our industry is in a state of emergency right now. We continue to experience contraction. This merger is going to exacerbate the current contraction of this industry, and like the hog industry as already described –- we had 667,000 producers in the '80s down to 67,000 today; you lost 90 percent of all the producers in that industry –- we're going to see the same thing in the cattle industry unless the Department of Justice and unless the U.S. Senate and the U.S. House take specific action to reverse the pressing course. Because like Congress was unaware of the tremendous exodus of hog producers, we will -- you will be unaware of the exodus of cattle producers, because it will happen one cattle operation at a time, in one rural community at a time until we wake up one morning and see we've lost the critical mass within this industry to maintain a viable market.

Thank you.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you, Mr. Bullard.

Mr. Feuz -- Dr. Feuz.

MR. FEUZ: Thank you Senator Kohl for the opportunity to speak to the committee --

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): I don't think your mike is on.

MR. FEUZ: Thank you Senator Kohl.

I want to begin my comments by just reiterating the change that has taken place in the packing industry over the last 20 years, when you look at the major players, Tyson who acquired IBP, Smithfield who acquired Moyer Packing, and Packerland; ConAgra who was a major player in 1987, exited the industry in 2002, and most recently Swift who went out with the JBS acquisition of those.

I point that out to -- as a fact that this is not a static industry but one where firms continue to enter and exit the industry. From a pure economic point of view I would have much greater concern about the level of concentration in market power if I did not see firms entering and exiting the industry.

Secondly, I point out that there are likely as not excessive profits being generated in this industry due to the level of concentration, or you would likely see the players that are there remaining in that industry to capture those excessive profits. Certainly, I don't think if IBP were strong enough, they would have allowed Tyson to acquire them. Nor would have ConAgra, a major agribusiness firm that continues to be involved in agriculture, divested themselves of both cattle feeding and beef packing had they been earning excessive profits due to concentration.

As I look specifically at this merger, I see three potential benefits. First of all, as [JBS Swift](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0)has noted, they bring outside capital and new ideas into an industry, that's probably needing both. As you look at the packing industry of the last couple of years, margins have been very small in that industry. And certainly some of the existing players are probably in a financial condition that they would not be able to continue operations without an additional capital. Perhaps even more important is the addition of some new ideas, particularly I think in the export market area where JBS Company has shown a history of being very aggressive in the world export markets. And I think that they can bring that level of expertise to the U.S. and increase our exports, particularly into some markets where we have previously not had access.

Another benefit I think has been highlighted somewhat by Mr. Hunt from U.S. Premium Beef. They have had one of the premier pricing grids for fed cattle, particularly upper-quality fed cattle that has been in the industry, that has allowed independent producers to receive a premium if they were producing a higher-quality animal.

Unfortunately, in the present situation, transportation has restricted the producers that could really benefit from that, because all those cattle had to be slaughtered, basically in Western Nebraska's two national plants. With this merger, that will become much more geographically dispersed into the Northeast, the Western markets as well as throughout Iowa, Nebraska, Kansas, and Texas, as there's greater plants that would have that grid available.

And lastly, I think on the market-power issue alone, perhaps three strong players competing for a limited supply of cattle would be more aggressive in the market place than what I view as currently two strong majors and one weak major within two regional competitors, one of which itself was probably in some financial difficulty. As I talked with the one feedlot operator in Utah, he mentioned to me that perhaps one strong player in the market would be better than a weak or no player.

On a couple of cautionary notes, certainly, the loss of a bidder in a market place is a concern. Going from four major players to three in the primary cattle feeding area will be of concern. However, if the plants stay open you'll still have the same competition for the number of cattle.

Perhaps of greater concern would be in the cow/calf and dairy market in the Southwest where you may be going from two independent firms, Smithfield and National to one in those areas. That could be a concern.

Lastly, I want to close –- I've heard several comments today about a concern for the overall food price level and what this merger may do, and I would suggest that if the Senate is concerned about the price of food, it would be much more advantageous to look at what I view as a ill-advised corn ethanol policy that is doing far more damage than the livestock industry, and will continue for the next few years than what this merger or others would do in that industry.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): Thank you, Dr. Feuz. Stumo.

MR. STUMO: Thank you, Senator Kohl. I would ask that my written comments be submitted in the records, please.

[SEN. KOHL](https://advance.lexis.com/document/?pdmfid=1519360&crid=b23b8151-6dd7-4bd9-a94e-c025c1c31293&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4SGH-1HG0-TWK7-H0KX-00000-00&pdcontentcomponentid=8104&pdteaserkey=sr0&pditab=allpods&ecomp=wbxnk&earg=sr0&prid=b1a756dc-6c07-4f18-8e9b-67d2a8da90f0): It will be done.

MR. STUMO: The organization for competitive markets is -- has members including feeders, large, medium, and small, across the spectrum. They're not here speaking today because they're afraid.

They're afraid of retaliation in the marketplace, if they say that their fears about the lack of competition when the packer/buyers discipline them every week, and every day in the market.

When my members speak to DOJ, they insist on confidentiality agreements, so nobody will find out, so they won't lose yet another buyer.

They insist on it. They wish competition -- they appreciate the packers, they appreciate Tyson, Cargill, Swift, National and Smithfield, all of them, but they do not appreciate the chokehold on market access that public policy and the packers have combined to create.

That chokehold is choking off the number of open, negotiated market shackle space in these plants that is available for these sellers and feedlots to sell into.

When you exert market power, you want to grab the bottleneck. In the oil market, in the oil merger of BP-Amoco, Cushing, Oklahoma was the bottleneck pipeline where price was set, and that's where you wanted to have your hands wrapped around.

Here you want to have your hands wrapped around rationing shackle space. There is the Great Plains; you'll see the overlap between JBS plants and National Beef plants. People will tell you that feeders in that area all have four buyers there.

They do not. They may have three, two, or the small guys may beg for someone to come look at their cattle. It didn't use to be. Through the consolidation -- people say it makes no difference. They come up with "happy theories" as to why it will be happy for everybody.

We have heard them today. They are untrue. The results are that a declining number of cow operations and declining cowherd -- We have 300 million people in this country today, increased from 200 million in 1967.

They eat a lot of beef. We should produce more beef to feed them. We don't. Oligopsony power is predicted to be inefficient because it depresses prices, it depresses output.

Oligopsony in this industry has met that prediction. As we concentrate, we depress price, we depress output. We hear vague claims of over-capacity, but yet we're going to expand the capacity. Which one is it?

If there's over-capacity, it's because of Oligopsony depressing price and depressing production, and that is bad. We could produce more beef. We could produce more beef to feed the U.S.

This is what public policy has wrought. It is poor performance. DOJ has failed. DOJ gets all wrapped up in competitive conduct. The judges have not treated them well.

Structure matters. This is -- 65-miles-an-hour is the speed we set on the highway. It's clear everybody knows you can drive safe over that, but it's highly likely to create more accidents than going the speed-limit.

Structure is the same. We can argue about whether there's going to be unreasonable practices or something, but it's highly likely we will have bad results like you see on the right, we have had.

It is a poorly performing country when we eat more food -- our ag sector. DOJ has failed in the Smithfield versus Premium Standard merger, because of marginally competitive market they allowed merger to monopoly in the southeast U.S.

Ghastly result. One packer -- they allowed it. Not an objection. Monsanto bought Delta and Pine Land Company. That merger was rejected in 2000, but they took another run at it and by golly, this DOJ let it happen, with an insignificant divestiture of Stonefield (ph).

Thus Monsanto has 50 percent of the cottonseed market in the U.S., 75 percent in some key regions. Prices go way up, they also choked off competing research by other competitors like DuPont, Syngenta, and others to kill the baby in the crib, so there will not be competition in the future, with future innovation.

We like innovation and choice, and we like competition. We don't have it. All the arguments that say we do, are based as you heard, perhaps, may, this could happen, that sort of thing, there's no proof.

That's why your Bill 1759 shifts the burden of proof so they have to actually prove it. They can't just think and utter happy thoughts, so judges accept it and ignore all the proof of anticompetitive harm.

Antitrust is out of balance. We could have a flourishing agriculture in diary, beef and pork. We could have lower seed prices, more choice and innovation in seed corn, cotton, and soy.

We do not because of the failures of the Department of Justice. 1759 is a good start and DOJ needs to stop allowing marginal competitive industries to become more non-competitive.

Thank you.

#### That restores competition by making companies proactively justify their practice

Pat Mooney et al. 17, co-founder and executive director of the ETC group, IPES Food Panel, October 2017, “TOO BIG TO FEED”, http://www.ipes-food.org/\_img/upload/files/Concentration\_FullReport.pdf

Implementation of current legislation poses further problems. In the US, of all 15,000 M&A deals that took place between 2005 and 2014, only about 3% were subject to scrutiny by anti-trust regulators (The Economist, 2016). In the EU, of the 1,300 mergers considered between 2004 and 2012, 83 – or 6.4% of cases – were found to raise concern (European Competition Network, 2012), but only 8 were prohibited as only M&As passing a certain market turnover threshold27 are considered relevant for anti-trust.

However, the tide may now be turning. In 2016, regulators from 26 jurisdictions28 intervened in more merger cases than they had done in previous years (Allen & Overy LLP, 2017). While 7 deals were prohibited and 13 deals abandoned in 2015 in all sectors of the economy, 2016 saw 8 deals prohibited and 23 deals dropped (ibid). Of note, only 2 of the 8 deals were prohibited by EU legislators and none by the US, though both jurisdictions are still considered global leaders in anti-trust.29

The agri-food sector has itself remained largely immune from the new tide of anti-trust activity. In its 2014 review of mergers, the OECD acknowledged that the regulatory trend is to make M&As easier for merging parties, and recognized that current policies tend to play out to the detriment of those most negatively affected by food system concentration (OECD, 2014). The capacity of anti-trust regulators to keep pace with rapidly expanding agri-food M&As remains weak (Schanbacher, 2014). Even though fines have been levied against several companies for abuses of power, regulators (particularly in the EU and US) have come under increasing fire for failing to address the impacts of existing agri-food sector concentration and the new generation of M&As (Leonard, 2014) – including the influence exerted by firms over political processes. The reluctance to file cases in major agricultural industries has itself been alleged to reflect corporate lobbying influence (see Impact 8).

Nonetheless, the growing resolve to tackle anti-competitive practices across the economy may now be permeating food systems. Steps being taken in a variety of different jurisdictions and in a variety of sectors may be starting to create a less conducive environment for M&A activity. In some cases, these measures seek to redefine anti-competitive practices and to reframe the scope of anti-trust rules. Steps to date may not be sufficient to reverse the current direction of travel. However, they point the way to key entry points where action is already occurring and could be taken further:

i) Addressing unfair practices in supply chains. Legislative and judicial bodies around the world are showing more interest in tackling excessive power in food supply chains and its impact on farmers and consumers alike:

• In 2010, an investigation by the South African Competition Commission charged a number of leading milk processors with price fixing for raw and processed milk, and restricting market competition.

• In June 2017, the South African Commission began an investigation into the grocery retail market, on the basis of unfair competition practices within the sector.

• In 2016, the European Commission published a report on unfair business-to-business trading practices in the food supply. The EU Directive on Unfair Commercial Practices adopted in 2005 is also currently undergoing evaluation to assess whether the regulatory framework is meeting its purpose of supporting small and medium sized enterprises and curbing abuses within the food supply chain.

ii) Considering the collective impact of sector-wide consolidation and redefining a competitive market. As M&A activity has escalated, a number of calls have been made for mergers to be considered as a whole, rather than in isolation, to acknowledge the unprecedented power a handful of consolidated firms to collectively shape food system dynamics (ETC, 2017; Friends of the Earth, 2017; TWN, 2017). Actions are being taken and proposals are being made for new ways of defining and measuring anti-competitive practices, often on the basis of considering food systems as a unique sector with high social importance:

• “Creeping concentration”, i.e. a series of minor mergers leading to high levels of market concentration, is coming to the attention of regulators in Australia and elsewhere.

• In Ireland, the Competition Authority considers concentration along the whole supply chain in order to assess market power resulting from vertical integration (OECD, 2014).

• In France, the M&A vetting process has been amended to give more space to the participation and the concerns of competing enterprises not immediately affected by the proposed merger. A related law further stipulates that companies looking to close a site – including following a takeover – must frst set it up for public sale and/or attempt to find a buyer.

• In South Africa, the 2012 review of the Walmart (US) and Massmart (South Africa) merger sparked unprecedented public debate. Though the merger was ultimately approved with conditions, it highlights the possibility of drawing on a more integrated competition review process. During the review, a number of government departments brought forward opinions and conditions on the case, allowing authorities to recognize the impacts of mergers beyond consumer welfare and competition, including employment and displacement of small business suppliers.

iii) Shifting the burden of proof onto companies. Some proposals are now being made for companies to proactively justify their M&A activity:

• In July 2017, the US Democrats presented their new political platform, the “Better Deal”, urging a new precautionary approach to current and future mergers. The vision included setting new standards for a more holistic, long-term view of concentration’s effects on the economy and society, and better monitoring of a company post-merger. While still focused on consumer welfare, in September 2017, Democrats on the US Senate Judiciary Committee’s anti-trust panel stipulated that companies seeking a mega-merger would have to show that the deal would not hurt consumers and demonstrate its benefits, rather than simply relying on the FTC to judge the impact of mergers on consumers (US Democrats, 2017). The Better Deal goes so far as to acknowledge the detrimental impact on farmers and rural communities likely to result from the Dow-Dupont, Monsanto-Bayer and Syngenta-ChemChina mergers, as well as the influential role large corporate actors have in shaping policy. It identifies the food and beverage sectors as two of the five key industries requiring more stringent anti-trust monitoring.

#### The plan is key---the absence of federal enforcement of antitrust law means lobbying tanks

John Ikerd 20, BS, MS and PhD in Agricultural Economics from the University of Missouri, former Head of Extension Agricultural Economics at the University of Georgia, Professor Emeritus from the University of Missouri, February 2020, “Reclaiming the Future of Farming”, Prepared for presentation at the MOSES Organic Farming Conference, <http://web.missouri.edu/~ikerdj/papers/WIMOSESFutureFoodFarming.pdf>.

What happened to stop, or at least delay, the great agricultural transformation that seemed so promising at the turn of the century? I think the futurists, myself included, failed to appreciate the growing economic and political power of the multinational agribusiness corporations and their determination to dominate the agricultural economy. When the federal government essentially quit enforcing corporate antitrust policy in the 1980s, it essentially freed the large corporations to take control of government. Economic colonization3 is a term that seems appropriate to describe the corporate domination of rural areas around the world, including rural America. The term is typically used in reference to the so-called developed nations using their economic power to continue dominating less-developed nations that were previously colonized politically. Instead of colonization by national governments, the colonization today is being carried out by large, multinational corporations. Much like colonial empires of the past, the economically valuable ecological and societal resources of rural areas, including rural people and cultures, are being exploited not to benefit rural people but instead to increase the wealth of corporate investors. These large, publicly traded corporations are purely economic entities with no capacity for concern or commitment to the future of rural communities. Their only interest is in extracting economic wealth from rural areas.

Whether intentional or coincidental, industrial agriculture has been the primary means of colonizing rural America. Agribusiness corporations gain political legitimacy and elicit economic concessions from local government officials through false promises of rural economic development. The largely unregulated industrial agriculture erodes the fertility of the soil and poisons the air and water with chemical and biological wastes. Comprehensive corporate contracts replace thinking, caring farmers with tractor drivers and corporate hired-hands. Once the productivity of an area has been depleted, the corporations will simply move their operations to other areas of the nation or world where land is still productive and labor costs are cheaper— as we have seen in with pineapple and sugar cane production moving out of Hawaii. Rural communities are left with depleted soils and aquifers, streams and groundwater polluted with agricultural chemical and biological wastes, and farmers who no longer know how to farm.

Obviously, farming communities did not become places where the knowledge workers of the 21st Century have chosen to work and live. Wendell Berry—farmer, philosopher, and author—in a 2017 letter to the New York Times described it this way: “The business of America has been largely and without apology the plundering of rural America, from which everything of value—minerals, timber, farm animals, farm crops, and “labor”—has been taken at the lowest possible price. As apparently none of the enlightened ones has seen in flying over or bypassing on the interstate highways, its too-large fields are toxic and eroding, its streams and rivers poisoned, its forests mangled, its towns dying or dead along with their locally owned small businesses, its children leaving after high school and not coming back. Too many of the children are not working at anything, too many are transfixed by the various screens, too many are on drugs, too many are dying.”4

The promise of a social and economic renaissance became social and economic desecration. A 2017 Wall Street Journal article labeled rural America as the “New Inner City.” In terms of poverty, education, teenage births, divorce, premature death, disability, and unemployment, rural counties now rank below inner cities.” 5 Drug abuse and crime, once urban problems, now plague rural communities. The rural communities that thrived socially and economically during the 1940s and 1950s, when I was a member of Future Farmers of America, are but a distant memory.

What did we gain from all of this economic desecration of rural America? Very little! Admittedly, American consumers on average spent less of their disposable income on food in the late 1990s than in the 1970s. Over the past 20 years, however, food prices have risen faster than the overall rate of inflation.6 Furthermore, industrial agriculture didn’t feed the hungry. In fact, more people are now classified as “food insecure” than back in the 1960s.7 In 2018, one-in-nine Americans were classified as food insecure and one-in-seven American children lived in foodinsecure homes.8 Whatever has been gained by lower food costs has been more than offset by rising costs of health care. An epidemic of diet related illnesses; obesity, diabetes, hypertension, heart disease, and cancers, now threatens the physical and financial future of the nation. Costs of health care are projected to account for one-fifth of the GDP by 2016.9

Why did we Americans let this happen? Or was it inevitable? The industrialization of American agriculture was made possible by post-World War II agrochemical and mechanical technologies, however, it was “made inevitable” by supportive government policies. The specialized, mechanized, large-scale nature of industrial farming that makes it economically efficient also makes it inherently economically risky. Farmers are forced to make large investments in land, buildings, and equipment in operations that are inherently vulnerable to unpredictable weather that can devastate crops, diseases that can wipe out livestock and poultry operations, and to unprofitable prices in markets characterized by periodic overproduction. So, American taxpayers were asked to absorb much of these risks through U.S. farm policies— including various kinds of price supports, deficiency payments, subsidized crop insurance, disaster payments, subsidized interest rates, loan guarantees, and investment tax credits. All of these programs, in one way or another, incentivize or subsidize industrial agriculture.

The industrialization of agriculture was a bold experiment, and it was well-intended—at least by many of its earlier advocates. I was one of those advocates during the first half of my 30 year academic career. I thought by improving the economic efficiency of farming, we would bring down the cost of food and make good food affordable for everybody. I thought the focus on economic efficiency would create profit opportunity for progressive farmers and support economically viable rural communities. However, during the farm financial crisis of the 1980s, I was forced to face the hard, cold reality that it had done none of these things. The industrialization of agriculture was well intended, but it simply didn’t work.

Regardless, many farmers continue to support it because they feel trapped by large investments in land, buildings, and equipment. They are trapped by government policies that encourage and enable them to keep doing what they are doing. They are also trapped by a “commercial farming culture” that has been skillfully crafted and protected by corporate agribusiness. So, what will it take to reclaim the future of farming? One of my professors at the University of Missouri, and later a mentor, was Harold Breimyer—a distinguished agricultural economist. Harold frequently reminded his students and others that “Americans can have any kind of agriculture we want.” He said we simply need to implement the right farm policies to get it. He was right. If we are to fundamentally change American agriculture, we must fundamentally change U.S. farm policy.

So what will it take to bring about another transformation in American farm policy? I personally believe it will take nothing less than a major consumer/taxpayer revolt. The corporate agri-food establishment has used its economic power to gain political power and now has firm control of the farm and food policy making in Washington DC and in statehouses across the country. No substantive change in farm policy can survive the political process without the endorsement or acquiescence of the corporate agricultural establishment.

Each new Farm Bill promises to conserve and protect natural resources and support independent family farms and rural communities. With each new Farm Bill the negative environmental and societal impacts of agriculture continue to grow and there are fewer independent family farms and fewer economically viable farming communities. Conservation programs such as Sod Buster, Swamp Buster, and the Conservation Reserve Program that limit crop production are more about temporary surplus reduction than permanent environmental protection. If we keep accepting the same kinds of farm policies we have accepted in the past, under both Democratic and Republican administrations, we are going to keep getting the same kind of agriculture we have been getting.

We need to start with a common understanding that the only politically defensible justification for government farm policies is to ensure domestic food security. That’s why government food assistance programs have always been administered through the U.S. Dept. of Agriculture (USDA). Logically, programs promoting farm exports should be administered by the Dept. of Commerce and biofuels programs by the Department of Energy. Domestic food security was the political justification for the initiation of U.S. farm policies of the 1930s, which included the Food Stamp program. The nation was in an economic depression. Farm families were going broke in numbers that put the nation’s food security was at risk. Depression era farm programs attempted to provide domestic food security by providing economic security for family farmers.

Domestic food security was also the political rationale for the later shift in farm policies in the early 1970s to programs that incentivize and subsidize industrial agriculture. Hunger in America had again become a major public concern during the 1960s. During the early 1970s, the Nixon/Butz administration used the promise of domestic food security to convince Congress of a need to change U.S. farm policy—and it worked. U.S. farm policies since the 1970s have succeeded in creating the kind of agriculture envisioned by the Nixon/Butz era policy experts. They simply failed to anticipate the negative environmental, social, and economic consequences.

However, for the first time since the 1970s, I see the possibility for a revolutionary, transformational change in U.S. farm policies. We have presidential candidates who are vowing to take on the corporate agricultural establishment and restore economic competitiveness to agricultural markets. Several candidates have also vowed support for a 2019 Congressional Resolution calling for a Green New Deal10 that would fundamentally change U.S. environmental, social, and economic policies—including farm policies. Perhaps most important, it reaffirms the responsibility of government to ensure domestic food security—enough good, healthful food for all. The resolution focuses on the challenges of climate change but calls for fundamental changes that would reach far beyond reducing emissions of greenhouse gasses. The ecological, social, economic inequities in farming, rural communities, and society in general are but different dimensions of same basic problem and will require a common solution.

The Green New Deal has not been approved by the U.S. Congress. It is simply a proposed congressional resolution that has never been formally debated in Congress or put to a serious vote. Still, it has been endorsed, to one extent or another, by every major contender for the Democratic nomination for President of the United States for the upcoming 2020 national election. This is the first time since the 1970s that many of the policy proposals have even been seriously discussed. The Green New Deal will be opposed by virtually every major organization and by many farmers who feel trapped in the current industrial system of commodity production. However, it is supported by a large number of progressive farm organizations and by many farmers who have been advocates for sustainable agriculture, by one name or another, for decades—without the support of their government. In the Green New Deal, there is still hope that the bright future of small, family farms I talked about in 1999 will become a reality.

### 1AC

#### Plan: The United States federal government should establish a structural presumption against agricultural mergers.

### 1AC

#### Contention Two is Sustainable Ag

#### Conventional farming is unsustainable---it requires chemical inputs that destroy ecosystems and pollinators and bio-accumulate, risking extinction---a disruptive collapse is inevitable unless a transition to sustainable practices starts now

Friedemann 17 – Alice Friedemann, Systems Architect and Engineer For Over 25 Years, Science, Energy, and Agriculture Writer, Investigative Journalist and Energy Expert, Founder of Energy Skeptic, Author of When Trucks Stop Running: Energy and the Future of Transportation, “Chemical Industrial Agriculture is Unsustainable. Here’s Why”, Resilience, 5-27, http://www.resilience.org/stories/2017-03-27/chemical-industrial-farming-unsustainable-heres/

We hear a lot about how we’re running out of antibiotics. But we are also doomed to run out of pesticides, because insects inevitably develop resistance, whether toxic chemicals are sprayed directly or genetically engineered into the plants.

Worse yet, weeds, insects, and fungus develop resistance in just 5 years on average, which has caused the chemicals to grow increasingly lethal over the past 60 years. And it takes on average eight to ten years to identify, test, and develop a new pesticide, though that isn’t long enough to discover the long-term toxicity to humans and other organisms.

And this devil’s bargain hasn’t even provided most of the gains in crop yields, which is due to natural-gas and phosphate fertilizers plus soil-crushing tractors and harvesters that can do the work of millions of men and horses quickly on farms that grow only one crop on thousands of acres.

Yet before pesticides, farmers lost a third of their crops to pests, after pesticides, farmers still lose a third of their crops.

Even without pesticides, industrial agriculture is doomed to fail from extremely high rates of soil erosion and soil compaction at rates that far exceed losses in the past, since soil couldn’t wash or blow away as easily on small farms that grew many crops.

But pest killing chemicals are surely accelerating the day of reckoning sooner rather than later. Enormous amounts of toxic chemicals are dumped on land every year — over 1 billion pounds are used in the United State (US) every year and 5.6 billion pounds globally (Alavanja 2009).

This destroys the very ecosystems that used to help plants fight off pests, and is a major factor biodiversity loss and extinction.

Evidence also points to pesticides playing a key role in the loss of bees and their pollination services. Although paleo-diet fanatics won’t mind eating mostly meat when fruit, vegetable, and nut crops are gone, they will not be so happy about having to eat more carbohydrates. Wheat and other grains will still be around, since they are wind-pollinated.

Agricultural chemicals render land lifeless and toxic to beneficial creatures, also killing the food chain above — fish, amphibians, birds, and humans (from cancer, chronic disease, and suicide).

Surely a day is coming when pesticides stop working, resulting in massive famines. But who is there to speak for the grandchildren? And those that do speak for them are mowed down by the logic of libertarian capitalism, which only cares about profits today. Given that a political party is now in power in the U.S. that wants to get rid of the protections the Environmental Protection Agency (EPA) and other agencies provide, may make matters worse if agricultural chemicals are allowed to be more toxic, long-lasting, and released earlier, before being fully tested for health effects.

Meanwhile chemical and genetic engineering companies are making a fortune, because the farmers have to pay full price, since the pests develop resistance long before a product is old enough to be made generically. Except for glyphosate, but weeds have developed resistance. Predictably.

In fact, the inevitability of resistance has been known for nearly seven decades. In 1951, as the world began using synthetic chemicals, Dr. Reginald Painter at Kansas State University published “Insect Resistance in Crop Plants”. He made a case that it would be better to understand how a crop plant fought off insects, since it was inevitable that insects would develop genetic or behavioral resistance. At best, chemicals might be used as an emergency control measure.

Farmers will say that we simply must carry on like this, there’s no other choice. But that’s simply not true.

Consider the corn rootworm, that costs farmers about $2 billion a year in lost crops despite spending hundreds of millions on chemicals and the hundreds of millions of dollars chemical companies spend developing new chemicals.

To lower the chances of corn pests developing resistance, corn crops were rotated with soybeans. Predictably, a few mutated to eat soybeans plus changed their behavior. They used to only lay eggs on nearby corn plants, now they disperse to lay eggs on soybean crops as well. Worse yet, corn is more profitable than soy and many farmers began growing continuous corn. Already the corn rootworm is developing resistance to the latest and greatest chemicals.

But the corn rootworm is not causing devastation in Europe, because farms are smaller and most farmers rotate not just soy, but wheat, alfalfa, sorghum and oats with corn (Nordhaus 2017).

Before planting, farmers try to get rid of pests that survived the winter and apply fumigants to kill fungi and nematodes, and pre-emergent chemicals to reduce weed seeds from emerging. Even farmers practicing no-till farming douse the land with herbicides by using GMO herbicide-resistant crops. Then over the course of crop growth, farmers may apply several rounds of additional pesticides to control different pests. For example, cotton growers apply chemicals from 12 to 30 times before harvest.

Currently, the potential harm is only assessed for 2 to 3 years before a permit is issued, even though the damage might occur up to 20 years later.

Although these chemicals appear to be just like antibiotics, that isn’t entirely true. We develop some immunity to a disease after antibiotics help us recover, but a plant is still vulnerable to the pests and weeds with the genetics or behavior to survive and chemical assault.

Although there are thousands of chemical toxins, what matters is how they kill, their method of action (MOA). For herbicides there are only 29 MOAs, for insecticides, just 28. So if a pest develops resistance to one chemical within an MOA, it will be resistant to all of the thousands of chemicals within that MOA.

The demand for chemicals has also grown due the high level of bioinvasive species. It takes a while to find native pests and make sure they won’t do more harm than good. In the 1950s there were just three main corn pests. By 1978 there were 40, and they vary regionally. For example, California has 30 arthropods and over 14 fungal diseases to cope with.

When I was learning how to grow food organically back in the 90s, I remember how outraged organic farmers were that Monsanto was going to genetically engineer plants to have the Bt bacteria in them. This is because the only insecticide organic farmers can use is Bt bacteria, because it is found in the soil. It’s natural. Organic farmers have been careful to spray only in emergencies so that insects didn’t develop resistance to their only remedy. Since 1996, GMO plants have been engineered to have Bt in them, and predictably, insects have developed resistance. For example, in 2015, 81% of all corn was planted with genetically engineered Bt. But corn earworms have developed resistance, especially in North Carolina and Georgia, setting the stage for damage across the nation. Five other insects have developed resistance to Bt as well.

GMO plants were also going to reduce pesticide use. They did for a while, but not for long. Chemical use has increased 7% to 202,000 tons a year in the past 10 years.

Resistance can come in other ways than mutations. Behavior can change. Cockroach bait is laced with glucose, so cockroaches that developed glucose-aversion now no longer take the bait.

It is worth repeating that chemicals and other practices are ruining the long-term viability of agriculture. Here is how author Dyer explains it:

“Ultimately the practice of modern farming is not sustainable” because “the damage to the soil and natural ecosystems is so great that farming becomes dependent not on the land but on the artificial inputs into the process, such as fertilizers and pesticides. In many ways, our battle against the diverse array of pest species is a battle against the health of the system itself. As we kill pest species, we also kill related species that may be beneficial. We kill predators that could assist our efforts. We reduce the ecosystem’s ability to recover due to reduced diversity, and we interfere with the organisms that affect the biogeochemical processes that maintain the soils in which the plants grow.

Soil is a complex, multifaceted living thing that is far more than the sum of the sand, silt, clay, fungi, microbes, nematodes, and other invertebrates. All biotic components interact as an ecosystem within the soil and at the surface, and in relation to the larger components such as herbivores that move across the land. Organisms grow and dig through the soil, aerate it, reorganize it, and add and subtract organic material. Mature soil is structured and layered and, very importantly, it remains in place. Plowing of the soil turns everything upside down. What was hidden from light is exposed. What was kept at a constant temperature is now varying with the day and night and seasons. What cannot tolerate drying conditions at the surface is likely killed. And very sensitive and delicate structures within the soil are disrupted and destroyed.

Conventional tillage disrupts the entire soil ecosystem. Tractors and farm equipment are large and heavy; they compact the soil, which removes air space and water-holding capacity. Wind and water erosion remove the smallest soil particles, which typically hold most of the micronutrients needed by plants. Synthetic fertilizers are added to supplement the loss of oil nutrients but often are relatively toxic to many soil organisms. And chemicals such as pre-emergents, fumigants, herbicides, insecticides, acaricides, fungicides, and defoliants eventually kill all but the most tolerant or resistant soil organisms. It does not take long to reduce a native, living, dynamic soil to a relatively lifeless collection of inorganic particles with little of the natural structure and function of undisturbed soil”.

When I told my husband all the reasons we use agricultural chemicals and the harm done, my husband got angry and said “Farmers aren’t stupid, that can’t be right!”

I think there are a number of reasons why farmers don’t go back to sustainable organic farming.

First, there is far too much money to be made in the chemical herbicide, pesticide, and insecticide industry to stop this juggernaut. After reading Lessig’s book “Republic, Lost”, one of the best, if not the best book on campaign finance reform, I despair of campaign financing ever happening. So chemical lobbyists will continue to donate enough money to politicians to maintain the status quo. Plus the chemical industry has infiltrated regulatory agencies via the revolving door for decades and is now in a position to assassinate the EPA, with newly appointed Scott Pruitt, who would like to get rid of the EPA.

Second, about half of farmers are hired guns. They don’t own the land and care about passing it on in good health to their children. They rent the land, and their goal, and the owner’s goal is for them to make as much profit as possible.

Third, renters and farmers both would lose money, maybe go out of business in the years it would take to convert an industrial monoculture farm to multiple crops rotated, or an organic farm.

Fourth, it takes time to learn to farm organically properly. So even if the farmer survives financially, mistakes will be made. Hopefully made up for by the higher price of organic food, but as wealth grows increasingly more unevenly distributed, and the risk of another economic crash grows (not to mention lack of reforms, being in more debt now than 2008, etc).

Fifth, industrial farming is what is taught at most universities. There are only a handful of universities that offer programs in organic agriculture.

Sixth, subsidies favor large farmers, who are also the only farmers who have the money to profit from economies of scale, and buy their own giant tractors to farm a thousand acres of monoculture crops. Industrial farming has driven 5 million farmers off the land who couldn’t compete with the profits made by larger farms in the area.

But farmers will have to go organic whether they like it or not

It’s hard to say whether this will happen because we’ve run out of pesticides, whether from resistance or a financial crash reducing new chemical research, or whether peak oil, peak coal, and peak natural gas will cause the decline of chemical farming. Agriculture uses about 15 to 20% of fossil fuel energy, from natural gas fertilizer, oil-based chemicals, farm vehicle and equipment fuel, the agricultural cold chain, distribution, packaging, refrigeration, and cooking to name a few of the uses.

At some point of fossil decline, there won’t be enough fuel or pesticides to continue business as usual.

Farmers will be forced to go organic at some point. Wouldn’t it be easier to start the transition now?

#### Consolidation halts that transition---3 internal links

#### First, Crowd-out---it leads to the replacement of small farms with large farms across industries

Kristen Tam and Olivia Bielskis 21, Researchers for UCLA Law Library, “Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement”, 4-1-21, UCLA Law Library, <https://escholarship.org/uc/item/0m16g2r5>

As defined by the United States Department of Agriculture (USDA), a “farm” is any place from which $1,000 or more of agricultural products were produced or sold during the year.11 This section discusses the historical and current consolidation trends in the agriculture marketplace for farms, meatpacking firms, and many other food corporations. I find that the overall number of farms has decreased while the size of each farm or firm has increased, and the number of farms in higher sales classes have increased along with their subsequent share of farmland.12 Farm numbers have decreased since the onset of the 20th century, however, due to Robert Bork and the Chicago School’s influence that prioritized economic efficiency and consumer prices over small businesses,13 the number of farms in the United States started decreasing at faster rates. In 1975, there were 2.5 million farms across the country,14 which declined by an average of 2.41 percent per year.1516 Comparatively, from 1980 to 1985, the number of farms decreased by an average of 6.15 percent per year,17 alluding to increased rates of consolidation. While farm numbers continue to decrease, output production size and the Gross Cash Farm Income (GCFI) of large farms has increased. From 2012 to 2018, the number of farms decreased from 2.11 to 2.03 million farms, while the average farm size increased from 429 to 443 acres.18 Specifically, the growth in land holdings has increased the greatest in the largest farms. In 1987, 57 percent of the United States cropland was operated by midsize farms with 100 to 999 acres of cropland while only 15 percent was operated by large farms over 2,000 acres.19 In 2012, cropland operated by midsize farms drastically decreased to 36 percent while cropland operated by large farms increased to 36 percent, more than doubling the figure from 1987.20 In addition to holding control of more land and market power, and decreasing competition in the marketplace, these larger farms hold a disproportionate majority of agricultural commodity profits. In 1991, small farms, defined as farms whose income is less than $350,000, took in 46 percent of agricultural profit, while in 2015, small farms took in only 25 percent of agricultural profit.21 Large farms, who make more than $1,000,000 held 31 percent of the GFCI in 1991, while in 2015, their share increased to 51 percent.22 The trend towards, seeing as the number of farms and packaging plants decrease while the number of animals raised per farm increases. From 1987 to 2017, there was a 28.50 percent decrease in the number of cow, pig and chicken farms.23 While the number of farms decreased, the midpoint numbers for the number of livestock per farm increased; where half of the livestock are above, and half are below it. In 1987, the midpoint number of cows for each livestock feeding industry was 80, while in 2012, this increased to 900, an increase of 1,025 percent.24 The number of meatpacking plants, consolidation is also prevalent in the livestock, poultry and meat packing industries where farmers sell their animals to be slaughtered, packaged, and distributed, also decreased which allows meatpackers to run roughshod over farmers by giving them power to pay their desired lower prices, disadvantaging farmers. Consolidation in other food industries is increasing as well, seeing as in 2012 four firms owned 89 percent of the peanut butter industry, a staggering figure which increased to 92 percent in 2017.25 In 2015 the two largest corn seed firms owned 78 percent of the market share,26 in 2017 the four largest jelly firms owned 85 percent of the industry,27 and in 2018, two firms owned 87 percent of the mayonnaise market share, a $1.6 billion dollar industry.28 These figures showing monopolization exemplify the formidable proportions to which the agriculture and food industry is consolidated. These trends underscore how the regulation mechanisms in place to promote competition and prevent monopolization are not working.

#### Second, Tech Lock-In---increasing reliance on technologies created by industrial ag create new path dependencies that make transition to sustainable tech impossible---it’s a linear risk

Jennifer Clapp 20, Canada Research Chair in Global Food Security and Sustainability and a professor in the School of Environment, Resources, and Sustainability at the University of Waterloo, “Precision Technologies for Agriculture: Digital Farming, Gene-Edited Crops, and the Politics of Sustainability,” Global Environment Politics, 20.3, https://direct.mit.edu/glep/article/20/3/49/95048/Precision-Technologies-for-Agriculture-Digital

Technological Lock-In

Key dynamics identified in the broader literature about technological lock-in—whereby technological systems develop along established pathways from which it is difficult and costly to deviate—are reflected in current debates over precision technologies for agriculture. Technological lock-in typically occurs when powerful social forces drive technological development in certain directions. These social forces are often the result of earlier events—technological, political, and psychological—that cement the societal dominance of certain technological systems over others (McKinnon 2019). This temporal nature of the process means that lock-in can become self-reinforcing over time and can ultimately crowd out other potential technological systems that might offer more benefits over the long run (Arthur 1989). In instances of lock-in, the cost of not adopting a new technology that fits into a dominant technological system can often be higher than the benefits of actually using that technology, even if there are better ways to resolve the problem (McKinnon 2019). In such situations, potential adopters typically make decisions about the costs of adopting (or not adopting) novel technologies in the short term, even in cases when the benefits of switching to a different system may be higher over the long term. This dynamic tends to give the momentum in debates regarding novel technology adoption to those voices that reinforce the dominant technological system while weakening the influence of those promoting alternative systems (Vanloqueren and Baret 2009).

The lens of technological lock-in helps shed light on the ways in which the structural context of the dominant agricultural system shapes the political dynamics surrounding current versus possible alternative systems in the debate over precision technologies. The current industrial model rose to dominance through historical patterns of progressive adoption of industrial agricultural technologies that established new path dependencies. The development of hybrid seeds in the 1920 and 1930s and the monoculture planting practices that accompanied them, for example, encouraged monocrop agriculture and the adoption of tractors to replace horses. When monocropping resulted in new vulnerabilities to insects and weeds in crop systems, the response was the adoption of agrochemical sprays to control those pests. Subsequently, agricultural biotechnology emerged as a means by which to address high levels of agrochemical use, by engineering crops to be resistant to pests or resistant to what were thought to be relatively benign herbicides, such as glyphosate (Sassenrath et al. 2008).

Although advocates promote precision technologies as part of a more sustainable trajectory, they are deeply enmeshed with elements of the established industrial agricultural system. Most of the corporate research into gene editing and variable-rate spraying equipment, for example, is focused on the use of these technologies in conjunction with herbicides—specifically glyphosate—which have already been locked into dominant agricultural practices. New precision technologies are also deeply enmeshed in the dominance of digital technology systems in society more broadly. The prevalence of and familiarity with digital technologies in society for nonfarming activities, such as for obtaining news and weather forecasts or social media, work to lock-in digital farming adoption by farmers. As farmers sign on to these new digitally linked farming technologies, their entrenchment in the industrial agriculture system to which most of those technologies are tethered only deepens. And as farmers become increasingly reliant on and skilled in the use of digital technologies to guide their farming decisions, lock-in becomes self-reinforcing, because farmers lose the ability to evaluate trade-offs and make decisions in the absence of digital assistance as well as the ability to repair their own digital equipment and machinery (Carolan 2018; Rotz et al. 2019).

#### Third, Proprietary Cropping Systems---they increase market power, raise the barrier for new entrants, and divert innovation to only system-based competition

Diana Moss 20, Ph.D., President, American Antitrust Institute, January, “Consolidation And Concentration In Agricultural Biotechnology: Next Generation Competition Issues,” https://www.antitrustinstitute.org/wp-content/uploads/2020/01/CPI-Moss.pdf

The most recent series of agricultural biotechnology mergers have created large, integrated, proprietary cropping systems of traits, GM crop seed, and crop protection. Such systems were evident as early as first-generation technologies, such as Monsanto’s early generation glyphosate herbicide Roundup and Roundup Ready 1 soybeans. Even then, the exclusive nature of systems was evident, as one farmer aptly noted: “[I] can’t mix chemicals with other companies’ products to remedy Roundup resistance.” More recently, Monsanto extended its newer generation RR2 soybean platform to encompass more complex traits and herbicides with its Roundup Ready 2 Xtend dicamba-tolerant integrated cropping system. Dow-DuPont made a similar move with its Enlist 2,4-D tolerant system. Recent merger proposals are motivated, among other reasons, by the drive to build out integrated, proprietary systems that do not interoperate with rivals’ products. This goal was apparently behind Monsanto’s failed bid for Syngenta which “…would [have] enable[d] the combined company to deliver integrated and sustainable solutions across all the major technology-driven platforms of breeding, biotechnology, crop protection, microbials and precision agriculture.”26 Monsanto and Bayer also touted integrated solutions as a major strategic benefit of their proposed merger.27 Integrated, proprietary systems raise a number of troubling issues. First, economic evidence from soybeans and cotton indicates that seed prices under vertical integration tend to be higher than under licensing arrangements across firms. This suggests that vertical integration may increase the exercise of market power and firms’ ability to extract economic benefits from seed dealers and farmers.28 Second, integration enhances both the ability and incentive to bundle proprietary products in proprietary systems that do not interoperate with rival technologies.29 This is likely to raise entry barriers for unintegrated rivals competing at standalone levels such as seeds or crop protection and that cannot enter at multiple levels. Such smaller rivals may be victims of exclusionary conduct, for example, if the Big 3 induce distributors to accept bundled products. A third problem is that proprietary systems of integrated, proprietary technologies shifts the competitive paradigm from competition at the individual levels of traits, GM crop seed, and crop protection to competition between systems. Arguably, a sector dominated by only three large firms will not provide sufficient head-to-head competition between systems to facilitate beneficial market outcomes. This poses significant risks for growers, who could be locked into single proprietary cropping systems at higher prices, with limited flexibility and choice. It would also harm consumers, who could pay higher prices and lose choice in how their food is grown and sourced.

#### Big Ag leads to ecological collapse---it destroys biodiversity, causes gulf hypoxia, and increases emissions

Matthew R. Sanderson and Stan Cox 19, social scientist at Kansas State University, research scholar in ecosphere studies at The Land Institute “Big Agriculture Is Leading to Ecological Collapse,” Foreign Policy, 10-14-2019, <https://foreignpolicy.com/2021/05/17/big-industrialized-agriculture-climate-change-earth-systems-ecological-collapse-policy/>

Today, there is more carbon dioxide in the atmosphere than at any point in the past [3.6 million years](https://research.noaa.gov/article/ArtMID/587/ArticleID/2742/Despite-pandemic-shutdowns-carbon-dioxide-and-methane-surged-in-2020). On April 5, atmospheric carbon dioxide exceeded [420 parts per million](https://www.esrl.noaa.gov/gmd/ccgg/trends/monthly.html)—marking nearly the halfway point toward doubling the carbon dioxide levels measured prior to the Industrial Revolution, a mere [171 years ago](https://www.ipcc.ch/site/assets/uploads/sites/2/2018/12/SR15_FAQ_Low_Res.pdf). Even amid a pandemic-induced economic shutdown—during which global annual emissions dropped [7 percent](https://research.noaa.gov/article/ArtMID/587/ArticleID/2742/Despite-pandemic-shutdowns-carbon-dioxide-and-methane-surged-in-2020)—carbon dioxide and methane levels set records in 2020. The last time Earth held this much carbon dioxide in its atmosphere, sea levels were nearly 80 feet higher and the planet was 7 degrees Fahrenheit warmer. The catch: Homo sapiens did not yet exist.

Change is in the air. U.S. Director of National Intelligence Avril Haines [announced](https://www.nytimes.com/live/2021/04/22/us/biden-earth-day-climate-summit) climate change is “at the center of the country’s national security and foreign policy.” Business-as-usual is no longer a viable strategy as more institutions consider a future that will look and feel much different. In this context, it is striking to read a recent piece in Foreign Policy arguing “[big agriculture is best](https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/).”

“Big agriculture is best” cannot be an argument supported by empirical evidence. By now, it is vitally clear that Earth systems—the atmosphere, oceans, soils, and biosphere—are in [various phases of collapse](https://www.swissre.com/media/news-releases/nr-20200923-biodiversity-and-ecosystems-services.html), putting nearly [one-half of the world’s gross](https://www.swissre.com/media/news-releases/nr-20200923-biodiversity-and-ecosystems-services.html) domestic product at risk and [undermining the planet’s ability to support life](https://ipbes.net/global-assessment). And big, industrialized agriculture—promoted by U.S. foreign and domestic policy—lies at the heart of the multiple connected crises we are confronting as a species.

The litany of industrial agriculture’s toll is long and diverse. Consider the effects of industrial animal agriculture, for example. As of this writing, animal agriculture accounts for [14.5 percent](http://www.fao.org/news/story/en/item/197623/icode/) of total anthropogenic greenhouse gas emissions annually. It is also the source of 60 percent of all nitrous oxide and 50 percent of all methane emissions, which have [36 times and 298 times](https://www.epa.gov/ghgemissions/understanding-global-warming-potentials), respectively, the warming potential of carbon dioxide. As industrial animal agriculture has scaled up, agricultural emissions of methane and nitrous oxide have been going in [one direction only](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter8-1.pdf): up.

Efforts to scale industrial agriculture are undermining the planet’s capacity to support life at more local scales too. Consider Brazil, home to the Amazon Rainforest, which makes up [40 percent](https://www.worldbank.org/en/news/feature/2019/05/22/why-the-amazons-biodiversity-is-critical-for-the-globe) of all remaining rainforest and 25 percent of all terrestrial biodiversity on Earth. Forest loss and species extinctions [have only increased](https://ipbes.net/sites/default/files/inline/files/ipbes_global_assessment_report_summary_for_policymakers.pdf) as industrial agriculture has scaled up in Brazil. Farmers are burning unprecedented amounts of forest to expand their operations in pursuit of an industrial model. In August 2019, [smoke blocked the sun in São Paulo](https://www.weforum.org/agenda/2019/08/amazon-burning-unseen-rate/), Brazil, 2,000 miles away from the fires in the state of Amazonas.

Efforts to scale industrial agriculture are undermining the planet’s capacity to support life.

In India, the pace of agricultural industrialization is hastening as indicated by [rising agricultural production](https://www.ers.usda.gov/mediaImport/1957187/err-203.pdf) and [declining employment in agriculture](https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=IN), which now accounts for less than one-half of India’s workforce. Agriculture has been scaled with all the tools of the Green Revolution: a high-input farming system comprised of genetically modified seeds and accompanying synthetic fertilizers and pesticides. As agriculture has industrialized in India, the use of [pesticides](http://ppqs.gov.in/statistical-database) and [fertilizers](https://pib.gov.in/PressReleseDetailm.aspx?PRID=1640400#:~:text=Production%20and%20Sales%2F%20consumption%20of%20Fertilisers%20comfortable&text=2019%2D20%20record%20high%20urea,previous%20year%20i.e.%202018%2D19.) has risen as well.

Although it has become more difficult to breathe the air in Brazil, it has become harder to find clean freshwater in India, where [pesticide contamination is rising](https://link.springer.com/article/10.1007/s10661-015-4287-y). There, the costs of the industrial agriculture model are plainly ecological and human: Unable to drink the water or pay back the loans they took out to finance their transition to industrial farming, an alarming number of Indian farmers are drinking pesticides instead. Almost a quarter-million Indian farmers have [died by suicide](http://www.isec.ac.in/farmer_suicides_An%20all%20India%20study-09Aug2017-revised.pdf) since 2000, and [10,281 farmers and farm laborers](https://www.nytimes.com/2020/09/08/world/asia/india-coronavirus-farmer-suicides-lockdown.html) killed themselves in 2019 alone. In Punjab, the country’s breadbasket, environmental destruction coexists with a raging opioid epidemic ensnaring nearly[two-thirds of households in the state](https://www.theguardian.com/global-development/2019/jul/01/the-indian-state-where-farmers-sow-the-seeds-of-death).

If the events in Brazil and India sound familiar to U.S. readers, it is because there are analogous stories in the United States—where industrial agriculture is rendering entire landscapes uninhabitable. The U.S. Corn Belt, which spans the region from Ohio to Nebraska, produces 75 percent of the country’s corn, but around [35 percent](https://www.pnas.org/content/118/8/e1922375118) of the region has completely lost its topsoil. Industrial agriculture has been pursued with special zeal in Iowa, where there are 25 million hogs and 3 million people. There, water from the Raccoon River enters the state capital of Des Moines—home to 550,000 people—with nitrates, phosphorus, and bacteria that have [exceeded federal safe water drinking standards](https://apnews.com/article/des-moines-lawsuits-courts-iowa-pollution-23798b7c9dfe04bc84f728ce92eeb4db).

At a larger scale, nutrient runoff from industrial agriculture in the U.S. Midwest has created an annual [dead zone](https://www.noaa.gov/media-release/noaa-forecasts-very-large-dead-zone-for-gulf-of-mexico)—a hypoxic area low in or devoid of oxygen—that is the size of Massachusetts. The ecological consequences of industrial agriculture manifest alongside a growing human toll. Rural communities are experiencing [rising suicide rates](https://www.washingtonpost.com/news/wonk/wp/2018/05/24/mapping-the-rising-tide-of-suicide-deaths-across-the-united-states/), especially [among young](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4551430/) people, along with increases in “[deaths of despair](https://www.nytimes.com/2020/01/09/opinion/sunday/deaths-despair-poverty.html)” from alcohol and drugs—an expanding human dead zone.

From suffering U.S. farmers to the pain inflicted on the developing world, everything about U.S. agriculture policy is dysfunctional. The next administration can do better.

Although tragic, these outcomes are neither inevitable nor natural. They are outcomes of U.S. policy choices. Industrialized agriculture has been a hallmark of U.S. foreign policy in the post-World War II era. Under the guise of [development for all](https://avalon.law.yale.edu/20th_century/truman.asp) and the mantra of “[feed the world](https://share.america.gov/u-s-farmers-feed-world/),” the United States has used policy to [dump surplus grain](https://www.cambridge.org/core/journals/renewable-agriculture-and-food-systems/article/true-costs-of-us-agricultural-dumping/ABDB3E76865636EF025C72D94FEECD32) in low-income countries—undermining markets for smallholder farmers—and cultivate foreign markets as importers of high-input, industrial agriculture technologies to scale agriculture. At home, federal policy since the 1970s has explicitly promoted scaling industrial agriculture through the “[get big or get out](https://grist.org/article/the-butz-stops-here/)” imperative.

Society did not arrive at this precipice because agriculture was too small or because industrialized agriculture respected the laws of physics. Instead, we are peering into an abyss of systemic socioecological collapse because every effort has been made to use industrialization to break through all known ecological and human limitations to scaling agriculture.

Industrial agriculture simplifies ecosystems, rendering us more vulnerable to threats. Transformative policies will be required to pull us back from the edge. As a start, the United States could set an example for the Global North with a [50-year farm bill](https://www.nytimes.com/2009/01/05/opinion/05berry.html).

Industrial agriculture simplifies ecosystems, rendering us more vulnerable to threats.

The bill would promote ecosystem diversification and increased resilience by reducing acreage of annual grain crops from 70 percent to 10 percent or less of all cropland while scaling up [perennial crops](https://science.sciencemag.org/content/328/5986/1638) to 80 percent of farmland. The remaining 10 percent would be allocated to other crops, including a diverse array of locally produced vegetables and fruits. Soil and water-conserving perennial varieties of rice, wheat, legumes, and other food-grain crops—which are [now being developed](https://www.cambridge.org/core/journals/global-sustainability/article/is-the-future-of-agriculture-perennial-imperatives-and-opportunities-to-reinvent-agriculture-by-shifting-from-annual-monocultures-to-perennial-polycultures/0F69B1DBF3493462B4D46EB8F0F541EE)—could serve as components of diverse, perennial, multispecies communities of food crops that replicate how nature functions. The bill would promote a transition to smaller, more diverse farm operations as agricultural diversification will work most effectively not on vast, uniform acreages but as mosaics made up of many modest-sized farms.

The bill would be an important step toward returning home as a species that once again lives within context—within limits, [perennially](https://www.resilience.org/stories/2020-12-08/transforming-life-on-our-home-planet-perennially/). Our collective pursuit of “big is best” led us out of context to our peril.

In the face of multiple cascading socioecological crises, Candide, published by the French writer Voltaire in 1759, shows us a way forward. Candide, the book’s protagonist, is mentored by Pangloss, a professor who holds a [Leibnizian optimism](https://plato.stanford.edu/entries/leibniz/) about the world that justifies the status quo as being “all for the best” in the “best of all possible worlds.”

#### Collapse of biodiversity causes extinction

Dr. Luiz Marques 20, PhD in Entomology, Associate Professor of Environmental History in the Department of History at the University of Campinas, Capitalism and Environmental Collapse, p. 247-248

Numerous scholars from various fields of science today are concerned with the ongoing collapse of biodiversity. The first Global Assessment of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES),1 published in 2019, estimates that:

The rate of global change in nature during the past 50 years is unprecedented in human history (…) Human actions threaten more species with global extinction now than ever before. (…) An average of around 25% of species in assessed animal and plant groups are threatened, suggesting that around 1 million species already face extinction, many within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss.

Societies’ very survival depends on their ability to avert the impending threat of biological annihilation via the ongoing sixth mass extinction of species, triggered or intensified by the globalization of capitalism over the last 50 years. Sir Robert Watson, Chair of IPBES (2016), doesn’t mince his words to say what is at stake: “We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide.” There is no hyperbole in the claim that the collapse of biodiversity and the acceleration of global warming, two processes that interact in synergy, entail an increasing risk of extinction for the Homo sapiens. As pointed out by Cristiana Paşca Palmer, Executive Secretary of the Convention on Biodiversity (2018), “I hope we aren’t the first species to document our own extinction.” Julia Marton-Lefèvre, former Director General of the International Union for Conservation of Nature (IUCN), reiterates this warning for the umpteenth time in a statement to delegations meeting at Rio+20 in 2012:

Sustainability is a matter of life and death for people on the planet. A sustainable future cannot be achieved without conserving biological diversity—animal and plant species, their habitats and their genes—not only for nature itself, but also for all 7 billion people who depend on it.

10.1 Defaunation and Biological Annihilation

Rodolfo Dirzo, Mauro Galetti, Ben Collen, and other co-authors of a review titled “Defaunation in the Anthropocene” (2014) conceptualize one of the central aspects of the current sixth mass extinction of species: the term defaunation is used to denote the loss of both species and populations of wildlife, as well as local declines in abundance of individuals. The defaunation process is in full swing:

In the past 500 years, humans have triggered a wave of extinction, threat, and local population declines that may be comparable in both rate and magnitude with the five previous mass extinctions of Earth’s history. Similar to other mass extinction events, the effects of this “sixth extinction wave” extend across taxonomic groups, but they are also selective, with some taxonomic groups and regions being particularly affected. (…) So profound is this problem that we have applied the term “defaunation” to describe it.

In a 2017 article, Gerardo Ceballos, Paul Ehrlich, and, again, Rodolfo Dirzo warn about the false impression that the threat of biological annihilation is not imminent:

The strong focus on species extinctions, a critical aspect of the contemporary pulse of biological extinction, leads to a common misimpression that Earth’s biota is not immediately threatened, just slowly entering an episode of major biodiversity loss. This view overlooks the current trends of population declines and extinctions. Using a sample of 27,600 terrestrial vertebrate species, and a more detailed analysis of 177 mammal species, we show the extremely high degree of population decay in vertebrates, even in common “species of low concern.” Dwindling population sizes and range shrinkages amount to a massive anthropogenic erosion of biodiversity and of the ecosystem services essential to civilization. This “biological annihilation” underlines the seriousness for humanity of Earth’s ongoing sixth mass extinction event.

#### Gulf hypoxia is growing because of ag runoff---it’ll collapse whole oceans---extinction

Hendy 17 – Dr. Ian Hendy, PhD in Trophic Marine Biology, Research and Communication Officer and Senior Scientific Researcher in Marine Ecology at the University of Portsmouth, Institute of Marine Sciences Laboratories, “Gulf of Mexico 'Dead Zone' Is Already A Disaster – But It Could Get Worse”, Phys Org, 8-14, https://phys.org/news/2017-08-gulf-mexico-dead-zone-disaster.html

Each summer, a large part of the Gulf of Mexico "dies". This year, the Gulf's "dead zone" is the largest on record, stretching from the mouth of the Mississippi, along the coast of Louisiana to waters off Texas, hundreds of miles away. Around 8,776 square miles of ocean, an area the size of New Jersey or Wales, is almost lifeless.

John Muir, the famed naturalist and early conservation campaigner, once said that: "When we try to pick out anything by itself, we find it hitched to everything else in the Universe." His point was that everything in nature is connected, and that no part of our ecosystem exists entirely independently from any other.

It is perhaps no surprise then that ultimate cause of the Gulf of Mexico's dead zone can be found many miles inland. Fertilisers used by farmers then wash into the Mississippi River and eventually into the sea, where nutrients such as nitrogen and phosphorus stimulate an explosion in microscopic algae, creating huge "algal blooms". The algae then die and sink to the bottom, where they decompose. But the same bacteria which decompose the algae also use the sea's oxygen during the process, leaving an "anoxic" ocean.

Fish and other mobile sea creatures are able to escape the suffocating dead zone. Less lucky however are the sponges, corals, sea squirts and other animals who live their lives fixed in one place on the sea bed. Low oxygen levels place them under great stress and we have seen huge mortalities. Such losses will of course ripple up the food web, creating a negative chain reaction of increasing mortality rates in larger and larger animals.

The "dead zone" has grown this year due to increased rainfall in America's Midwest washing ever greater amounts of nutrients into the Mississippi, which ultimately end up in the Gulf. Not only is this a huge conservation issue – the Gulf contains key nursery habitats such as mangrove forests, sea grass beds and coral reefs that benefit adjacent fisheries – but it also has huge consequences for the local fishing economy, particularly the shrimp industry.

Steps are under way to slow down the ecological disaster. Some farmers in the Mississippi basin are using large grassy zones along waterways in order to soak up the agricultural fertilisers and filter out many of the nutrients before they make their way down the Mississippi to pollute the Gulf. However, it remains to be seen whether such measures are effective – and US farmers certainly need to greatly reduce the nitrogen and phosphates they use.

In the century since Muir's death, things have sped up. A larger population demands more food which means more deforestation, more farmland and more fertiliser. The increase demand placed on our land is ultimately affecting the marine environment.

These losses are unsustainable. The marine environment is integral for all life on earth, from an ecological and economic point of view. If we keep losing ecosystem services such as coastal nursery habitats and spawning grounds at this current rate, it will not just be an area the size of a state that is a dead zone, but the whole Gulf, or even whole oceans.

#### Industrial ag causes antibiotic resistant pandemics---extinction

Pamlin 15 – Dennis Pamlin, Entrepreneur and Founder of 21st Century Frontiers, Senior Associate at Chinese Academy of Social Sciences, Visiting Research Fellow at the Research Center of Journalism and Social Development at Renmin University, Advisor to Centre for Sustainable Development at Confederation of Indian Industries, Stuart Armstrong, DPhil from Oxford University, James Martin Research Fellow at the Future of Humanity Institute at Oxford University, “Global Challenges, 12 Risks That Threaten Human Civilization: The Case for a New Risk Category”, Global Challenges Foundation, February, https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

3.1.4.1 Expected impact disaggregation

3.1.4.2 Probability

Influenza subtypes266

Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261

These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic.

Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267

There are other grounds for suspecting that such a high impact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme.

Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275

Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the risk of a civilisation collapse would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade).

Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics).

Five important factors in estimating the probabilities and impacts of the challenge:

1. What the true probability distribution for pandemics is, especially at the tail.

2. The capacity of modern international health systems to deal with an extreme pandemic.

3. How fast medical research can proceed in an emergency.

4. How mobility of goods and people, as well as population density, will affect pandemic transmission.

5. Whether humans can develop novel and effective anti-pandemic solutions.

1. Extensive medical research will be key to preventing and combatting large scale pandemics. The drawbacks are the possibility of accidental release of dangerous pathogens from laboratories and of bioterrorism.

2. As so much is known about pandemic risks compared with other risks, there are more possibilities for specific prepandemic contingency plans.

3. The effectiveness of healthcare systems will be important, especially in less developed nations where the pandemic may overwhelm the system, and then transmit from there to other nations.

4. Global coordination in detection, analysis and treatment are vital for stopping a pandemic in its early stages, and for implementing measures such as quarantines and more advanced countermeasures.

5. Poverty will affect the quality of national healthcare systems, population density and sanitation quality, the movement of local goods and people, and the effectiveness of the political response.

6. Bioterrorists may unleash a pathogen held in storage, such as smallpox.

7. Laboratory security at the top labs is insufficient for the danger at hand, and accidental release is a nonnegligible possibility.

8. Pandemics are one of the risks where there is a possibility for a very large number of direct casualties, depending on the severity of the pathogen.

9. Mass casualties and finger-pointing could destabilise the world political and economic systems.

10. If the pathogen is transmissible to farm animals, this could affect the world food supply.

11. It is unlikely the pathogen would be a recurrent, long-term risk, but variants of it could continue to affect people and animals for many years, dependent on its transmissibility and life cycle.

12. Small pandemic scares could improve global coordination on the issue.

13. Increased population density causes increased transmissibility of the pathogen, especially in urban slums.

14. Some pathogens, such as bird flu, depend on regular contact between humans and “reservoir species” in order to evolve into periodically dangerous strains.

15. If antibiotic resistance develops, humanity could see the resurgence of bacteria-based pandemics.

16. The increased movement of people and products increases the speed and spread of pandemic transmission.

17. Sanitation or its lack will strongly affect the spread of certain pathogens in key areas.

18. The efficiency of global reaction to a new pandemic will be strongly determined by the speed of research on the pathogen during the pandemic.

19. A great risk will arise if a pathogen combines the different dangerous features of current viruses or bacteria.

20. The improvements to surveillance and sensing technologies (including indirect detection via web queries or social media) open the possibility of smarter interventions (such as microquarantines) and faster understanding of the pathogen’s transmissibility.

21. Post-pandemic politics will be important for preventing a civilisation collapse or enabling reconstruction.

22. Many pathogens incubate in species close to humans, before leaping the species barrier.

23. Monoculture food systems make it easier to transmit any pathogen infecting human food animals.

24. The mode of transmission of the pathogen will be critical to its ultimate reach and impact.

25. Various countermeasures are available in terms of detection, virus analysis, treatment, and quarantining. Future research, technological and political developments may open up new methods of fighting the pathogen.

26. Many of the current factors determining pathogen transmission are unprecedented, such as movements of goods and people, the quality of healthcare systems, and the existence of a centralised political response. This means that data from past pandemics will not be as reliable for computing probability distributions.

27. The pandemic risk lies in the “tails” – the extreme events – and these tails must be estimated from few data points, making them tricky and uncertain.

3.1 Current risks during 2013

3.1.4.3 Main events

10-Jun-13: Pandemic Influenza Risk Management: WHO Interim Guidance 278 – Policy

This is an updated document that replaces the 2009 Pandemic Influenza Preparedness and Response: a WHO guidance document.279 It updates its recommendations based on lessons from the influenza A(H1N1) 2009 pandemic (swine flu),280 the adoption by the Sixty-fourth World Health Assembly of the Pandemic Influenza Preparedness Framework281 (for the sharing of influenza viruses and access to vaccines and other benefits), and the States Parties’ obligations on capacity strengthening contained in the International Health Regulations of 2005.282

Of significance was the Report of the Review Committee on the Functioning of the International Health Regulations (2005) on the A(H1N1) 2009 pandemic,283 which concluded: “We were lucky this time, but as the report concludes, the world is ill-prepared to respond to a severe influenza pandemic or to any similarly global, sustained and threatening public-health emergency.” This is reinforced by the fact that the 2009 pandemic is alleged to have infected 24% of the population.284

The main lesson the WHO drew from that epidemic was that member states generally had communication issues (between ministries of health and decision,makers, and with the public), and were prepared for a pandemic of high severity and appeared unable to adapt their national and subnational responses adequately to a more moderate event.

The guidance paper indicates simultaneously the weaknesses of pandemic preparations, the improvements in these preparations, and the continued role of the WHO as global directing and coordinating authority.

24-Jul-13: Bacteria become resistant to some of the last remaining antibiotics 285 – Event

Bacterial infections, such as the Black Death, 286 syphilis, 287 and tuberculosis, 288 have been responsible for millions of deaths, over the thousands of years they have co-existed with humanity. Though these diseases have not been eradicated – overall, a third of the world is currently infected with the tuberculosis bacillus289 – they have been controlled since the introduction of antibiotics, and prognostics have improved tremendously. But recently a rising number of bacteria have developed antibiotic resistance, due mainly to antibiotic over-prescription290 and use in livestock feed.291 This Nature report highlights the worrying way in which Enterobacteriaceae (bacteria with a 50% mortality rate) have become resistant to carbapenems, one of the last remaining antibiotics that had been effective against them.

#### Small farms are key to the implementation of regenerative ag practices---the market power of large farms prevents status quo investment

Kristen Tam and Olivia Bielskis 21, Researchers for UCLA Law Library, “Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement”, 4-1-21, <https://escholarship.org/uc/item/0m16g2r5>

Food Security, a Critical Practice to create a Climate Resilient Future The United Nations IPCC report calls for a rapid greenhouse gas reduction to limit temperature rise to 1.5 degrees celsius by 2050.33 Given that agriculture and forestry accounted for 10.5 percent of greenhouse gas emissions in 2018,34 farming practices can play a crucial role in meeting these goals. Farming the land in ways that build healthy soil, maintain biodiversity, and sequester carbon dioxide are critical measures that will help America cultivate a sustainable food system, protect the land for generations to come, and meet greenhouse gas emission reduction goals. Currently, the practices that dominate the American agricultural landscape often till the soil, plant only one to two crops at a time, and input large sums of fertilizer, herbicides, pesticides, and other chemicals to streamline production. Industrialized agriculture values efficiency, maximizing yield, and decreasing labor input. In contrast, regenerative agriculture practices maintain soil health for long term benefit by applying compost as fertilizer, planting cover crops, implementing diverse crop rotation, rotating livestock grazing, limiting fertilizer and pesticide use, and eliminating tillage practices.35 Although opponents highlight that regenerative practices yield less products per acre and require more labor input, they neglect the significance of their energy input being 30-60 percent less than traditional methods because they do not use machines, fertilizer, and herbicides.36 This practice ultimately increases the long term productivity and stability of food production because it doesn’t rely on the continuous purchasing and application of chemicals into the soil. Instead, it builds soil health by increasing nutrient and water retention, both of which increases land productivity.37 II. Small Farms are More Likely to Implement Regenerative Fertilization Practices One of the defining regenerative agriculture practices is applying compost and manure as fertilizer. There are three different types of fertilization methods that the USDA measures every few years, manure, organic, and commercial that help replenish soil nutrients. Manure is the application of animal bio excretions,38 organic fertilizer is the use of organic matter, compost, animal manures or green manures and does not include any chemical fertilizers,39 and commercial fertilizer is the application of chemically derived fertilizers such as nitrogen, phosphate and potash.40 For these figures, manure and organic fertilizers are categorized as “regenerative fertilizers” because they represent methods that replenish soils with naturally derived as opposed to chemically manufactured nutrients. Small farms, 10.0 to 49.9 acres, are more likely to implement regenerative fertilizer methods than medium sized, 260 to 499 acres, and large sized, 1,000 to 1,999 acre farms. In 2017, 32.74 percent of small farms used regenerative fertilizer, compared to 27.27 percent of medium and 21.63 percent of large farms.41 Small farms are also transitioning away from commercial fertilizer to regenerative fertilizer methods at a faster rate than medium and large farms. From 2012 to 2017, small farms had the greatest percent decrease in number of farms using commercial fertilizers, 6.50 percent, and the largest percent increase for regenerative practices, 6.47 percent. Medium farms experienced a 2.28 percent decrease in the number of farms implementing commercial fertilizers, while a 2.57 percent increase in regenerative fertilizers. Large farms experienced a 2.31 percent decrease in the number of farming implementing commercial fertilizers, while a 2.32 percent increase in regenerative fertilizers.42 This demonstrates that smaller farms are more willing and better suited to implement regenerative practices. Industrial agriculture firms, on the other hand, highly prioritize efficiencies and maximizing profit, thus, are less likely to invest the time and money into learning about and switching to regenerative fertilization practices. While small farms are making the most rapid transition to regenerative fertilization practices that would benefit the market and planet in the long run, the increased market and resource dominance of the largest farms, which have the slowest rates of transition to regenerative fertilization practices, is ultimately hindering the growth of regenerative agriculture in the United States.

Consolidation Negatively Affects Farmers This disproportionate market power gained by a few agriculture conglomerates allows them to reduce prices in order to drive out competition.43 While large farms lack the will to invest in more regenerative farming techniques, small farms that do not employ regenerative practices are primarily hindered by their lack of economic means to do so. As previously stated, individual farmers make less than 15 cents per dollar and, according to a study conducted by the USDA in 2001, 71 percent of poultry growers live below the poverty line.44 Such subpar circumstances are not conducive to having the freedom to invest time and money into switching practices to plant cover crops, not till, and use animal fertilizer. E. Consolidation Negatively Affects Consumers In addition to harming farmers, agricultural consolidation has also resulted in increased food prices for consumers, largely disproving the claims of Bork’s “consumer welfare standard.” In 2014, economist John Kwoka published a book Mergers, Merger Control, and Remedies: A Retrospective Analysis of U.S. Policy where he analyzed 200 mergers from 1976 to 2006 and found that post-merger prices on average increased by 4.3 percent.45 In addition, evidence has shown that market self-correction has not occurred as a result of antitrust underenforcement.4

#### Without a transition, ecocide is inevitable---Land conversion is empirically denied

Andrew Kimbrell 03, JD, Executive Director at the Center for Food Safety, “The Myth: Industrial Agriculture Benefits the Environment and Wildlife”, Fatal Harvest: The Tragedy of Industrial Agriculture, 1-4-2003, http://www.keepmainefree.org/myth5.html

Industrial agriculture is the largest single threat to the earth's biodiversity. Fence-row-to-fence-row plowing, planting, and harvesting techniques decimate wildlife habitats, while massive chemical use poisons the soil and water, and kills off countless plant and animal communities. Industrial agriculture’s mythmakers have been so successful in their efforts to shape opinion that they must believe we’ll swallow just about anything. They now assure us that intensive farming methods that rely on chemicals and biotechnology somehow protect the environment. This myth, as illogical as it may sound to an informed reader, is increasingly widespread in America today and is increasingly accepted as valid. What’s worse, agribusiness is saturating the media with misleading reports of the purported ecological risks of organic and other environmentally sustainable agricultural practices. A typical claim of the industrial apologists is that the industrial style of agriculture has prevented some 15 million square miles of wildlands from being plowed under for “low-yield” food production. They continuously assert that the biggest challenge of the 21st century is to increase food yields through modern advances in agricultural science, which include the genetic engineering of commercial food crops. They also claim that if the world does not fully embrace industrial agriculture, hundreds of thousands of wildlife species will be lost to low-yield crops and ranging livestock. There is a plethora of evidence that busts this myth. At the outset, the idea that sustainable agriculture is low-yield and would result in plowing under millions of square miles of wildlands is simply wrong. Relatively smaller farm sizes are much more productive per unit acre — in fact 2 to 10 times more productive — than larger ones, according to numerous government studies. In fact, the smallest farms, those of 27 acres or less, are more than ten times as productive (in terms of dollar output per acre) than large farms (6,000 acres or more), and extremely small farms (4 acres or less) can be over a hundred times as productive. Additionally, in contrast to industrial agriculture, sustainable or alternative agriculture minimizes the environmental impacts of farming on plants and animals, as well as the air, water, and soil, often without added economic costs. The simple use of composted organic manures is a cost-effective alternative to chemical fertilizers, and increases soil microbiology and fertility, decreases erosion, and over the long term helps preserve wildlife habitats. Organic and diversified farming practices increase the prevalence of birds and mammals on farmlands and ensure biological diversity for the planet. In sum, in terms of preserving and augmenting soil productivity and the biodiversity of the planet, small-scale sustainable agriculture is far more beneficial and efficient than its industrial counterpart. Moreover, instead of being a boon to the environment as the myth proclaims, industrial agriculture is currently the largest single threat to the earth's biodiversity. There are two primary reasons for this: the devastation of wild species caused by chemical use, and the destruction of wildlife habitat from industrial agriculture's inefficient fence-row-to-fence-row plowing, planting, and harvesting techniques. Chemicals and the Environment Pesticide use — endemic to industrial agriculture — has been clearly identified as a principal driving force behind the drastic reduction of biodiversity on America's farmlands. According to Tracy Hewitt and Katherine Smith of the Henry Wallace Institute, there are no fewer than 50 scientific studies that have documented adverse environmental effects of pesticide use on bird, mammal, and amphibian populations across the United States and Canada. The Virginia Department of Game and Inland Fisheries, for example, found that at least 6 percent of the breeding population of bald eagles along the James River were killed annually by insecticide poisonings. Professor David Pimentel estimates that 672 million birds are affected by pesticide use on farmlands and 10 percent of these — 67 million — die each year. In Texas, where some 15 million acres of croplands are treated with pesticides, tens of thousands of migratory waterfowl come in direct contact with the treated grains, risking sickness and ultimately death. Between 1977 and 1984, half of all the fish killed off the coast of South Carolina were attributed to pesticide contamination. These are only a few of the many tragic examples of wildlife destruction in the United States alone. Chemical fertilizers — which are also a key component of industrial agriculture — pose an even greater risk to soil and water quality, threatening biodiversity and wildlife populations around the globe. Aquatic and marine life are especially vulnerable to the tons of residues from chemically treated croplands that find their way into our major estuaries each year. In the Chesapeake Bay, native sea grasses, fish, and shellfish populations have declined dramatically in number in the last few decades due to extremely high nitrogen and phosphorous levels caused by the excessive use of chemical fertilizers. According to Kelley R. Tucker of the American Bird Conservancy, use of inorganic fertilizers also tends to reduce overall plant species diversity on farmlands, allowing farm edges to be dominated by only one or a few types of plants. Bird populations suffer as a result because they are highly dependent upon the variety of insects that are supported by diverse, native landscapes. Habitat Destruction In addition to the environmental damage caused by chemical pesticides and fertilizers, the huge monocultured fields characteristic of industrial agriculture have dramatically reduced a number of wildlife populations by transforming habitats, displacing populations of native species, and introducing non-native species. Among countless other wild plants and animals, important game species such as prairie chickens, bobwhite quail, cottontail rabbits, and ring-necked pheasants have been greatly reduced or eliminated in areas of industrial agriculture. Diversified farming techniques, on the other hand, incorporate numerous varieties of plants, flowers, and weeds, and encourage the proliferation of various wildlife, insect, and plant species. No myth can hide the fact that decades of industrial agriculture have been a disaster for the environment. Its chemical poisoning has caused eco-cide among countless species. And it has resulted in irreversible soil loss, reduction in soil and water quality, and the proliferation of non-native species that choke out indigenous varieties. Without question, the tilling, mowing, and harvesting operations of industrial agriculture have affected, and continue to catastrophically destroy, wildlife and soil and water quality. By contrast, sustainable and organic farming methods result in the reduction of land under the plow and the increase of biodiversity and wildlife on farmlands and beyond.

#### The plan solves---it allows small farms to compete by resolving unequal distribution of market power

Hannah Kass 19, Master’s degree candidate in environmental studies at the University of Pennsylvania, “Breaking Up Big Ag Requires Reasonable Antitrust Enforcement”, 12/26/19, The Regulatory Review, https://www.theregreview.org/2019/12/26/kass-breaking-up-big-ag-antitrust-enforcement/

In 2007, food sovereignty activists from around the world convened in Sélingué, Mali to write the [Declaration of Nyéléni](https://nyeleni.org/spip.php?article290). That declaration asserts that activists should seek to democratize the flows of power, wealth, and resources that have moved predominantly toward the core industrialized countries and multinational corporate agribusinesses, and away from farmers all over the world.

The declaration aims to ensure that the food system protects those who produce and consume the world’s food supply: farmers and people, rather than corporate agribusinesses. Yet in the United States and elsewhere, the food system has a long way to go toward meeting the needs of both farmers and consumers.

Farmers are increasingly driven out of agriculture by the unequal distribution of market power. To ensure fair competition in the agri-food marketplace, it is imperative that the federal government provide the proper enforcement of antitrust regulations. Currently, corporate agribusinesses [hold](https://www.iatp.org/sites/default/files/451_2_89014.pdf) a disproportionate amount of market power in the agri-food economy. Farmers, on the other hand, are under economic pressure to compete in a growing global market, and often must [rely](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) on contracting with just a few processing companies to sell their products.

Many of these contracts contain [conditions](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) which force farmers to buy seeds and equipment from a small handful of input companies. Often, the big food companies are vertically integrated—that is, the same companies operate at various levels of the supply chain. At the end of the day, farmers only [receive](https://1yd7z7koz052nb8r33cfxyw5-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/042718-FarmerShare-1.pdf) 14.8 cents per every dollar consumers spend on food—yet the costs of production amount to 80 cents per dollar. The majority of the revenue is realized by corporate agribusiness executives and shareholders.

In 2015, the four largest beef firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 85% of the beef market. The four largest U.S. corn seed firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 85% of the corn seed market, and the four largest U.S. soybean seed firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 76% of that market. In 2017, after the Bayer–Monsanto and Dow–Dupont mergers, the four largest global herbicide and pesticide firms now [own](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 84% of the market share.

The [Federal Trade Commission](https://www.ftc.gov/) (FTC) and [Antitrust Division of the Department of Justice](https://www.justice.gov/atr) interpret and implement antitrust statutes. The [Sherman Antitrust Act of 1890](https://www.ourdocuments.gov/doc.php?flash=false&doc=51&page=transcript) renders price-fixing, restraint of trade, and excessive market monopolization illegal, and the [Clayton Antitrust Act](http://euro.ecom.cmu.edu/program/law/08-732/Antitrust/ClaytonAct.pdf) asserts that it is unlawful for any business to merge with or acquire any part of its industry in a manner that significantly damages that industry. Despite these laws, corporate agribusiness’ monopolization of the agricultural market continues to persist at the expense of farmers in the United States.

Over the past 40 years, corporate agribusinesses have benefited from the FTC and Antitrust Division’s lax interpretations of antitrust statutes. These agencies have [permitted](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1065&context=gblr) large corporate agribusinesses to merge and monopolize the market excessively, despite the fact that antitrust statutes were created explicitly to regulate monopolies and ensure fair market competition.

Admittedly, given that the Sherman Act makes it illegal to restrain trade, it might be said that only by allowing agribusinesses to merge, acquire other businesses, and monopolize the market is trade able to continue unrestrained. But that trade is unrestrained only for the big firms. Small farmers are unable to [compete](https://foodfirst.org/wp-content/uploads/2013/12/BK7_4-Fall-2001-Vol-7-4-Freedom-to-Trade.pdf) in the marketplace when the concentration of big firms continues unrestrained, particularly when mergers and acquisitions promote the monopolization of the market.

Consider how small farmers have fared under the consolidation of the meat packing industry. According to the [Packers and Stockyards Act of 1921](https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/42/STATUTE-42-Pg159b.pdf), price-fixing was supposedly rendered illegal, but even with this protection the plight of small farmers has been profound.

In 2004, for example, cattle farmer Henry Lee Pickett [sued](https://caselaw.findlaw.com/us-11th-circuit/1492709.html) meat packer Tyson Foods when he noticed that Tyson was lowering prices in its marketing agreements with farmers. Pickett preferred to charge the cash market price to avoid being paid an unfair price. Even if farmers did not sell their products through marketing agreements like Tyson’s, often they still needed to lower their prices on the open market. Pickett was unable to provide evidence that Tyson’s market agreements were producing unfair competition practices, so he lost his case.

Separately, pork producers also unsuccessfully [fought](https://law.justia.com/cases/federal/district-courts/FSupp2/183/824/2285063/) meat packer Smithfield Foods, citing illegal price-fixing under the Packers and Stockyards Act. The marketing agreements were seen by the judiciary as reasonable business practices because they cut costs to the agribusiness contractors.

In both of these cases, Tyson and Smithfield were protected by the “freedom of contract” principle, which declares that everyone is free to participate in, or opt out of, any contractual agreement. However, the share of this “freedom” in terms of food sovereignty is certainly asymmetrical. When the market price is controlled by an artificially low price created by a marketing agreement, farmers are not free from poverty. When marketing agreements are adopted by the majority of processors, and there are not alternative agreements offered, farmers are not free from opting out of unfair contracts. In effect, farmers are locked into receiving an unfair price for their product.

The [Agricultural Adjustment Act of 1933](http://nationalaglawcenter.org/wp-content/uploads/assets/farmbills/1933.pdf) contained an important policy for agrarian viability: parity pricing, or a price support that covers producers’ costs of production in setting commodity prices. But that policy [lapsed](https://onlinelibrary.wiley.com/doi/abs/10.1526/0036011042722750) in 1973 and has never returned as part of federal agricultural law. Reinstating a parity price for farm products would ensure that consolidated corporate agribusinesses would not be able to fix prices below the costs of production. Farmers would have to be paid a fair price for their products under the law.

Another important solution will be for farmers and food sovereignty advocates to seek judicial review of mergers and acquisitions approved by the FTC and DOJ. When firms are too big, they accumulate too large a share of power, land, and wealth. This inequality inherently renders farmers dispossessed of their ability to compete in the marketplace.

Instilling food sovereignty into our food governance requires prioritizing our farmers’ needs. The law must guarantee a fair price for the food they grow to feed all of us. The judiciary must consider the “restraint of trade” that their previous merger approvals have imposed on farmers, and enforce antitrust laws in favor of farmers going forward.

# 2AC

# 2AC R3

## Food Security

#### Industrial innovation fails---defensive R&D, narrow technological scope, and barriers to entry

Pat Mooney et al. 17, founder of the ETC group, October 2017, TOO BIG TO FEED, http://www.ipes-food.org/\_img/upload/files/Concentration\_FullReport.pdf

IMPACT 3 Narrowing the scope of innovation: defensive and derivative R&D Consolidation across the agri-food industry has a major impact in shaping R&D pathways and the broader innovation climate in food systems. Over the past 30 years, global private sector investment in agricultural R&D has risen faster than public R&D spending in OECD countries (Pray & Fuglie, 2015). By 2013, private R&D accounted for almost half of agricultural research (Jaruzelski et al., 2017), with public research declining and increasingly focused on complementing and facilitating private R&D (e.g. through IPR protections).24 In its 2011 study on concentration in agricultural inputs, the USDA observed that the share of private R&D performed by the largest firms was even greater than their market shares (based on 2010 figures in Fuglie et al., 2011). For example: • The top eight seed/biotech companies accounted for 76% of all R&D spending in this sector • The top five companies accounted for over 74% of agrochemical R&D • The top four companies performed over 57% of farm machinery R&D • The top eight companies accounted for over 66% of R&D in animal health To put this in perspective, in 2013 the combined R&D budgets of the Big Six agrochemical and seed companies, valued at $6.59 billion, was six times larger than the total USDA Agricultural Research and Information budget ($1.1 billion) (USDA, 2013), and twenty times bigger than the CGIAR’s $332.2 million expenditures on crop-oriented research/breeding in the same year (CGIAR, 2013). The pooled resources and combined weight of increasingly consolidated agribusiness firms has long been touted by industry leaders as the key to a dynamic innovation climate. Such arguments date back to the 1980s, when Don Duvick, the research director of Pioneer Hybrid (then the world’s largest seed company, later merged with DuPont and now merged with Dow) made the case that the increased research capacity of merged companies would allow for greater and faster ‘diversity in time’: input companies would have a research pipe line providing farmers with an annual turnover of varieties in response to rapidly evolving diseases or pests, and other environmental stresses. From this perspective, consolidation is required to deliver the scale (research costs, infrastructure requirements) and scope (global applications) to rapidly invent and deploy new technologies around the world. This stands alongside the ‘diversity in space’ customarily practiced on the farm, whereby farmers protect their harvests with species and genetic diversity in the field (e.g. by intercropping, mixed crop-livestock farming). In addition, a different version of ‘diversity in time’, e.g. the use of crop rotations, has traditionally been adopted by farmers to boost resilience and mitigate risks. By contrast, farmers relying on the research pipelines of agribusiness firms may be left to shoulder the risks, e.g. of pest outbreaks, while seed companies supply their customers with new, resistant seeds in following years. More broadly, evidence from a range of sectors suggests that economies of scale fail to translate into dynamic innovation strategies, with highly concentrated markets often working against innovation. In an overview of innovation in the US automobile, computer and pharmaceutical industries, Adams and Brock (2004, p.49) noted that innovation in oligopolistic markets often comes “reluctantly” from leading companies when it occurs at all. A further study conducted by the US Federal Trade Commission suggests a strong negative correlation between high levels of market concentration and innovation (FTC, 2003). Buyouts are often pursued with innovation in mind, but primarily in terms of consolidating R&D costs - not increasing the quantity or quality of innovation. While private companies now make up a larger portion of total R&D spending in many sectors, the R&D budgets of large firms are frequently downsized as a result of consolidation (Lynch & Chazan, 2014). Moreover, mergers between R&D-oriented firms have been shown to reduce the types of innovation that are practiced (Moss, 2016; Haucap & Stiebale, 2016). The dominant trend is for large firms to buy out, enter licensing agreements, or partner with start-ups to fill in their innovation gaps. While the trend towards scaling innovation is not inherently problematic, analysts – including Chicago School economists - are increasingly concerned by the capacity of dominant firms to stifle bourgeoning competition through buyouts (The Economist, 2017c). Already, the leading companies in about two thirds of the 900 monitored industrial sectors have significantly increased their market share since the 1990s, while startup companies have diminished in number and in size (ibid). While the net R&D figures above suggest that today’s dominant agri-food companies are addressing the innovation challenge head-on, a closer look at research and innovation trends suggests that disincentives to innovation and increasingly defensive modes of R&D (i.e. R&D intended to defend existing products or technologies in the face of new competition or regulations, instead of investing in new ideas) are the reality in these highly concentrated markets. A series of significant and highly-anticipated advances have failed to materialize since the agri-food industry stepped up its consolidation in the 1970s. For example, commercial breeders initially argued that intellectual property protection would give them the incentive to domesticate new species of fruits and vegetables or, at least, to expand the market for a wider range of crops; however, there has been little to no increase or expansion (Dutfeld, 2000; Phillips McDougall, 2013). While the volume of R&D spending in the agrifood sector may be high, the scope remains strikingly narrow. The consolidation and privatization of R&D budgets has focused innovation on a narrow range of crops, technologies and approaches, creating path dependencies that detract from research on traditional crop varieties or social innovation strategies (Rahman, 2009). R&D spending has centered on crops and technologies with the highest commercial returns (Piesse & Thirtle, 2010), providing little space for commercial innovation for crops that are often most important for smallholder farmers in the South, and for delivering diverse, nutrient-rich diets. As much as 40% of private breeding research goes to one crop, maize (Fujisaka et al., 2011). In crop chemicals, the number of new active ingredients undergoing R&D decreased by 60% between 2000 and 2012 (Phillips McDougall, 2013). Recent trends suggest that the majority of patents being registered do not represent new breakthroughs - let alone innovations with relevance for the challenges food systems now face. According to USDA researchers, three firms (DuPont, Monsanto, Syngenta) accounted for nearly three quarters of all US patents issued for crop cultivars between 1982 and 2007 (ibid). As mentioned by industry analysts, “on a global basis, […] a greater share of R&D investment is being spent on defending products as they come of patent, including seed treatment and formulation technologies – rather than new active ingredient research” (ibid). For example, with only a handful of firms selling Bt cotton or GM soybeans (Naseem & Oehmke, 2008), the path dependencies are greater still for GM crops. Once a company has gone through the costs and regulatory maneuvers to bring a pesticide to market, it is more lucrative for companies to breed GM seeds that boost sales of proprietary chemicals than to develop alternative agronomic solutions to pests, diseases and changing climatic conditions (Glover, 2010). Between 1995 and 2005, pesticide development costs rose by 118%—but the greatest share of R&D expenditures went to preserving sales of old chemical products facing patent expiration. The dependence on a firm’s old proprietary technologies appears to actively constrain innovation (Gapper, 2015). For these companies, the practical cost of bringing a new pesticide to market averages around US$286 million, while the cost of bringing a new GM variety is closer to US$136 million (ETC, 2015). The approaches adopted by dominant firms also impact other companies’ capacity or willingness to innovate. An increasing market share for transnational corporations in transitional economies has been shown to reduce local innovation and knowledge diffusion outside a company’s own networks (Voinea, 2008). Consolidation is also affecting the innovation climate in food processing and retail, cementing a focus on product differentiation over other forms of innovation. H

ere, new product lines are proliferating faster than ever. The food and beverage industry typically introduces over 21,000 new food and drink products per year (USDA, 2014a). However, this should not be confused with meaningful steps to innovate in terms of how those products are produced, composed, sourced and delivered (and the resulting implications for sustainability). While consumers may believe they are choosing among diverse products made by competing companies, they are often selecting among only notionally – or promotionally – different products from the same firm (ibid). ConAgra, for example, sells six different brands of popcorn, all containing a nearly identical ingredient list. In the US, margarine sales display a similar trend, with two firms – Unilever and ConAgra – accounting for 51.2% and 16.9% of sales through their six and four different brands respectively (Howard, 2016b). Similarly, new products introduced onto the market under different brands, such as breakfast cereals, are often made up of variations of the same ingredients – with a majority of product investment going into marketing rather than innovative R&D (Lawrence, 2008). This illusion of product diversity reflects the extensive and growing consolidation of the sector. A 2013 study of supermarket consolidation in the US found that four leading grocery retailers controlled 63.3% of sales of 100 basic grocery items, and more than 75% of sales for 32 of these items (Food & Water Watch, 2013). This type of consolidation does not preclude genuine innovation between product lines. However, the same supply chains and same logics are likely to underpin many of those products, meaning that much of the choice and diversity at consumers’ fingertips - and the implicit innovation in food retail - may be illusory. Indeed, a number of studies in Europe and the US demonstrate that increased market power results in reduced innovation efforts by manufacturers and food processors (Dobson et al., 2001; Roeder et al, 2000; US Federal Trade Commission, 2003a). As in the input sectors, corporate concentration can lead to barriers to entry – to the detriment of smaller and potentially more innovative actors. For example, new entrants can be shut out when dominant actors pay retailers to exclude products similar to theirs (Howard, 2016b). A defensive R&D paradigm therefore runs across food systems and has been cemented by the rapid consolidation at the field and fork ends of the chain. These trends have major implications for sustainability, allowing resources to be diverted away from investment in product innovation (e.g. reformulation of ingredients) or in improving agricultural practices. The resulting innovation climate reinforces the focus on ‘high-tech’ lab-based micro-innovations that have macro (i.e. global) applications: a privately-owned pesticide, a drying process, or a nutritional supplement. Alternative paradigms based on decentralized ‘wide-tech’ approaches are kept of the table; the potential of a ‘wide tech’ innovation paradigm to underpin more sustainable food systems is discussed in Section 3.

#### Competition is best for innovation---concentration leads to fewer labs, pathways, and stackable traits

Brad Plumer 16, former senior editor “Why the fight over the Monsanto-Bayer deal matters for the future of farming,” Vox, 9-20-2016, https://www.vox.com/2016/9/20/12988616/bayer-monsanto-dupont-dow-agriculture-mergers-innovation

Now, not everyone’s convinced by this pro-innovation case. At the hearing, Diana Moss, president of the American Antitrust Institute, laid out five big counterpoints to consider:

1) For starters, there’s not a lot of great historical evidence that consolidation has led to greater innovation in agriculture. In fact, the opposite might even be the case.

In the late 1990s and early 2000s, she noted, R&D spending among biotech firms as a percentage of sales boomed, as new traits such as insect resistance were being widely introduced. In response, the industry went through a wave of consolidation, with bigger firms like Monsanto buying up smaller companies and patents.

By the late 2000s, however, R&D spending as a percentage of sales had actually slumped back down to mid-1990s levels. "This conclusion," Moss noted, "calls into question long-standing arguments that concentration is needed to generate economies of scale in R&D."

2) Moss also pointed out that while crop yields have been going up over time — a point of pride among biotech companies — seed prices have increased even faster. This, she noted, was "the very problem that biotechnology is purportedly designed to solve." The worry here, in other words, is that while these massive agribusinesses have had R&D successes, the lack of competition has limited the actual benefit to farmers (and hence consumers).

3) Moss quibbled with the claim that companies could get more research and scientific breakthroughs by combining their research divisions. That might be true, but a big worry is that you’d have fewer labs working on a set number of problems in agriculture — which would actually reduce the odds of a breakthrough. Key quote:

The time and cost associated with performing R&D and field-testing and obtaining regulatory approvals create a long pipeline to commercialization. And once through the pipeline, biotechnology firms must market new technology to farmers where crop planning and switching costs increase the time associated with adoption of new technology on a larger scale. In innovation markets, therefore, the importance of maintaining multiple parallel in R&D paths is paramount. As one farmer put it: "The more people you have researching, the better off you are at finding something."

4) Moss also pointed out that a great deal of innovation in seed and crop varieties comes from different competitors working together to "stack" traits. So if Dow has developed a trait that allows cotton to be resistant to worms, and Monsanto has developed a trait that allows cotton to be Roundup Ready, they can join forces, through cross-licensing agreements, to produce cotton with both traits.

But this system works best when there are lots of companies competing against each other. "Farmers benefit most when there are competing stacks to choose from," Moss argued. "Competition maximizes the potential for numerous collaborations and minimizes incentives to refuse to license

or to impose discriminatory restrictions in technology licensing agreements. Moreover, competition limits incentives for just a few large players in a tight oligopoly to tacitly or even explicitly ‘agree’ not to compete."

5) All these mergers could make it much harder for smaller companies to break into agriculture with new innovations. Big, vertically integrated firms that sell both seeds and pesticides can create integrated products that require farmers to buy the full package — and lock out small competitors.

The basic thread running through these five points is that competition is crucial for fostering innovation, as farmers have more choices and companies have more incentive to create the most appealing seeds and pesticides for them. Reducing this competitive dynamic is likely to swamp any benefits from increased synergies from mergers.

#### Best studies disprove defense

Koren 16 – Ore Koren, PhD Candidate at the University of Minnesota in Political Science and Former Jennings Randolph Peace Scholar at the United States Institute of Peace, & Benjamin E. Bagozzi, Assistant Professor in the Department of Political Science & International. Relations at the University of Delaware, “From Global to Local, Food Insecurity is Associated with Contemporary Armed Conflicts”, Food Security, October, Volume 8, Issue 5, https://link.springer.com/article/10.1007/s12571-016-0610-x

What do these findings indicate about the variation in the risk of conflict and civil conflict? Firstly, all four models support the argument that a significant relationship exists between food insecurity and conflict. More specifically, these findings suggest that, for an average country, the baseline risk of conflict and civil conflict increases in regions that provide at least some access to food – supporting the expectation that global demands for food should generally direct conflict towards agricultural areas. At the same time, within agricultural areas, conflict is intuitively more likely to arise in regions where the levels of food per capita are low – that is, where food supplies are scarce. Secondly, and in line with previous research (Burke et al. 2009; O’Loughlin et al. 2012; Hsiang and Meng 2014; Hendrix and Salehyan 2012), warmer regions and areas with lower precipitation were significantly more likely to experience conflict. This supports the argument that food scarcity can serve, to some extent, as a mediating factor for the effects of climate variables, in addition to the independent impact of food insecurity related concerns on conflict. Thirdly, as extant studies (e.g., Hegre and Sambanis 2006) suggest, poorer regions are more likely to experience conflict, as are more ethnically diverse regions, although it appears that higher levels of democracy do not translate into more peace once cell level characteristics are taken into account.3 Perhaps unsurprisingly, regions with larger populations are more likely to experience conflict, as are more rural regions, as some scholars have argued (Fearon and Laitin 2003; Kalyvas 2006; Buhaug et al. 2009).

In sum, four models involving different explanatory variables have been utilized to examine two conceptualizations of conflict as an outcome of interest. The results strongly support extant arguments that access to and availability of food are each associated with an increased occurrence of armed conflict. This evidence does not negate previous explanations of conflict that emphasize the importance of political and economic development or climactic variation. However, by highlighting the strong association between food access and availability on one hand, and local political violence on the other, the above findings do show that these past expositions (e.g. Miguel et al. 2004; Burke et al. 2009; Hsiang and Meng 2014) in and of themselves are insufficient to fully explain the likelihood of local level conflict. Simply put, the present study confirms that there exists a systematic, and global, relationship between food insecurity on one hand, and the occurrence and persistence of social conflict on the other.

Discussion

What do these findings imply about the effect of food insecurity and conflict? Naturally, even the most detailed and elaborate models are simplistic, especially when containing as diverse a range of observations as those examined above. Nevertheless, in terms of conditional probabilities, all models show a statistically significant first difference change of approximately +92 % in the probability of conflict when a high risk scenario is simulated for an average cell.4

The conditional probabilities discussed above highlight the inherent complexity of social systems, as a phenomenon as notable as violent conflict ultimately arises due to a variety of stressors. Therefore, it should be emphasized that the above findings should not be interpreted as explaining conflict onset. Conflict can erupt due to various political (Buhaug 2010; Fearon and Laitin 2003) or economic (Hegre and Sambanis 2006; Collier and Hoeffler 2005) reasons – which may or may not be related to food insecurity – that are beyond the scope of this paper. Rather, the present study more simply suggests that political violence will have a higher likelihood of concentrating in regions that (i) offer more access to food resources and (ii) face low levels of food availability within areas that offer some access to food resources.

This study adopts an economic perspective on food security to explain this variation in the concentration of social conflict. From the demand side, violent conflict is most likely to revolve primarily around access to food sources. When food insecurity produces higher demands for food, these demands will directly compel groups and individuals to seek out and fight over existing food resources, rather than leading these actors to pursue and fight over geographic areas that lack any (or have very little) agricultural resources. Thus, access to croplands and food is a necessary condition for food insecurity-induced conflict, which is confirmed in the cropland analyses presented here. From the supply side, and within those areas that do already offer access to agriculture and/or food, conflict is most likely to occur in regions that offer lower levels of food availability, or insufficient food supplies. This is because lower food availability (or supplies) in these contexts directly implies higher levels of resource scarcity, which can engender social grievances, and ultimately, social and political conflict (Brinkman and Hendrix 2011; Hendrix and Brinkman 2013). More broadly, several causal mechanisms could plausibly link food security and social conflict.

For one, conflict in regions with higher food access and lower availability might arise as a principal outcome of food insecurity. This approach is most directly in tune with the body of research concerned with the resource scarcity

-based security implications of climate change (e.g. Miguel et al. 2004; Burke et al. 2009; O’Loughlin et al. 2012), as well as with broader studies of conflict dynamics and food security in both rural and urban contexts (Brinkman and Hendrix 2011; Hendrix and Brinkman 2013; Messer and Cohen 2006). From this perspective, individuals and groups actively fight with one another due to food insecurity-induced grievances, which may manifest in groups’ attempts to overthrow existing political structures, or in these actors’ efforts to more directly seize and control available (but scarce) agricultural resources in an effort to better guarantee long-term food security for their constituents. If future global projections for population growth, consumption, and climate change hold true, then these dynamics suggest that incidences of violent conflict over food scarcity and food insecurity may increase as individuals and groups fight over a continuously shrinking pool of resources, including food.

A second mechanism involves the existence of logistic support in conflict-prone regions, or lack thereof. Throughout history and well into the nineteenth century, armies living off the land have been a regular characteristic of warfare. The utilization of motorized transport vehicles and airlifts has significantly reduced the need of modern militaries to rely on local populations for support, at least among modernized, highly technological militaries (Kress 2002, 12–13). However, given the bureaucratic and economic capabilities required to maintain such systems, the majority of state and non-state armed groups in the developing world are still unlikely to be supported by well-developed logistic supply chains (Henk and Rupiya 2001). Taking into account the consistent relationship between economic welfare and conflict (Hegre and Sambanis 2006; Fearon and Laitin 2003), unsupported warring groups on all sides of a conflict may move into regions that offer more access to cropland in order to forage and pillage to support themselves, which in turn produces higher incidences of hostilities, especially if there is not much food per person available within these fertile regions. Hence, violent conflict in this case is not the direct result of food insecurity, but rather is shaped by food insecurity concerns. The identified relationships between food security and conflict are robust across numerous alternative model specifications, and imply an independent effect of food insecurity in shaping conflict dynamics and conflict risk. Especially when considered alongside current, and projected, climatic and political-economic conditions, this linkage suggests that countries could see an increase in localized conflict worldwide in the coming years. However, this anticipated trend should be considered with caution for several key reasons.

## Sustainability

#### Sustainable ag increases yields

Morris 16 – Katlyn S. Morris, PhD Candidate in the Department of Plant & Soil Science at the University of Vermont, and Gabriela Bucini, PhD student at the Natural. Resource Ecology Laboratory (NREL) of Colorado State University, “California’s Drought as Opportunity: Redesigning U.S. Agriculture for a Changing Climate”, Elementa Science, https://www.elementascience.org/articles/10.12952/journal.elementa.000142/

Yields and productivity

In addition, contrary to the long-held assumption that organic or agroecological farms are less productive than large-scale conventional farms, diverse agroecosystems can produce higher yields per unit of land than monocultures. Research has shown that organic agriculture produces yields sufficient to ‘feed the world’ at present and for a growing population, without the need for agricultural expansion (Badgley et al., 2007). Various trials and meta-analyses have concluded that yields are comparable for organic and conventional fields (Ponisio et al., 2015, Pimentel et al., 2005), while others have shown a great deal of variability in yields depending on the crop, climatic and geographic conditions, and specific management practices (DePonti et al., 2012; Seufert et al., 2012). Productivity in terms of harvestable products per unit area is higher in polycultures than monocultures with the same level of management (Altieri, 1999). Yield advantages can range from 20–60% depending on crops, climate, and management factors. These yield advantages are attributable to more efficient use of water, light, and nutrients in polycultures and the maximization of vertical space of different crops (Altieri and Toledo, 2011).

Many of the principles of agroecology and other sustainable agriculture approaches can be applied to different geographies and crop or livestock systems to improve yields without reliance on agrochemicals and irrigation. For example, in Mexico one hectare planted with a mixture of maize, squash and beans can produce as much as 1.73 ha of a maize monoculture. In Brazil, intercropped maize and beans exhibited a yield advantage of 28 percent over maize monocultures. In the Brazilian Amazon, Kayapo yields are 200% higher in agroecological systems than they are in systems that use agrochemicals (Altieri and Toledo, 2011). In the United States, the Rodale Institute long-term trial of corn and soybeans managed conventionally versus organically showed that organic crops (fertilized with manure and intercropped with legumes) had significantly higher yields than conventional in 4 out of 5 of the drought years between 1988 and 1999 (Lotter et al., 2003). Manure and legume treatments improved soil water-holding capacity, water infiltration rate, and water capture efficiency, leading to higher yields in periods of water-stress (Lotter et al., 2003). A long-term, large scale trial in Iowa demonstrated that cropping system diversification of maize and soybean resulted in lower costs from reduced chemical inputs and higher yields over time (Davis et al., 2012). These examples from throughout Latin America and the United States challenge the assumption that diversified and organically managed farms are less productive than conventionally managed farms.

## T

#### Counter-interp---‘prohibitions’ include regulation---reject arbitrary distinctions.

John G. Koeltl 7, United States District Judge, “United States Baseball v. City of New York”, United States District Court for the Southern District of New York, 509 F. Supp. 2d 285, 297, 2007 U.S. Dist. LEXIS 63234, 8/27/2007, Lexis

The City responds that its home rule and police powers are broader pursuant to Article IX, Section 2(c) of the New York State Constitution, New York Home Rule Law § 10(1)(a)(12), and New York General City Law § 20(13) than the plaintiffs suggest. These provisions give the City the power to enact laws for the "safety, health, well-being, and welfare" of its residents. The City asserts [\*\*29] that the Bat Ordinance does not constitute a "prohibition" because it does not condemn all use of non-wood bats. It bars their use in competitive high school baseball games, but not for example in high school practices, junior high school games, "pick up" games, or youth league games that are not school-sponsored. Moreover, the City persuasively argues that the suggested distinction between "prohibitions" and other "regulations" is artificial and untenable, because all regulations prohibit some conduct that is incompatible with the regulatory standards and all "prohibitions" leave some conduct untouched. For example, a New York court upheld as a valid exercise of the police power a New York City law banning the possession in a public place of a knife with a blade of at least four inches in length in People v. Ortiz, 125 Misc. 2d 318, 479 N.Y.S.2d 613, 620 (Crim. Ct. 1984). The plaintiffs suggest the law at issue in Ortiz was a not a "prohibition," but it appears to be at least as complete a prohibition as the Bat Ordinance, which prohibits only certain uses of bats with certain defined characteristics.

## ADV CP

#### The plan is a prereq---allows small farms to compete

Anthony Pahnke 21, vice president of the Family Farm Defenders, “Make food more equitable through antitrust laws,” TheHill, 3-4-2021, https://thehill.com/opinion/energy-environment/541492-make-food-more-equitable-through-antitrust-laws

From [destroying](https://www.theguardian.com/world/2020/apr/09/us-coronavirus-outbreak-agriculture-food-supply-waste) perfectly good food due to supply chain bottlenecks, to farmworkers [risking](https://www.usatoday.com/in-depth/news/nation/2020/10/21/covid-how-virus-racism-devastated-latino-farmworkers-california/5978494002/)their lives in the fields for poverty-level wages, the COVID-19 pandemic has brought to the fore our food system’s rigid, wasteful and exploitative nature.

Given [President Biden](https://thehill.com/people/joe-biden)’s recent order [to review](https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/24/remarks-by-president-biden-at-signing-of-an-executive-order-on-supply-chains/) supply chains, with those in agriculture included, now is the time to consider us[e]ing our country’s antitrust laws to help make our food system more resilient, equitable and competitive.

More to the point, enforcing these laws, namely, the progressive-era [Sherman, Clayton and Federal Trade Commission (FTC) Acts](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws), authorize government officials to break up corporations that monopolize markets to restrain trade and suppress dynamic competition, as well as conduct wide-sweeping investigations of the potential negative effects of mergers.

A survey of the field — yes, pun intended — shows increasing corporate control that does nothing to counter rampant waste and exploitation.

According to [the Open Markets Institute](http://web.archive.org/web/20190711183105/https:/openmarketsinstitute.org/wp-content/uploads/2019/05/190322_MonopolyFoodReport-v7.pdf), the four largest poultry processing firms went from controlling 35 percent of the market in 1986 to 51 percent in 2015. For beef, the story is much the same as the market share of the four largest processors jumped from 25 percent in 1977 to 85 percent in 2015. The top four seed companies’ market share, also during this period, went from 59 to 85 percent.

Undergirding this expansion of corporate consolidation is unnecessary suffering.

Just speak to the workers in meatpacking plants around the country who have labored under constant fear of contracting the virus as [outbreaks spread](https://www.usatoday.com/in-depth/news/investigations/2020/04/22/meat-packing-plants-covid-may-force-choice-worker-health-food/2995232001/) from firm to firm.

In professions already characterized by dangerous work conditions and low pay, food system workers now find themselves [pressuring owners](https://foodtank.com/news/2021/01/farm-workers-organizations-demand-protections-as-essential-workers/) for basics such as face masks, hazard pay and information on the nature of the virus.

Meanwhile, these same corporate processors regularly gauge farmers at the marketplace, as revealed in the periodic settlement for price fixing in the [dairy](https://topclassactions.com/lawsuit-settlements/lawsuit-news/220m-milk-price-fixing-class-action-settlement-reached), [pork](https://www.meatpoultry.com/articles/24066-jbs-announces-settlement-in-pork-antitrust-lawsuit) and [poultry](https://www.drovers.com/news/industry/tyson-settles-anti-trust-case-2215-million) industries.

Farmers could pay higher wages and provide better work conditions to workers but they also suffer because of chronically low prices for their produce. According to the National Farmers Union, about [.14 cents](https://nfu.org/farmers-share/) of every food retail dollar goes to the farmer, with the remainder going to restaurants, retailers and processors.

Consolidated supply chains that squeeze farmers for so much gave producers [no choice](https://www.nytimes.com/2020/04/11/business/coronavirus-destroying-food.html) but to dump their milk, plow under vegetables, euthanize their animals and smash eggs. This, as the lines at the [food banks](https://time.com/5914551/food-banks-covid-19-photos/) around the country grew.

When faced with such egregious waste, the government threw money at the problem. And it was a lot — upwards of [40 percent](https://www.marketwatch.com/story/u-s-government-checks-constituted-40-of-farmers-income-in-2020-usda-01609444429) of farm income in 2020 came from government subsidies.

To add insult to injury, [10 percent](https://www.nbcnews.com/business/economy/small-farmers-left-behind-trump-administration-s-covid-19-relief-n1236158) of farmers received 60 percent of the payments as a small number of relatively well-resourced producers took an unfair share of the aid.

The point — our rigid, corporate-controlled food system dishes out equal servings of waste as it does exploitation.

The way forward is to reform the system — with antitrust.

First, we need action concerning mergers. The Department of Justice (DOJ) should consider worker welfare as part of its [merger guidelines](https://www.justice.gov/atr/merger-enforcement) when considering whether or not a combination should be approved.

Next, investigations are required into the profit margins and pricing strategies of agribusiness firms. Instead of receiving news of corporate malfeasance from the periodic settlement, farmers and workers deserve to know the extent of anti-competitive practices that exist throughout the system.

The Federal Trade Commission (FTC) investigation of the meatpacking industry [from 1917 to 1919](https://www.jstor.org/stable/pdf/1885160.pdf) is exemplary of such an effort, which ultimately led to regulatory reform and corporate divestiture in railroads and stockyards after disclosing decades of illegal collusion between firms.

Additionally, if larger processors and input dealers would be broken up into smaller companies, then farmers would have more options to sell their product

and more choices when making purchases. Changing the playing field in this way would also improve the chances of young farmer success as higher prices mean improved incomes.

On how breaking up firms improves competition and economic performance, we have as evidence the well-known case of [Standard Oil Co. of New Jersey v. United States](https://www.law.cornell.edu/supremecourt/text/221/1). Back then, in 1911, Standard Oil was broken into 34 companies. Some firms would later merge, such as Exxon and Mobil. Still, as lawyer and advocate Timothy Wu writes in “[The Curse of Bigness](https://globalreports.columbia.edu/books/the-curse-of-bigness/#:~:text=In%20The%20Curse%20of%20Bigness,%20Columbia%20professor%20Tim,Era%20were%20forgotten%20in%20the%20last%2040%20years.),” the collective value of the different businesses increased in the years following government intervention.

Furthermore, increasing the number of buyers and sellers would make markets more resilient in the face of disruption because decentralizing supply chains grants more actors with knowledge and control over products.

[Court ruling sets up ever more bruising fight over tech](https://thehill.com/policy/technology/561406-court-ruling-sets-up-ever-more-bruising-fight-over-tech?utm_source=thehill&utm_medium=widgets&utm_campaign=es_recommended_content)

The equation is simple — more actors plus more competition equals more dynamism.

Part of any review of our wasteful, exploitative agricultural system must focus on the pernicious effects of corporate consolidation. In this regard, Biden’s scrutiny of supply chains should include antitrust legislation. Enforcing antitrust laws not only stands to improve the economics of agriculture but it would also help lay the groundwork for a resilient, just system of food production.

#### Subsides make large farms larger and drive small farmers out of business

NSAC 17, National Sustainable Agriculture Coalition, 12/21/17, HOW FARM SUBSIDIES ENCOURAGE THE BIG TO GET BIGGER, https://sustainableagriculture.net/blog/farm-subsidies-encourage-big-get-bigger/

A recent pair of reports from the Economic Research Service (ERS) confirms that federal subsidies to farms are increasingly going to larger and larger farms, thus supporting the cycle of the big getting bigger. Fewer and bigger farms mean less money circulating in local economies, fewer farm jobs in rural areas, and fewer opportunities for beginning and young farmers to get into the business.

Since 1991, the household income threshold for farms receiving half of all commodity program payments more than doubled from about $60,000 to over $146,000. For crop insurance indemnities we see a similar shift. In 1997, half of crop insurance indemnities went to farms with incomes of over $63,000; today that number is $143,000.

This is all concerning, but with crop insurance we see an even more worrisome trend when you look at farms with over $1 million in Gross Cash Farm Income (GCFI) income, which includes large and very large farms according to ERS definitions. These largest farms saw their share of indemnities increase from 12 percent to nearly 33 percent of the total. This dramatic change – combined with the recently revealed data showing that the top one percent of farms-by-sales receive 20 percent of subsides – raises questions about how crop insurance benefits are distributed. Logically, even as large and very large farms become more common, the proportion of indemnities among different sized farms should stay the same. This seems to indicate that as crop insurance has expanded, it has provided disproportionately favorable incentives to the largest farms, including unlimited crop insurance subsidies.

Since 1991, taxpayer subsidies for crop insurance have greatly increased from $300 million to $6.1 billion. While total acreage in the program has increased significantly, the number of policyholders has stayed relatively steady meaning more acres covered by the same number of farms, also indicative of consolidation.

This is all overlaid on the fact that during this same period the number of farms in America fell by around 70,000 [1] and the percent of land owned by actual farmers declined, with nearly 40 percent of land now being rented or leased and 80 percent of rented or leased land being owned by non-farmers.

This raises the question: is the crop insurance program, under its current subsidy structure, doing a good job keeping people in farming, or is it contributing to the consolidation of farms and pushing people out of farming?

In addition to shedding light on the impacts of the current subsidy structure, these reports also shed light on the problem of access to crop insurance. Of farms with GCFI between $150,000 and $350,000, less than half have crop insurance, which is concerning especially when you consider that farms with a GCFI of under $350,000 account for 50 percent of all farmland. ERS indicates that at the $350,000-$999,000 GCFI level, participation jumps to 65-69 percent; and that when GFCI exceeds $1 million, participation in crop insurance tops out at 71.2 percent. NSAC has several recommendations for increasing access to crop insurance, including for small farms and beginning farmers.

According to ERS Large family farms, those over $1 million of GCFI only represent 13 percent of crop insurance program participants, but operate 34 percent of cropland in the program and receive 34 percent of indemnities. Small farms, those with a GFCI of less than $350,000 operate over half of farm acreage but receive only 16 percent of indemnities. This indicates that farms of substantial size, but by no means the largest, have more limited access to crop insurance than the largest farms.

Negative Impacts of Subsidies on Mid-Scale, Beginning and Young farmers

As the ERS report rightly points out, government subsidies don’t always directly translate into support for the farmers being targeted. This is because subsidy payments increase the net return on farmland, and in the case of conservation payments, can increase costs.

As has been firmly established, government subsidy programs increase land prices and rents since landowners try to capture some the increased net return that results from subsidy payments. Government subsides of all types to farms totaled $16.9 billion in 2015.

Increased land prices and rents resulting from government subsidies have detrimental impacts on mid-scale, beginning, and young farmers. When government payments of all types increase, they make land more expensive to rent and buy, thus making it more expensive for those farmers just starting out.

The payments also have the perverse effect of helping the largest farms (which receive the largest portion of the payments and indemnities) get bigger by allowing them to capitalize subsides in order to bid higher for land or pay higher rents thus perpetuating the cycle. This was laid to bare in a recent Wall Street Journal article, where a farmer with over 10,000 acres in Kansas acknowledged the difficulty any young or new farmer would have in trying to outbid him for land.

#### Consolidation makes prices high now BUT the plan solves

C. Scott Hemphill 18, NYU law professor, “COMMENT: Mergers that Harm Sellers,” May, 127 Yale L.J. 2078, lexis

In 1990, Weiss collected more than 121 studies that examined in various ways the difference in prices based on levels of concentration. His conclusion was that "our evidence that concentration is correlated with price is overwhelming." 133 Other studies also find evidence of a positive relationship between price and concentration. 134 The price effect of concentration exists regardless of the level of profitability of the firms in the concentrated market. Such firms are likely, inter alia, [\*809] to expend resources to protect and entrench a market position. 135 Essentially, once a firm faces a unique demand situation (monopolistic competition) or is part of a relatively tight oligopoly with mutual interests, economic logic dictates that such a firm should invest in preserving and protecting its competitive advantage regardless of whether the investment enhances efficiency or innovation. 136 Indeed, such firms logically would resist efficiency improvements or innovations that reduced the barriers to entry or otherwise encouraged more competition. These incentives explain in part why mergers creating such market structures are inherently likely to have anticompetitive consequences. Hovenkamp and Shapiro in 2017 reviewed the economic literature and concluded that it showed that "concentrated industries tended to perform poorly in serving consumers, as they displayed higher prices,

higher price/cost margins, and higher profits than less concentrated industries." 137 Thus they concluded that "first and foremost, economic theory and a wide range of economic evidence support the conclusion that horizontal mergers that significantly increase market concentration are likely to lessen competition and harm consumers." 138 Thus, increased concentration has a strong relationship with higher prices as well as facilitating other harms to competition, and it lacks a consistent connection to reported profits. 139 Hence, any merger that substantially increases concentration of even a moderately concentrated market or significantly further entrenches a concentrated market is sufficiently likely to cause a "substantial lessening of competition" or tend "to create a monopoly" that it should be presumed illegal. 140 Thus, apparent redundancy in fact contributes directly to enhanced competitiveness. How strong that presumption should be and what might rebut it arguably depends on whether there are good reasons to believe that such mergers, despite the competitive harms that they seem likely to engender, make some other useful contribution to the [\*810] economy. The next two subsections address the claims that concentration can stimulate innovation or ensure greater efficiency.

## Section 5 CP

#### Courts say no and Congress backlashes

Alison Jones 20 and William E. Kovacic. Alison Jones, King’s College London, London, United Kingdom. William E. Kovacic, King’s College London, George Washington University, and United Kingdom Competition and Markets Authority, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy". SAGE Journals. 3/20/2020. https://journals.sagepub.com/doi/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded s

ome successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### ‘Scope’ is defined by enforcement

Frank G. Clement 16 Jr, Judge on the Tennessee Court of Appeals, “Hamer v. Southeast Res. Group, Inc.”, Court of Appeals of Tennessee, At Nashville, 2016 Tenn. App. LEXIS 176, 3/3/2016, Lexis

Under Southeast's interpretation, Plaintiff agreed to disclose and make available every business opportunity "to be marketed to credit union members." Such a broad definition appears to encompass every product or service imaginable, whether they have anything to do with Action or not. Under this interpretation, Plaintiff would be required to disclose an opportunity to sell cars to credit union members even though Action's business is not related to cars at all. The inconvenience, hardship, or absurdity that would result are weighty evidence that the parties did not intend for "scope and purpose" to have this meaning, especially when interpreting the agreement based on the ordinary meaning of "scope" avoids these difficulties. See Branscombe, 76 So. 3d at 948 HN9 ("The inconvenience, hardship, or absurdity of one interpretation of a contract or its contradiction of the general purpose is weighty evidence that such meaning was not intended when the language is open to an interpretation which is neither absurd nor frivolous and is in agreement with the general purpose of the parties.").

HN10 The ordinary meaning of words is found in the dictionary and is the most commonly understood meaning in relation to the subject matter of the parties' agreement. See Siegle, 788 So.2d at 360; Beans, 740 So. 2d at 67; J.N. Laliotis, 558 So. 2d at 68. According to one dictionary, "scope" means "1. The range of one's perceptions, thoughts, or actions. 2. Breath or opportunity to function. 3. The area covered by a given activity or subject." The American Heritage College Dictionary 1222 (3d ed. 1997). The operating agreement is concerned with the relationship of Action's members to each other and to Action, and the subject matter of section 6.6 is the duty to make certain business opportunities available to Action in order to avoid competition between Action and its members. [\*18] Based on the dictionary and the subject matter of the parties' agreement, "scope" most naturally refers to the range or breadth of the business that Action is engaged in at the relevant time.

#### It causes uncertainty AND delay

Alexander Paul Okuliar 21, Morrison & Foerster LLP, "FTC Lays Groundwork For Rulemakings: Are New Substantive Competition Rules Coming?", Mondaq, 3/25/2021, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1067906/ftc-lays-groundwork-for-rulemakings-are-new-substantive-competition-rules-coming

The FTC's foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC's authority,

the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled. Substantive FTC competition rules could also create potential divergence in enforcement policy or activity between the DOJ and FTC brought about by the new rules.

## Ex Ante Reg CP

#### Clayton Section 7 Key to Ex Ante Review

John M. Yun 21, Associate Professor of Law, Antonin Scalia Law School, George Mason University, and Director of Economic Education at the Global Antitrust Institute, "Are We Dropping the Crystal Ball? Understanding Nascent & Potential Competition in Antitrust," Marquette Law Review, Vol. 104, No. 613, Spring 2021, Lexis.

Second, ex ante evaluation of mergers under the Clayton Act, § 7 necessarily involves comparing two counterfactuals: a future world (1) with the acquisition and (2) without the acquisition. In "standard" merger analysis, that is, mergers involving actual, mature competitors, projecting the world without the acquisition tends to be straightforward: we presume it is largely the same as the present world that we observe.12 \*\*\*FOOTNOTE BEGINS\*\*\* In fact, there is probably no other area of antitrust enforcement that is as well-developed and formalized as the review of horizontal mergers and acquisitions. See, e.g., U.S. Dep't of Just. & Fed. Trade Comm'n, Horizontal Merger Guidelines (2010) [hereinafter Guidelines], https://www.justice.gov/atr/horizontal-merger-guidelines-08192010 [https://perma.cc/VT8Z-8UVV] (the 2010 guidelines are based on a strong legacy of prior merger guidelines, including major revisions in 1982 and 1992). \*\*\*FOOTNOTE ENDS\*\*\* Of course, this is not the full story as there [\*618] could be post-acquisition supply-and demand-side changes to the market; nonetheless, antitrust practitioners, mor e or less, rely on this straightforward prediction that the future will be largely the same as the present or recent past. Even for the more uncertain prediction regarding the world with the acquisition, the current level of competition between mature competitors also gives us a reliable window into that counterfactual - as it involves predictable changes in incentives given the loss of a competitive constraint. Things are less certain in regard to the realization of efficiencies, and the law, in some sense, incorporates this increased uncertainty as courts rarely credit efficiencies.

For mergers involving a nascent or potential competitor, however, we do not have the luxury of the longer history of competition that mature competitors provide. This point, however, should not be overstated. If a nascent or potential competitor represents a true threat to the market power of an acquirer, then agencies and courts will likely have some basis to make this determination. Nonetheless, we should acknowledge this fundamental increase in uncertainty when dealing with immature levels of competition.

[\*619] In contrast, unilateral monopolistic conduct, such as exclusivity, involve comparing actual outcomes with a single, "but-for," counterfactual, that is, a world without the unilateral monopolistic conduct. For instance, in United States v. Microsoft, which introduced the doctrine of nascent competition, the court explicitly examined the outcome of Microsoft's exclusionary conduct toward Netscape on market performance. Implicitly, the court still had to compare this actual outcome of the conduct with the but-for world - yet this comparison is fundamentally less demanding given the need to develop just one counterfactual.17 \*\*\*FOOTNOTE BEGINS\*\*\* There is certainly an important legal question regarding the degree to which this "but-for" counterfactual needs to be developed and proven by the plaintiff to find a § 2 violation - that is, the issue of "but-for" causality. See id. at 79 ("To require that § 2 liability turn on a plaintiff's ability or inability to reconstruct the hypothetical marketplace absent a defendant's anticompetitive conduct would only encourage monopolists to take more and earlier anticompetitive action."). Yet, even without a legal requirement to show a specific but-for causality for each case, it does not negate the conceptual underpinning to determine the harm from certain conduct: the difference in outcomes between the world with the conduct and without. See infra Part II for a more detailed discussion on the requirements needed to establish this comparison. \*\*\*FOOTNOTE ENDS\*\*\* In a similar way, ex post evaluations of consummated mergers - whether or not the acquisition, at the time, involved an immature or mature competitor - also fall under this umbrella of requiring one, rather than two, counterfactuals.

Crucially, based on the number of counterfactuals that have to be analyzed, there is an intrinsic asymmetry in the information burden needed to adjudicate ex ante versus ex post conduct. As discussed, ex ante evaluations of mergers, which are the predominant type of merger investigations since the passage of the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, involve the need to compare two counterfactuals. Part III argues that, due to this asymmetry in counterfactual burdens, ex ante evaluations of nascent and potential competition cases should be solely evaluated under the Clayton Act, § 7 standard, and the associated precedents that developed - particularly after the HSR Act was passed. The reason is that these cases all involve the same [\*620] prescriptive exercise of comparing two possible worlds, that is, with and without the proposed acquisition. This implies, for instance, that agencies and courts should be wary to adopt proposals to use the Sherman Act, § 2 monopolization standards, and precedents to examine ex ante nascent and potential competitor acquisitions. While these proposals are serious attempts to address some of the information burdens associated with assessing immature competition, using § 2 standards and cases are fundamentally trying to fit a square peg into a round hole. Section 2 precedents were neither intended nor geared for use when two, rather than one, counterfactuals must be developed. On the other hand, ex post evaluations of mergers - to the extent that there is a claim that a given merger, or series of mergers, contributed to the monopolization of a market, can be appropriately evaluated under § 2 standards - as it also involves the development of just one counterfactual because we can actually observe the outcome of the merger or series of mergers.

#### Perm---do both. It shields the NB.

Dr. Pedro Caro de Sousa 21, Advisor at the EUI Florence School of Regulation, Competition Expert with the OECD, DPhil from the University of Oxford, “Competition Enforcement and Regulatory Alternatives”, OECD, 6/7/2021, https://www.oecd.org/daf/competition/competition-enforcement-and-regulatory-alternatives-2021.pdf

Another view is that competition law and regulation are complements. Well-functioning markets can often best be achieved by the combination of timely, targeted competition enforcement and ex ante regulation that draws on a breadth of market experience (Coscelli, 2018[31]).

Complementary roles for economic regulation and competition law arise mainly in two instances: where the sectoral law and competition law have the same goal, i.e. the promotion of competition; or where sectoral regulations have goals broader than the promotion of competition that are nevertheless consistent with competition law (ICN, 2004, pp. 4-8[32]).10 In these circumstances, competition and regulation are not mutually exclusive. They operate in the same sphere of economic activity, address the same problems, and the use of one mechanism does not preclude the application of the other (Dunne, 2015, p. 56[5]).

There are numerous examples of how competition enforcement can complement sector-regulation. In regulated sectors, the sector regulator has sometimes been considered the ex ante controller of market power, via price, revenue and investment oversight, while the competition authority is considered the ex post controller of market power, via abuse of dominance and cartel enforcement (OECD, 2019, p. 7[11]). Competition law can help ensure that the regulatory regime achieves its economic goals, particularly those related to economic welfare; make markets perform more competitively, given the regulatory regime that happens to control them; and scrutinise private conduct that is not effectively reviewed or controlled by the regulatory regime (Hovenkamp, 2020, p. 899[33]).

#### Perm---do the CP. ‘Prohibit’ includes regulation.

John G. Koeltl 07, United States District Judge, “United States Baseball v. City of New York”, United States District Court for the Southern District of New York, 509 F. Supp. 2d 285, 297, 2007 U.S. Dist. LEXIS 63234, 8/27/2007, Lexis

The City responds that its home rule and police powers are broader pursuant to Article IX, Section 2(c) of the New York State Constitution, New York Home Rule Law § 10(1)(a)(12), and New York General City Law § 20(13) than the plaintiffs suggest. These provisions give the City the power to enact laws for the "safety, health, well-being, and welfare" of its residents. The City asserts [\*\*29] that the Bat Ordinance does not constitute a "prohibition" because it does not condemn all use of non-wood bats. It bars their use in competitive high school baseball games, but not for example in high school practices, junior high school games, "pick up" games, or youth league games that are not school-sponsored. Moreover, the City persuasively argues that the suggested distinction between "prohibitions" and other "regulations" is artificial and untenable, because all regulations prohibit some conduct that is incompatible with the regulatory standards and all "prohibitions" leave some conduct untouched.

For example, a New York court upheld as a valid exercise of the police power a New York City law banning the possession in a public place of a knife with a blade of at least four inches in length in People v. Ortiz, 125 Misc. 2d 318, 479 N.Y.S.2d 613, 620 (Crim. Ct. 1984). The plaintiffs suggest the law at issue in Ortiz was a not a "prohibition," but it appears to be at least as complete a prohibition as the Bat Ordinance, which prohibits only certain uses of bats with certain defined characteristics.

#### Actually changing merger review is necessary to prevent environmental abuses

Jennifer Clapp 18, Professor and Canada Research Chair in Global Food Security and Sustainability at the University of Waterloo, 05/01/18, Mega-Mergers on the Menu: Corporate Concentration and the Politics of Sustainability in the Global Food System, Global Environmental Politics, Vol. 18, Issue 2, p. 12–33, https://doi.org/10.1162/glep\_a\_00454

Weak and Fragmented Regulatory and Institutional Frameworks

The nongovernance of the environmental effects of agribusiness mergers is also the product of weak and fragmented regulatory oversight of mergers and acquisitions across a range of disjointed institutions that might weigh in on the issue as it relates to agricultural sustainability. There is no global institution or set of rules governing competition policy that oversees mergers and acquisitions (M&As) on a global scale (Dimitrov et al. 2007). The Organisation for Economic Cooperation and Development (OECD) offers guidance to its member states regarding competition issues, and the UN Conference on Trade and Development (UNCTAD) has developed a model law on competition. But these are not formal governance arrangements, and decisions on mergers are left up to individual states. Regulatory authorities in the countries where the large agribusiness firms do business are looking at the mergers and can decide, based on their own analyses of the effects of the mergers in the domestic market, whether to allow them to proceed within their jurisdictions. Monsanto, for example, has had to file its merger intention with regulatory authorities in close to thirty different countries (Bartz and Roumeliotis 2016). Among the major countries reviewing the mergers are rich industrial countries or regions, such as the US, Europe, and Canada, and a number of developing countries, including India, China, South Africa, and Brazil, which are increasingly major markets for these firms.

Government regulators typically focus their analyses of M&A activity narrowly on the potential impact on market competitiveness, efficiency, and innovation in their domestic market. They use econometric models to evaluate the extent to which the merged firms will change the dynamics of the marketplace for the products they sell. If their models predict more efficient markets due to economies of scale, even if there are fewer suppliers in the market, then the deals might be viewed more positively (King 2001). The focus on competition effects is important, as it helps to uncover the ways in which mergers might result in higher prices or create barriers to entry for new firms and whether innovation will be stifled (Organisation for Economic Co-operation and Development 2007; Shapiro 2002). Indeed, independent economic analyses of the agribusiness mergers reveal that they will put several of the products that the firms sell within the anticompetitive range, according to the measures used by the competition authorities (Bryant et al. 2016; Maisashvili et al. 2016). Not surprisingly, some of the regulatory authorities have asked the resulting firms to spin off certain product lines to reduce potential negative market impacts.

At the same time, however, broader issues of “public interest,” including environmental considerations, get short shrift in the merger evaluation processes in most countries. As a recent OECD (2017, 3) report on public interest considerations in merger decisions notes, “the majority of OECD Member country competition authorities are not responsible for applying public interest considerations in reviewing mergers; the task is left to sector regulators or government departments.” The report goes on to note that evaluating mergers based on competition c

riteria versus public interest criteria could lead to different results and warns that those countries that consider public interest issues should be wary of the “risks to the certainty and predictability of their merger control system” (OECD 2017, 4). In other words, the OECD stresses the importance of predictability over public interest considerations, and this advice is widely followed. For example, there is nothing in the merger enforcement guidelines of the US, Canada, or the EU indicating that the potential environmental impact of corporate concentration is even considered in the vetting process (Canada Competition Bureau 2011; European Union 2004; US Department of Justice 2010).

Most governments work on the principle that other governance frameworks outside of the competition assessment process can address the public interest issues associated with mergers (Organisation for Economic Co-operation and Development 2017). There are indeed international environmental governance arrangements that broadly address questions of genetic diversity and chemical pesticides, namely, the Convention on Biodiversity, the International Treaty on Plant Genetic Resources, and the Rotterdam Convention. But these agreements have no authority over, and make no mention of, competition issues as drivers of the problems they seek to address. There has been more recognition of the problems associated with corporate concentration in the arena of global food governance. Civil society actors have raised the issue at the Committee on World Food Security (CFS), the main coordinating body for international food governance. But that body also has no capacity to coordinate or govern states on competition issues. At the annual CFS meeting in October 2016, the Civil Society Mechanism (CSM) proposed discussing the most recent agribusiness mergers as a matter of urgency in the plenary session. A number of governments, however, objected to having such a debate in the formal plenary setting. Instead, the body permitted an informal information discussion that was strictly billed as a CSM-sponsored event and not included in the formal meeting report (International Institute for Sustainable Development 2016). Again in 2017, the mergers were discussed in a side event organized by the CSM but not in the formal meeting.

#### Capture’s uniquely likely in agribusiness

OCM 20, Organization for Competitive Markets, 08/24/20, Captured: How Agribusiness Controls Regulatory Agencies and Harms Producers and Consumers, https://competitivemarkets.com/wp-content/uploads/2020/08/Regulatory-Capture-Paper\_Final.pdf

Introduction

When Georgia Governor Sonny Perdue was nominated to be U.S. secretary of agriculture, American family farmers who had believed in President Trump’s promises to “drain the swamp” and protect domestic agriculture felt a surge of disappointment. Secretary Perdue had spent his career in government advocating for and benefiting from the interests of Big Ag. With Perdue at the helm of the U.S. Department of Agriculture (USDA), what checks and balances would exist in the federal government to counteract the consolidation, collusion, and corruption that have become customary in the U.S. agriculture economy?

Thomas Jefferson had foreseen America as a democratic republic of small farmers. Sadly, “we the farmers” now have little or no say in a government that was constituted to represent us. The America that existed as an agrarian utopia of regulated fair-market capitalism in the mind of Jefferson has become a very different America: one where the federal government is neither limited nor limiting, but instead allows corporations to influence policy, aided and abetted by despotic regulators and enforcers motivated by self-interest.

How did the federal government come to support international conglomerates instead of hardworking American farmers? In Congress, the clearest way government supports the interests of the powerful is with the money spent by lobbyists and given to politicians through campaign contributions. In the executive branch, where policy makers are appointed rather than elected, the interests of Big Ag predominate when governmental appointees are “captured” by the industry. Executive branch regulatory capture is the topic of this report.

Secretary Perdue is just one example of regulatory capture, whereby government officials tasked with enforcing laws for all choose to support the private interests of a few. From top to bottom, USDA is rife with petty and personal corruption. An April 2019 investigation described a conversation with a USDA official about the Food Safety and Inspection Service (FSIS). The official noted rather straightforwardly that “large meat producers like Cargill, Tyson, Smithfield, Swift (JBS) and Sanderson Farms are often given a ‘pass’ thanks to their high-paid lobbyists.”1 The anonymous whistleblower further characterized USDA as an old boys club with a revolving door “between the USDA and FSIS, and the captains of the meat industry.” Through repeated gifts of pro-corporate policy making, nonenforcement, and deregulation, the refrain is indisputable: the USDA advocates for special interests

and ignores ordinary people for financial reasons.

Free-market capitalism relies on government to create a level playing field that encourages entrepreneurship. However, free-market capitalism and what President Reagan called “the magic of the market” cannot function as intended when government enforcers are captured and special interests tilt the playing field away from working people.

The Organization for Competitive Markets (OCM) advocates for the rights of family farmers, and we support fighters like Connie and Jonathan Buttram who want to make a living free from government and industry coercion. Their stories and those of people like them compel action and inspire hope.

The people at the top of the federal government are not an anonymous mass of bureaucrats; they are individuals like Sonny Perdue, who make decisions that have pernicious consequences for people like Connie and Jonathan Buttram. When OCM, and thousands of other groups and individuals, reach out to our representatives so family farmers like the Buttrams can have a fighting chance, we are merely ignored, time and again.

This report describes how the executive branch of the federal government supports policies contrary to the interests of American family farmers by installing “captured” bureaucrats in positions of power.

Section I – Passing Through the Revolving Door

Brink Lindsey and Steven Teles define regulatory capture as “private industries co-opt[ing] governmental power for their own competitive benefit.”2 A quintessential example is “the revolving door,” wherein decision makers cycle from government positions to the industries they regulate and back again. Along the way, these individuals adopt attitudes and beliefs that benefit their position in that particular private business, which, of course, they will soon rejoin upon completion of their putatively “public” service. This cycle is all the more insidious for the omnipresent promise of higher pay in the private sector. Hence, there is continuing economic pressure through which personal self-interest morphs through a wink and a nod into the self-interest of the private company. In the wake of such lucrative paydays, family farmers cannot compete for the attention of public officials who favor personal wealth over public service.

The USDA is more prone to regulatory capture than many other agencies because “the USDA provides grading, certification and verification services intended to improve agricultural companies’ marketing of a variety of farm products.”3 This makes the agency, and especially certain oversight mechanisms within it, dependent on the industry they work with through user fees and a broader mission to promote the agricultural industry. 4 Similarly, there are a limited number of people with the requisite technical skills necessary to hold high-level regulatory jobs, and one way to get such experience is through private industry. The intertwining of USDA with private industry is to some degree inevitable; nevertheless, this does not excuse the brazen self-dealing we explore in the following sections.

#### Companies circumvent, it causes regulatory capture, rent seeking, AND links to the NB.

Lawrence J. Spiwak 21, President of the Phoenix Center for Advanced Legal and Economic Public Policy Studies. of the Phoenix Center for Advanced Legal and Economic Public Policy Studies, "A Poor Case for a ‘Digital Platform Agency’," Phoenix Center Perspectives, 21-02, 03/09/2021, pg. 8.

Conclusion

By nearly all accounts, the regulation of economic activity has warts. Firms are not passive recipients of regulation but adapt their practices to regulation to minimize impact. Regulators tend toward capture and their efforts often do more harm than good. As such, we may rightly demand compelling arguments for a new regulator, especially one with broad scope and unbridled power over the most important and dynamic segment of the modern economy. The Wheeler Proposal’s call for a Digital Platform Agency fails in that regard.

Antitrust, while imperfect, is grounded in precedent and is conducted in a dispassionate manner, thus avoids the pitfalls of regulatory capture and rent seeking accompanying regulation.58 Accordingly, if we are concerned that antitrust enforcement is lacking, then perhaps increasing the budgets of the DOJ and the FTC, coupled with more alert Congressional oversight, is the better policy choice at this time.59

#### Considering environmental concerns is key environmental protection

Federica Dolce 18, EU Policy Manager at Safe Food Advocacy Europe, June 2018, Competition Policy and Environmental Principles in Agricultural Industry, http://arno.uvt.nl/show.cgi?fid=145864

Chapter 3: Integration of environment into competition law The overview on integration principle, sustainable development and precautionary principle, and the related Court’s behaviour, provided a very environmental friendly perception of EU institution’s commitment to safeguard the environment. However, as illustrated in Chapter 1, several factors threaten the environment, namely biodiversity loss, exclusion of economic value of the eco-system into decision making, and also habitat loss due to land use change and fragmentation, with also overexploitation and unsustainable use of resources. Then, in light of the environmental considerations done in Chapter 1 and the functioning of EUMR illustrated in Chapter 2, this chapter aims to understand whether Merger Regulation should be interpreted in the light of environmental principle. While rising questions on the unconsidered environmental damage this merger will bring, the main question is: should an environmental perspective be reasonable cause to declare a concentration incompatible with the internal market? 3.1. Policy linking clauses and fundamental rights Keeping competition law far from other areas, risks jeopardizing the environmental actions taken in other fields. The so called “policy-linking clauses” in conjunction with the Charter of Fundamental Rights suggests that the Commission has a positive obligation to respect and promote environmental protection in competition law. Competition law could take into account other policy aims in regulating anti-competitive agreements and mergers that do not merely focus on protection of competition but can contribute to the economic policy in a wider sense195 . Firstly, the Treaty enshrines clauses aimed to connected and intertwined policy fields. To begin with, Article 3 TEU – specifically para.3 – states that “the Union shall establish an internal market. It shall work for sustainable development, […] and high level of protection and improvement of the quality of the environment”. In addition, article 7 TFEU states that the Union “shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral” 196. The Article can be read in conjunction with the second policy-linking clause related to Article 11 TFEU197. This provides the integration of environmental concerns into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. Another important provision confirms the relevance of the environment into the European legislation is found in Article 191 TFEU198. This one specifically entrusts the Union policy to pursue the following objectives, such as preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change199 . Notwithstanding the presence of these clauses, a considerable policy fragmentation within the EU institution was noticed200. This policy fragmentation might be solved through the joint application of Article 7 TFEU with Article 11 and 191 TFEU. In fact, the new Article 7 TFEU makes clear that achieving coherence and consistency between the Union’s actions is no longer merely an aim, rather an obligation201. In this regard, “the duty to seek a balance [of objectives] and to promote a sustainable development202 is relevant […]. The main point is to achieve a “true integration of the environmental dimension of sustainable development in the secondary legislation” 203. In order to ensure this coherence between Treaty objectives and secondary legislation it will be especially important to involve environmental integration since the first policy planning phase204 . Arguably, competition policy cannot be implemented in a vacuum, lacking of synergy with other European projects 205 . Pursuing coherency, the Commission can ensure better consistency between the different policy activities. Since “competition policy is a Union policy, the policy-linking clauses206 goals should be considered when competition policy is implemented, even if these goals conflict with other competition law objectives”207. This can be valid also for secondary legislation, in this case EUMR. In this sense, the implementation of secondary law shall follow the indication given in the Treaty.208 As illustrated above, allocative efficiency and consumer welfare are central to competition law and policy, and to the internal market in general. Then, it would be hard to balance which principle should prevail over another. Considering the case of mergers in which the secondary legislation is the core legislation, the integration of environmental issues might be facilitated during the ex-ante analysis on the grounds of the external obligations of these clauses over EUMR. In fact, Recital 23 of the Merger Regulation establishes whether concentrations with a Community dimension are compatible with the common market in terms of the need to maintain and develop effective competition in the common market. It underlines that it is necessary that the Commission places its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2(3) TFEU209 . The second argument illustrates how environmental law can impose external limits on the enforcement of competition law on the ground of fundamental rights210. It suggested environmental protection can exert an influence on competition law, as a result of its status as a fundamental right211 . This intersection of environment with fundamental rights is both supported by the Court of Justice case law and the provisions in the Charter of Fundamental Rights212. According to the case law, fundamental rights had to be respected when applying EU rules relating to other policies213 . As from the EU Charter of Fundamental Rights, Article 37 ensure a high level of environmental protection and the improvement of the quality of the environment which must be integrated into the policies of the Union in accordance with the principle of sustainable development214 . This provision set out an obligation for EU institutions and bodies to respect Charter rights and for the Member States to respect these rights when “implementing the EU law”215. In this regard, both Article 11 TFEU and Article 37 EUCFR can play a strong role balancing public interests even more consistently216. It is reasonable to argue that this “fundamental character” conferred by the ECFR “denotes a recognition that environmental protection constitutes one of the core values upon which the Union is founded, within the meaning of Article 2 TEU.”217 . It would be incorrect to imply that environmental policy prevails over competition policy. This external constrain does not want to broaden the material scope of competition law to incorporate environmental and public policy, rather it may potentially influence its application. When applying the EUMR, decisions of the Commission shall be read in the light of these principles. This would help the Commission to better internalize negative environmental externalities which might be brought by the merger218 . In conclusion, in case of mergers including cross-cutting policy areas, this balancing process between environment and competition/economy is likelihood to be contextualized into a different framework incorporating the importance of environmental protection as a constitutional value. This analysis suggested that even in the absence of substantive overlaps between environment and mergers in their material scope, the Commission has a positive obligation in including environmental concerns when applying secondary legislation, namely the EUMR. 3.2. Coexistence between agro-business and organic agriculture Treaty objectives are a first answer to the problem concerning the lack of environmental consideration in competition policies. In fact, their integration can take place considering also other legal tools. Since this thesis focuses on the analysis of a merger taking place in the agro-food sector, this section of the research seeks to understand what role environmental law might play in the merger assessment, through the conceptualisation of coexistence as a purely economic issue219 within the risk assessment for GMOs under the Food&Feed Regulation220. To conclude the framework of this research, different opinions about this problem will be collected in order to answer whether a broader concept of coexistence might create a space for public policy argument in the merger assessment. To actually pursue integration, it must be clarified who is subject to the environmental principles. It must be remembered that Regulations are the most centralising of all Union instruments and they are used to achieve uniformity. They are applied to produces legal effects with regards to categories of persons described in a generalized and abstract manner. In other words, regulations are as binding over Member States as over people and firms221 . Generally, coexistence was designed to “keep levels of GM material on non-GM farms and in nonGM products to some acceptable level, and/or to minimise the problems associated with the presence of GM material”222 . As regarding the Food and Feed Regulation, there are three points particularly interesting. First, paragraph 28 states that “operators should avoid the unintended presence of GMOs in other products. […] [and the Commission should provide] guidelines on the coexistence of genetically modified, conventional and organic crops”. Second, the content of this Regulation takes account of “the international trade commitments of the European Communities and of the requirements of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity as regards importer obligations and notification.”223 And finally, Article 1 define as objective of the Regulation to “[…] provide the basis for ensuring a high level of protection of human life and health, animal health and welfare, environment and consumer interests […], whilst ensuring the effective functioning of the internal market”. However, the chance for coexistence to live together with the needs of the internal market was not facilitated by the narrow vision of the Commission. On the one hand, according to Article 26a of the Deliberate Release Directive: “Member States may take appropriate measures to avoid the unintended presence of GMOs in other products”224 .On the other hand, Article 22 provides that “Member States may not prohibit, restrict or impede the placing on the market of GMOs which comply with the requirements of this Directive.” Indeed, it is not always easy for Member States to avoid the presence of GMOs on the ground of public interests concerns- They need to prove the measures to be proportionate, non-discriminatory and necessary, within the risk assessment225 . In some cases, even though the Member States demonstrated acceptable qualitative and quantitative assessment of risks, the mere probability of risks cannot provide a basis for restrictive measures226 . Surely, this opposition represent a prove of the hard balancing between different EU objectives and free movement of goods in EU law, and also a certain denial of the precautionary principle. Finally, the mere conceptualization of coexistence as an economic factor precludes organic cultivation and public concerns to have voice against the enhancement of the internal market. “If coexistence were more than an economic issue,[…] there would be space to hear genuinely competing public policy arguments, on for example environmental, health and consumer protection, or even, more ephemerally perhaps, the protection of a particular form of agriculture, or food security, or rural ‘ways of life”227 . Then, the question might be if secondary legislation might allow precautionary principle to create a possible room to safeguard and enhance the voice of organic farmers in the merger assessment. As noticed previously by the Court of Justice’s analysis, the precautionary principle might be employed to justify restricting regulatory actions to protect organic farmers. Considering organic and local farmers as guardians for variety of seeds and biodiversity, the precautionary principle may be recalled for avoiding deprivation of biodiversity and cultural heritage embedded in the seeds. On the grounds of the scientific studies about the relationship between monoculture and market concentration, the possibility of loss of seeds biodiversity can represent a sufficient risk to recall precautionary principle to better protect local farmers. This is the connecting point between the Food&Feed Regulation and the EUMR. Previously this research identified two important concepts. First, Regulations are binding over both institutions and firms. Second, according to the interpretation of the Court of Justice the precautionary principle is binding for the EU institutions. A way to respect coexistence and ensure its correct application can be to define the “acceptable level of GMOs” cultivation in the merger assessment to avoid big corporation to threat the existence of organic cultivation. This would also be in line with Article 7 TFEU to ensure coherence between the different policy areas, and with the Common Agricultural policy which confirms that agriculture plays a great role in sustainable development policies to ensure environmental and biodiversity protection228 . Local farmers are the guardian of public goods such as ‘rural landscapes, traditional and indigenous farming practices or simply the rural way of life’, which relate themselves closely to questions of environmental and consumer protection229 . The increasing level of market concentration allowed by the EU competition authorities reflects a problem that is not merely economic, rather public. Considering the obligations deriving from Treaties objectives, Recital 23 of EUMR and the aforementioned point of the Food&Feed Regulation, the attention to protection of local agriculture and the protection of non-GM seeds is mandatory for both the EU institutions and firms. Previously, an analysis on the SIEC test and on the substantive appraisals of competition raised questions on whether high levels of concentration impact environmental factors and biodiversity are taken into account during the merger assessment. The SIEC test and the merger analysis as well as the concept of coexistence epitomize a problem on the questionable adaptability of this kind of test which solely includes economic factors in the analysis. Paragraph 9 of the Guideline suggests a possible broader interpretation, taking into account future changes that can be reasonably foreseen230 . In the light of concept of coexistence, the threats on organic business and cultivation of non-GM organism is a real concreate changes that might be reasonable foreseen. In other words, considering the meaning of precautionary principle, and the positive role conferred through case law by the Court of Justice of the integration of this principle into other internal market policy, it seems more than reasonable that a merger taking place in the agro-food sectors, involving damages for biodiversity and local farmers should be subject to the evaluation of coexistence, precautionary and environmental concerns.

## Antitrust DA

#### Biden’s XO and future FTC rule changes thump

Ausra Delard & Brian O’Bleness 21, JD Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' National Health Care Practice Group; Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' White Collar and Government Investigations Practice, “A New Day, A New Deal: The Biden Administration’s Antitrust Revolution”, JD Supra, 7/19/21, https://www.jdsupra.com/legalnews/a-new-day-a-new-deal-the-biden-8824526/

The Biden administration is “supercharging” antitrust enforcement with an expansive view of what constitutes anti-competitive behavior. While much attention has been paid to antitrust scrutiny of large technology companies, also in the crosshairs of the Biden administration are labor markets, agricultural markets and healthcare markets (prescription drugs, hospital consolidation and insurance) according to President Biden’s July 9 Executive Order on Competition2. The order is one of several recent developments that signal an antitrust revolution is underway. A central theme of this revolution is that competition laws can serve as a broad panacea to solve many societal problems, including privacy concerns.3

The Federal Trade Commission (“FTC”) is now led by Lina Khan, a 32-year old academic, who believes that “the current framework in antitrust – specifically its pegging competition to ‘consumer welfare,’ defined as short-term price effects – is unequipped to capture the architecture of market power in the modern economy.”4 Within her first month as chair of the FTC, Khan has moved quickly to revise guidance and protocols that may have otherwise limited expanded enforcement against broadly defined unfair competition, including predatory, exploitative and coercive practices. Transformation of current antitrust policy is also supported by pending legislation that calls for sweeping reform to “reinvigorate America’s antitrust laws and restore competition to American markets.”5

At the heart of the revolution is a sense that antitrust enforcement has failed to address anti-competitive acts by (i) limiting competitive effects to pricing and (ii) the general acceptance that driving a hard bargain is a lawful business practice as long as it doesn’t leverage market power in another relevant market. With a focus on pricing effects, modern antitrust analysis recognizes economic efficiency and the ability to lower costs – which can be passed on to consumers through lower prices – as redeeming pro-competitive benefits. However, the Biden administration appears keen to return to historical antitrust paradigms seen in the 1960s where maintenance of fragmented industries and markets was of paramount importance, even at the cost of higher prices.6

Biden’s Executive Order on Competition

On July 9, President Biden issued an Executive Order on Competition (“EOC”) and established a White House Competition Council to monitor progress on finalizing the initiatives in the order. The EOC encouraged enforcement efforts particularly in labor markets, agricultural markets, healthcare markets (prescription drugs, hospital consolidation and insurance), and the tech sector.7 In particular, the President announced a policy of greater scrutiny of mergers, “with particular attention to the acquisition of nascent competitors, serial mergers, the accumulation of data, competition by ‘free’ products, and the effect on user privacy” and “prior bad mergers that past administrations did not previously challenge.”8

In technology markets, President Biden encouraged the FTC to establish rules on (i) surveillance and the accumulation of data and (ii) barring unfair methods of competition in internet marketplaces, particularly where “large platforms’ power give them unfair opportunities to get a leg up on the small businesses that rely on them to reach customers.”9 The EOC calls for the FTC to use its rule-making authority to ban “pay for delay” and similar agreements among drugmakers and for the FDA to combat high prescription drug prices and price gouging. In agriculture, the EOC points to concentration in markets for seeds, equipment, feed and fertilizer. In labor markets, the EOC moves to prohibit non-compete clauses and unnecessary occupational licensing restrictions that impede economic mobility.10

Merger Guidelines

Also on July 9, FTC Chair Khan, within one month of being sworn in, issued a joint statement with Acting Assistant Attorney General Richard A. Powers of the Antitrust Division of the Department of Justice to consider revisions to the Merger Guidelines.11 We anticipate that federal antitrust authorities plan to significantly revamp the public guidance relating to both horizontal and vertical mergers. Chair Khan has raised concerns that current vertical merger enforcement has been over-permissive and not adequately addressed concerns regarding foreclosure and leverage.12 Khan has criticized the Reagan administration’s 1982 Merger Guidelines for its “radical departure” from an emphasis on “preserving and promoting market structures conducive to competition” to a disproportionate embrace of economic factors relating to price increases and output restrictions that has guided modern antitrust analyses to date.13 Instead, she calls on evaluating the neutrality of the competitive process and the openness of the market by examining: (i) entry barriers, (ii) conflicts of interest, (iii) the emergence of gatekeepers and bottlenecks, (iv) the use of and control over data, and (v) the dynamics of bargaining power. More emphasis would be placed on the competitive process and market structure, including what lines of business a firm is involved in and how those lines of business interact and whether the structure of the market creates or reflects dependencies. Chair Khan’s scholarly work has focused on pre-1980s antitrust analyses when courts, concerned with protecting small businesses and avoiding the adverse political consequences that may arise from the aggregation of economic power, blocked mergers with 5 percent share increases to prevent increased market concentration in its incipiency.14 President Biden’s remarks in the EOC echo this historical sentiment as he discusses “threats from growing corporate power” and the need to give “the little guy a fighting chance.”15

#### China tech fears are unfounded---they can’t catch up.

Fred **Hu 18,** economist and chairman of Primavera Capital Group, 8-22-2018, "The U.S. Is Overly Paranoid About China’S Tech Rise," Washington Post, <https://www.washingtonpost.com/news/theworldpost/wp/2018/08/22/us-china-3/?utm_term=.ed8dd0d27f82>

But much of the fear over China’s **tech**nological rise is unfounded. Fundamentally, China is like most emerging economies around the world: still trying hard to close the enormous technological gap with advanced economies led by America. China has undoubtedly made more progress than many of its developing peers in that race. Its tech industries have grown at a faster pace and achieved a global scale beyond those of most developing countries. In a broad range of manufacturing sectors — notably consumer electronics, steel, ship building, high-speed rail systems and solar panels — China has established itself as the world’s leading producer. In areas such as consumer Internet and financial technology, it has arguably overtaken even the United States and now leads the rest of the world. Yet China hawks such as Robert Lighthizer and Peter Navarro charge that whatever progress China has made on the tech front is due to the country’s blatant theft of U.S. technology. Considering the enormous investments China has made in science and technology over recent decades, such claims do not hold water. China has devoted vast resources to research and development — $409 billion in 2015 (21 percent of the global total), according to the U.S. National Science Foundation. China’s investment in research and development grew over 20 percent annually between 2000 and 2010 and almost 14 percent from 2010-2015. U.S. research and development hovered around 4 percent over the same period. For a country with an average per capita income a mere one-sixth of America’s, China’s research and development investments reflect a real and sustained national commitment. At the same time, China has vastly expanded and improved STEM education and has one of the largest pools of STEM graduates in the world. The devotion of significant resources to research and development and human capital has in turn enabled China to reap some of the early fruits of innovation. China now tops the world in new patent filings. As the first country to receive more than 1 million patent applications in a single year — a record the World Intellectual Property Organization said reflected “extraordinary” levels of innovation — China accounts for almost 40 percent of the global total and more than that of the United States, Japan and South Korea combined. China has also significantly boosted venture capital investment, which supports the commercialization of emerging technologies. While the United States attracts the most investment worldwide (nearly $70 billion), venture capital investment in China rose from approximately $3 billion in 2013 to $34 billion in 2016, climbing from 5 percent to 27 percent of the global share — the fastest increase of any economy. China’s start-up ecosystem is both vast and vibrant; it has successfully incubated more tech unicorns than any other country except the United States. Too often, U.S. critics claim that Chinese industrial policies like Made in China 2025 are behind the country’s ascendancy in tech. In fact, virtually none of China’s leading tech firms, such as Alibaba, Baidu and Tencent, are state-owned or meaningful beneficiaries of state support. They are all founded and led by smart and risk-taking private entrepreneurs, just like their Silicon Valley brethren. Tellingly, many Chinese tech start-ups have received U.S. venture financing. And Chinese technology companies and venture firms have made significant investments in U.S. start-ups. Sadly, the virtuous two-way venture capital flows are now in jeopardy because of Washington’s growing paranoia about China. As impressive as China’s innovation and progress may be, however, it is premature to declare that China has caught up with the U.S. tech industry. Interventionist government bureaucracy, stodgy state-owned enterprises, a rigid school system and — above all — harsh restrictions on individual freedoms continue to stifle independent thinking and creativity and constrain China from realizing its full innovation potential. While China is well positioned to succeed in “strategic” industries such as semiconductors, pharmaceuticals and commercial aircraft due to its vast pool of engineering talent and the size of its domestic market, **so far it has remained a laggard.**China has failed to develop an indigenous chip industry despite a state-led drive to do so, with tens of billions spent over the past four decades. Despite its status as the “world’s factory,” making everything from cell phones and laptops to numerous other devices, China continues to import 90 percent of its microchips from foreign countries, predominantly from the United States. That is why the U.S. threat to cut off critical chip supply to ZTE, a Chinese telecom equipment firm, has been dubbed the “Sputnik moment” in China: a sober reminder of China’s continued weaknesses in critical technologies. While China has made spectacular progress on the tech front, **the United States remains the undisputed global leader in science and technology**. The **U**nited **S**tates holds most of the world’s leading research universities; it deploys the highest amounts of both public and private funding in **r**esearch **and** **d**evelopment; attracts the most venture capital; awards the most advanced degrees; provides the most advanced business, financial and information services and is the largest producer in knowledge-intensive, high-tech sectors, from pharmaceuticals to semiconductors. **The fear that China will displace the United States as the global tech superpower is grossly exaggerated**. Unfortunately, such paranoia dominates the minds of protectionist U.S. politicians and China hawks and has already amplified a destructive trade war between the world’s two largest economies. For China’s part, its soul-searching is overdue. Beijing should resist the prevalent yet ill-justified self-complacency and triumphalism that contributed to the fear in Washington in the first place, and it should make serious efforts to reform and open its domestic economy. Unless Beijing amends its heavy-handed statist approach to economic development, China’s potential as a leading nation in science and technology could be seriously curtailed.

## Tradeoff

#### Biden’s XO and future FTC rule changes thump

Ausra Delard & Brian O’Bleness 21, JD Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' National Health Care Practice Group; Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' White Collar and Government Investigations Practice, “A New Day, A New Deal: The Biden Administration’s Antitrust Revolution”, JD Supra, 7/19/21, https://www.jdsupra.com/legalnews/a-new-day-a-new-deal-the-biden-8824526/

The Biden administration is “supercharging” antitrust enforcement with an expansive view of what constitutes anti-competitive behavior. While much attention has been paid to antitrust scrutiny of large technology companies, also in the crosshairs of the Biden administration are labor markets, agricultural markets and healthcare markets (prescription drugs, hospital consolidation and insurance) according to President Biden’s July 9 Executive Order on Competition2. The order is one of several recent developments that signal an antitrust revolution is underway. A central theme of this revolution is that competition laws can serve as a broad panacea to solve many societal problems, including privacy concerns.3

The Federal Trade Commission (“FTC”) is now led by Lina Khan, a 32-year old academic, who believes that “the current framework in antitrust – specifically its pegging competition to ‘consumer welfare,’ defined as short-term price effects – is unequipped to capture the architecture of market power in the modern economy.”4 Within her first month as chair of the FTC, Khan has moved quickly to revise guidance and protocols that may have otherwise limited expanded enforcement against broadly defined unfair competition, including predatory, exploitative and coercive practices. Transformation of current antitrust policy is also supported by pending legislation that calls for sweeping reform to “reinvigorate America’s antitrust laws and restore competition to American markets.”5

At the heart of the revolution is a sense that antitrust enforcement has failed to address anti-competitive acts by (i) limiting competitive effects to pricing and (ii) the general acceptance that driving a hard bargain is a lawful business practice as long as it doesn’t leverage market power in another relevant market. With a focus on pricing effects, modern antitrust analysis recognizes economic efficiency and the ability to lower costs – which can be passed on to consumers through lower prices – as redeeming pro-competitive benefits. However, the Biden administration appears keen to return to historical antitrust paradigms seen in the 1960s where maintenance of fragmented industries and markets was of paramount importance, even at the cost of higher prices.6

Biden’s Executive Order on Competition

On July 9, President Biden issued an Executive Order on Competition (“EOC”) and established a White House Competition Council

to monitor progress on finalizing the initiatives in the order. The EOC encouraged enforcement efforts particularly in labor markets, agricultural markets, healthcare markets (prescription drugs, hospital consolidation and insurance), and the tech sector.7 In particular, the President announced a policy of greater scrutiny of mergers, “with particular attention to the acquisition of nascent competitors, serial mergers, the accumulation of data, competition by ‘free’ products, and the effect on user privacy” and “prior bad mergers that past administrations did not previously challenge.”8

In technology markets, President Biden encouraged the FTC to establish rules on (i) surveillance and the accumulation of data and (ii) barring unfair methods of competition in internet marketplaces, particularly where “large platforms’ power give them unfair opportunities to get a leg up on the small businesses that rely on them to reach customers.”9 The EOC calls for the FTC to use its rule-making authority to ban “pay for delay” and similar agreements among drugmakers and for the FDA to combat high prescription drug prices and price gouging. In agriculture, the EOC points to concentration in markets for seeds, equipment, feed and fertilizer. In labor markets, the EOC moves to prohibit non-compete clauses and unnecessary occupational licensing restrictions that impede economic mobility.10

Merger Guidelines

Also on July 9, FTC Chair Khan, within one month of being sworn in, issued a joint statement with Acting Assistant Attorney General Richard A. Powers of the Antitrust Division of the Department of Justice to consider revisions to the Merger Guidelines.11 We anticipate that federal antitrust authorities plan to significantly revamp the public guidance relating to both horizontal and vertical mergers. Chair Khan has raised concerns that current vertical merger enforcement has been over-permissive and not adequately addressed concerns regarding foreclosure and leverage.12 Khan has criticized the Reagan administration’s 1982 Merger Guidelines for its “radical departure” from an emphasis on “preserving and promoting market structures conducive to competition” to a disproportionate embrace of economic factors relating to price increases and output restrictions that has guided modern antitrust analyses to date.13 Instead, she calls on evaluating the neutrality of the competitive process and the openness of the market by examining: (i) entry barriers, (ii) conflicts of interest, (iii) the emergence of gatekeepers and bottlenecks, (iv) the use of and control over data, and (v) the dynamics of bargaining power. More emphasis would be placed on the competitive process and market structure, including what lines of business a firm is involved in and how those lines of business interact and whether the structure of the market creates or reflects dependencies. Chair Khan’s scholarly work has focused on pre-1980s antitrust analyses when courts, concerned with protecting small businesses and avoiding the adverse political consequences that may arise from the aggregation of economic power, blocked mergers with 5 percent share increases to prevent increased market concentration in its incipiency.14 President Biden’s remarks in the EOC echo this historical sentiment as he discusses “threats from growing corporate power” and the need to give “the little guy a fighting chance.”15

#### Agencies are wrecked.

MFEM 8-19, Masuda, Funai, Eifert & Mitchell, Ltd., "The Implications of President Biden's ‘Executive Order on Promoting Competition in the American Economy’," Mondaq, 08/19/2021, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1103288/the-implications-of-president-biden39s-executive-order-on-promoting-competition-in-the-american-economy.

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.”

The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

Although the implications of the Order are not limited to the area of antitrust, the Order reflects the Biden Administration's emphasis on it. For example, the Order encourages the DOJ and other agencies responsible for banking to update guidelines on banking mergers to provide heightened scrutiny of mergers. The Order also encourages the DOJ and the FTC to challenge prior “bad mergers,” meaning that mergers that went unchallenged under previous administrations may be challenged in the future. Another specific area that the Order focuses on is the right to repair; it encourages the FTC to limit equipment manufacturers from limiting consumer's rights to repair.

Other affected areas of law include, but are not limited to, labor and employment (e.g. non-compete agreements) and consumer protection (e.g. financial data portability). Corporations with any significant activity in the United States should assess the impact that the Order would have on their businesses and prepare for the materialization of the specific initiatives included in the Order.

#### Walt is a total miscut---says Downturn won’t cause war

**Walt ’20**[Stephen; Robert and Renée Belfer professor of international relations @ Harvard University; 5/13/20; "Will a Global Depression Trigger Another World War?"; Foreign Policy; <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>]

One familiar argument is the so-called **diversionary** (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to **divert attention** from their failures by **provoking a crisis** with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald **Trump** will decide to **attack** a country like **Iran** or **Venezuela** in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as **unlikely**, even if one ignores the **logical** and **empirical flaws** in the theory **itself**. War is **always a gamble**, and should things go **badly**—even a **little bit**—it would **hammer the last nail** in the **coffin** of **Trump’s declining fortunes**. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his **staunchest supporters** may wonder why he is **wasting time** and **money** going after Iran or Venezuela at a moment when **thousands of Americans** are **dying preventable deaths** at home. Even a successful military action won’t **put Americans back to work**, create the sort of **testing-and-tracing** regime that competent governments around the world have been able to implement already, or **hasten** the development of a **vaccine**. The **same logic** is likely to guide the decisions of **other world leaders** too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a **really big war** to generate a **significant stimulus**, and it is hard to imagine any country launching a **large-scale war**—with all its attendant risks—at a moment when **debt levels** are **already soaring**. More importantly, there are lots of **easier** and more **direct ways** to **stimulate the economy**—infrastructure spending, unemployment insurance, even “helicopter payments”—and **launching a war** has to be one of the least **efficient methods available**. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some **special circumstances**, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of **any country** in **similar circumstances today**. Now is **hardly the time** for **Russia** to try to **grab** more of **Ukraine**—if it even **wanted** to—or for China to **make a play for Taiwan**, because the **costs** of doing so would **clearly outweigh the economic benefits**. Even conquering an **oil-rich country**—the sort of greedy acquisitiveness that Trump occasionally hints at—**doesn’t look attractive** when there’s a **vast glut on the market**. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. **On balance**, however, I do not think that even the **extraordinary economic conditions** we are witnessing today are going to have **much impact** on the **likelihood of war**. Why? First of all, if depressions **were** a **powerful cause of war**, there would be a **lot more** of the **latter**. To take one example, the United States has suffered **40 or more recessions** since the country was founded, yet it has fought perhaps 20 interstate wars, most of them **unrelated to the state of the economy**. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a **powerful cause of war,** they would have predicted “**nine out of the last five** (or fewer).” Second, states **do not start wars** unless they believe they will win a **quick** and relatively **cheap victory**. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders **avoid** war when they are convinced it will be **long, bloody, costly**, and **uncertain**. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. **Europe** went to war in **1914** with each side believing it would win a **rapid and easy victory**, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. **Iraq** attacked **Iran** in 1980 because Saddam believed the Islamic Republic was in **disarray** and would be **easy to defeat**, and George W. Bush **invaded Iraq** in 2003 convinced the war would be **short, successful**, and **pay for itself.**The fact that each of these leaders **miscalculated badly** does not alter the **main point**: **No matter** what a country’s **economic condition** might be, its leaders **will not go to war** unless they think they can do so **quickly, cheaply**, and with a **reasonable probability of success.**Third, and most important, the primary **motivation** for most wars is the desire for **security**, not **economic gain**. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “**every war** between **Great Powers** [between 1848 and 1918] … started as a **preventive** war, not as a **war of conquest**,” and that **remains true** of most wars fought since then. The bottom line: **Economic conditions** (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only **one factor among many** and **rarely** the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term. To be sure, I can’t rule out another powerful cause of war—stupidity—especially when it is so much in evidence in some quarters these days. So there is no guarantee that we won’t see misguided leaders stumbling into another foolish bloodlettin

#### Economic decline increases cooperation.

Christina L. **Davis &** Krzysztof J. **Pelc 17**, Christina L. Davis is a Professor of Politics and International Affairs at Princeton; Krzysztof J. Pelc is an Associate Professor of Political Science at McGill University, “Cooperation in Hard Times: Self-restraint of Trade Protection,” Journal of Conflict Resolution, 61(2): 398-429

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restrain

# 1AR

# 1AR

## Section 5 CP

#### It causes years of protracted litigation AND gets struck down

Nicolás Rivero 21, Tech Reporter at Quartz, BA in Journalism from Northwestern University, “Biden’s Antitrust Crusaders Can’t Crusade Without Congress”, Quartz, 3/11/2021, https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

#### The CP is confusing and unclear

Elizabeth B. Deutsch 15, JD Candidate at Yale Law School, MSc from the London School of Economics, MPhil from the University of Cambridge, BA from Yale University, “Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act's Nondiscrimination Mandate”, Yale Law Journal, 124 Yale L.J. 2470, May 2015, Lexis

The Department of Justice (DOJ) and the FTC have issued a statement about their antitrust oversight of post-ACA integration. While the statement makes clear that oversight will continue, it suggests that "clinical integration" is the magic phrase that healthcare entities must utter in order to pass muster. Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, Fed. Trade Commission & Dep't Just. (Oct. 2011), http://www.justice.gov/atr/public/health\_care/276458.pdf [http://perma.cc/6LB8-3BEN]. In its publication Clinical Integration, the American Hospital Association states that for their purposes:

Antitrust guidance is narrowly and technically drafted without any binding effect; as a result, caregivers can neither readily understand the guidance nor completely rely on it. The AHA has advocated for the antitrust agencies - the Department of Justice's Antitrust Division and the Federal Trade Commission - to issue more comprehensive, user-friendly guidance clearly explaining what issues must be resolved to ensure that clinical integration programs comply with antitrust law.

#### Remedies are too limited, excludes DOJ enforcement, AND it won’t be applied.

John B. Kirkwood 21, Professor of Law, Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 43-46, 01/15/2021, SSRN.

The existence of Section 5 of the Federal Trade Commission Act is no reason not to expand the Sherman Act. In theory, Section 5 covers anticompetitive conduct that falls short of monopolization, but as Section A explains, its remedies are limited and its track record has been disappointing. Section B addresses the risk that expanding the Sherman Act would unduly deter procompetitive conduct. This risk can be minimized, however, by confining the amendment to the tech giants and including proof requirements that would defeat most challenges to desirable conduct. Section C describes the recent Congressional support for this change. Section D uses a detailed example to demonstrate that it would be workable in practice.

A. Section 5 of the FTC Act

Passed in 1914, the FTC Act not only created a second federal agency to enforce the Sherman Act, it gave the agency a broader mandate. Section 5 prohibits “unfair methods of competition,”228 whether or not they emerge from collusion or result in monopoly power. In principle, therefore, Section 5 plugs the hole in the Sherman Act just described. In practice, however, it rarely does so. As explained below, the ability of Section 5 to deter anticompetitive conduct is modest. It cannot be enforced by private parties and violations of Section 5 do not result in treble damages and attorneys’ fees. In addition, the Department of Justice cannot enforce it, reducing its deterrent effect still further. Perhaps most important, courts have been quite reluctant to apply Section 5 outside the bounds of the Sherman Act. In consequence, the FTC has rarely brought such suits; in the last forty years, the FTC has not pursued a single pure Section 5 challenge to unilateral exclusion.

1. No Private Treble Damage Actions

The FTC Act contains no private right of action. As a result, respondents do not face the possibility of treble damages and attorneys’ fees. Nor can the FTC seek civil penalties for an initial violation.229 \*\*\*FOOTNOTE BEGINS\*\*\* In response to an initial violation, the FTC can only issue a cease-and-desist order. If the respondent violates that order, the Commission can impose civil penalties, but that requires the respondent to repeat the violation. \*\*\*FOOTNOTE ENDS\*\*\* To be sure, the Commission may be able to obtain restitution from a district court, but that authority is in doubt,230 and the FTC has never tried to exercise it in an exclusion case without alleging a section 2 violation. 231 In a pure Section 5 case, in short, tech giant exclusion is highly unlikely to result in treble damages, civil penalties, restitution, or other monetary sanctions. If a tech giant concludes that it would be profitable to exclude a third party from its platform, the prospect of a Section 5 action would not materially change the calculus.

Khan implicitly relies on this point when she asserts that “[u]nlike structural remedies, behavioral remedies seek to change the firms’ conduct, while leaving the underlying incentives untouched.”232 But behavioral remedies leave a firm’s incentives unchanged only when they are entirely equitable, as they typically are under Section 5. When illegal conduct reliably results in serious financial sanctions, a firm’s incentives change.

2. No Department of Justice Enforcement

The U.S. Department of Justice cannot enforce Section 5. This reduces by half the number of federal agencies that can prosecute pure Section 5 violations. If the FTC lacks the relevant industry expertise or is distracted by other matters, there will be no federal enforcement whatsoever.

3. Few Pure Section 5 Actions

In practice, moreover, Section 5 rarely reaches beyond the Sherman Act. In theory, its breadth is clear: its language, legislative history, and case law indicate that it was not meant to be confined to the contours of the Sherman Act or Clayton Act.233 Since the early 1980s, however, when the FTC was firmly rebuffed in several attempts to apply Section 5 to novel practices,234 courts have seldom been willing to sustain a pure Section 5 challenge. The only area where the FTC has had repeated success involves attempts to collude.235 But with respect to unilateral exclusion, it has not brought any pure Section 5 cases since the early 1980s.236 In consequence, the broad language of the FTC Act has not generally “resulted in an operationally wider scope for the FTC Act than the Sherman Act.”237

The Commission and the courts may be unwilling to apply Section 5 more aggressively because they fear it would chill procompetitive conduct. Section 2 reduces that risk by placing severe limits on the ability of plaintiffs to challenge unilateral exclusion. Unless a plaintiff can establish monopoly power or a dangerous probability of monopoly power, it cannot challenge unilateral exclusion under Section 2. 238 But those limits are too severe; they immunize a wide range of unjustified and anticompetitive exclusion. Consumers and workers would be better protected, and the tech giants more effectively controlled, if the limits were moderated.

#### Courts will nerf it

Daniel A. Crane 10, Frederick Paul Furth Sr. Professor of Law at the University of Michigan, JD from the University of Chicago School of Law, BA from Wheaton College, “Reflections on Section 5 of the FTC Act and the FTC's Case Against Intel”, The CPI Antitrust Journal, Volume 2, February 2010, https://repository.law.umich.edu/articles/1370/

In recent years, the Commission has frequently tied itself to the Sherman Act.11 Why would it choose to accept that baggage? Of late, the FTC has been shell-shocked by its treatment in the courts when it has invoked an independent Section 5. There is a wide gulf between the theoretical availability of an expansive Section 5 and actual judicial affirmation of FTC decisions to enjoin behavior that would not violate the Sherman Act. The courts have frequently quashed the FTC’s efforts to develop an independent Section 5, even while paying lip service to the independence principle.12 As Bill Kovacic remarked during his opening comments at the FTC’s October 2008 workshop on the meaning of Section 5, it is difficult to find even ten successfully litigated Section 5 antitrust cases over the Commission’s nearly hundred-year history.13

The reason is institutional. Courts tend to be jealous of their jurisdiction. To cite a venerable precedent to which we will return at end, courts are loathe to abandon their prerogative “to say what the law is.”14 In an early decision—subsequently overruled but never quite forgotten—the Supreme Court applied a Marbury v. Madison thematic to the FTC: “The words ‘unfair competition’ are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as a matter of law what they include.”15 Courts are wary of agency assertions that the agency should be accorded independent space to develop legal norms. As Bob Pitofsky has explained, a construction of Section 5 that would make the same behavior lawful at the Department of Justice and unlawful at the FTC is “untenable.”16

So this is where we are today: Legal doctrine theoretically allows space for an independent Section 5 and there are good policy reasons for some movement away from the constraints of the Sherman Act, but great care needs to be taken in the formulation of a “separation strategy.” It simply will not do for the FTC to declare independence from the Sherman Act and then proceed to formulate its own antitrust policy.17 As Commissioner Rosch recognizes in his statement dissenting from the Commission’s decision to bring an independent Sherman Act Section 2 “tag-along” action, the Commission must not merely assert independence from the Sherman Act, but explain the principles that justify departure from Sherman Act norms in each relevant case.18 A “just trust us, we’re the FTC,” strategy has no chance of success in the courts.

#### It gets rolled back

Amy Marshak 11, JD Candidate at the New York University School of Law, BS from Cornell University, “The Federal Trade Commission On The Frontier: Suggestions For The Use Of Section 5”, New York University Law Review, 86 N.Y.U.L. Rev. 1121, October 2011, Lexis

C. Limitations on the Federal Trade Commission's Section 5 Authority

The text of the FTC Act, its legislative history, and controlling Supreme Court precedent point toward an almost boundless authority to pursue anticompetitive conduct under section 5. However, the lower courts and Congress have affirmatively limited the FTC's ability to exercise the widest reaches of its power. This has become increasingly [\*1133] true in the wake of a widespread backlash against FTC expansion beginning in the 1970s and the retrenchment of antitrust doctrine more generally in the past few decades. 58 This change in legal and political philosophy may place significant limitations on any attempt by the FTC to expand the reach of section 5.

1. Official Airline Guides, Boise Cascade, and Ethyl

A trio of circuit-level decisions in the early 1980s - Official Airline Guides, Boise Cascade, and Ethyl 59 - significantly curtailed the Commission's use of its power to attack anticompetitive business practices that fall outside the narrowly defined categories of Sherman Act doctrine. 60 In each case, the FTC acknowledged that the practices at issue did not amount to a violation of the Sherman or Clayton Acts but declared the conduct to be an unfair method of competition independent of the other statutes. 61 However, the Second and Ninth Circuits overturned the FTC's determinations, marking the beginning of a significant rollback in the Commission's willingness to pursue stand-alone section 5 violations.

#### They won’t be granted deference

John O. McGinnis 21, George C. Dix Professor in Constitutional Law at Northwestern University, “Abandoning the Consumer Welfare Standard”, 8/26/2021, https://lawliberty.org/abandoning-the-consumer-welfare-standard/

The Prospects The Executive Order, however ill-conceived the specifics are, will do the most damage if it changes antitrust law fundamentally. And here the Biden administration happily faces problems. We have had forty years of bipartisan competition policy focused generally on consumer welfare. The President does not have a political eraser to wipe that away. One possibility is for the Biden administration to persuade Congress to enact major changes in antitrust law. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not impossible, to get any substantial changes in antitrust law through the evenly divided Senate. Thus, the administration has pinned its strategy on transformation through administrative fiat. To that end, it appointed Lina Khan, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single most radical appointment in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon. Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare. But it is not at all clear Khan can succeed. On such a central question as the definition of competition, courts may not give her agency much deference now that the Roberts Court appears to have stopped applying Chevron—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

## Antitrust DA

#### AI not key

Yellow

Allison 20 **–** Professor of Government, Harvard Kennedy School

Graham Allison, August 2020, "Is China Beating the U.S. to AI Supremacy?," Belfer Center for Science and International Affairs, <https://www.belfercenter.org/publication/china-beating-us-ai-supremacy>

Clues for a Winning Strategy

Is AI a race China is destined to win? With a population four times the size of the United States, there is no question that China will have the largest domestic market for AI applications. With many multiples of the United States in data, substantially larger numbers of computer scientists and a government for which there is a first-order priority, we can understand colleagues who are pessimistic. Indeed, it is our best judgment that on the current trajectory, while the United States will maintain a narrow lead over the next five years, China will then catch up and pass us quickly thereafter.

Nonetheless, we believe that this is an arena in which the United States can compete—and win. Congress recently established the “National Security Commission on Artificial Intelligence,” with Eric Schmidt as its chair, and Bob Work, who served as Deputy Secretary of Defense under both Obama and Trump, as Vice Chair. Its mission is to develop that strategy “to ensure America’s national security enterprise has the tools it needs to maintain U.S. global leadership.”55 In the hope of being helpful to that effort, we conclude with five pointers toward a winning strategy.

First, Americans must wake up to the challenge. Recognition that that the United States faces a serious competitor in a contest in which the outcome will be decisive for our future is necessary to get our competitive juices flowing. The Olympics offers an instructive analogy for thinking about a competitive strategy for AI. It also reminds us that competition is inherently a good thing. Competition produces superior performance. Participants in a marathon run faster than they do when running alone. Indeed, competition is a core American value. Free markets organize a competitive process that produces better products at cheaper prices. Science and its applications advance as research teams compete to better understand the world.56

Second, in this competition, the United States cannot hope to be the biggest—in that category, China wins by default due to the size of its population. However, what the United States can be is the smartest. In the seeking to improve and advance the most advanced of technologies, the brightest 0.0001 percent of individuals make the difference. The United States can succeed by recruiting talent from all 7.7 billion people on Earth and enabling these individuals to realize their full potential.57 In fact, U.S. companies have now recruited more than half of the top 100 recognized AI geniuses. In sharp contrast, China is a closed society—limited essentially to 1.4 billion Chinese speakers. Just 1000 foreign born individuals became Chinese citizens last year. So while the United States will not win competitions in which bulk numbers are the dominant factor, where brilliance, creativity and innovation matter most, the United States has a decisive advantage.58

Third, platforms matter. Here the United States begins with a huge sustainable competitive advantage: English is the universal language for science, business and the web. Chinese face the choice of either speaking English, or simply talking to themselves. Not only do the Chinese, but also the French and others often complain that this is unfair—and it may be. But it is a fact. To transform Singapore from a third-world city into one of the world’s most successful and prosperous global trading hubs, Lee Kuan Yew insisted on making English its first language. (Indeed, at one point in counseling Chinese leaders, he suggested that China make English its first language.) Today, more than half of the 7.5 billion people on Earth speak English—and another billion are seeking to learn.

Fourth, American companies have a significant first mover advantage in the establishment of the major platforms in AI, including operating systems (Android and Apple), design of advanced semiconductors (arm), and killer apps—including Instagram, YouTube and Facebook. Instagram has 1 billion monthly active users; Facebook more than 2.4 billion. While Chinese competitors will certainly attempt to displace the current leaders in both platforms and applications, if American companies are smart enough to continue enlarging their users’ opportunities, improving their experiences, and expanding the number of people using their platforms and applications, Chinese and others who want to speak to the world could have to continue relying on U.S.-dominated platforms.

#### It’s fake

Louise Lucas 18, 11-14-2018, "China’s artificial intelligence ambitions hit hurdles," Financial Times, https://www.ft.com/content/8620933a-e0c5-11e8-a6e5-792428919cee

China’s once-hot artificial intelligence sector is in a funk: spurned by investors, failing to deliver on cutting-edge technology and struggling to generate returns. It is a far cry from last year, when Beijing issued plans to lead the world in AI by 2030, venture capital investors were pumping up valuations and China’s tech giants peppered their earnings calls liberally with their AI ambitions. Disillusionment with the progress of AI is not unique to China. In the US, IBM laid off engineers at its flagship AI IBM Watson in the summer. Earlier Gary Marcus, a psychology professor at New York University and longtime sceptic lamented that “six decades into the history of AI, our bots do little more than play music, sweep floors and bid on advertisements”. But China, where the hype — and funding — went into overdrive last year, the reversal has cut more deeply. China last year overtook the US in terms of private sector investment, pulling in just shy of $5bn, but the $1.6bn invested in the first six months of this year is less than one-third of US levels, according to ABI Research. “[We’re] at a juncture where the generic use cases have been addressed,” said Lian Jye Su, principle analyst at the consultancy. “And building generic general purpose chatbots is much easier than specific algorithms for industries like banking, construction, or mining because you need industry knowledge and buy-in from the industry.” That inflection point has combined with a shortage of computing capacity to power algorithms and machine learning. What is left is familiar ground for tech investors: inflated valuations, over-hyped pitches and threadbare monetisation models. “We feel it’s a little bit over-invested,” said Nisa Leung, managing partner at Qiming Venture Partners, a big investor in China tech. “Many companies are unable to ramp up their monetisation or they are over-promising their ability.”

#### Super infancy and everything is open source.

Vivek Wadhwa 18, distinguished fellow at Carnegie Mellon University’s College of Engineering, 10-4-2018, "Commentary: The AI Wars Have Not Even Begun," Fortune, http://fortune.com/2018/10/04/artificial-intelligence-war-us-china/

There is no doubt that AI has incredible potential. But the technology is still in its infancy; there are no AI superpowers. The race to implement AI has hardly begun, particularly in business. As well, the most advanced AI tools are open source, which means that everyone has access to them. Tech companies are generating hype with cool demonstrations of AI, such as Google’s AlphaGo Zero, which learned one of the world’s most difficult board games in three days and could easily defeat its top-ranked players. Several companies are claiming breakthroughs with self-driving vehicles. But don’t be fooled: The games are just special cases, and the self-driving cars are still on their training wheels. AlphaGo, the original iteration of AlphaGo Zero, developed its intelligence through use of generative adversarial networks, a technology that pits two AI systems against each another to allow them to learn from each other. The trick was that before the networks battled each other, they received a lot of coaching. And, more importantly, their problems and outcomes were well defined. Unlike board games and arcade games, business systems don’t have defined outcomes and rules. They work with very limited datasets, often disjointed and messy. The computers also don’t do critical business analysis; it’s the job of humans to comprehend information that the systems gather and to decide what to do with it. Humans can deal with uncertainty and doubt; AI cannot. Google’s Waymo self-driving cars have collectively driven over 9 million miles, yet are nowhere near ready for release. Tesla’s Autopilot, after gathering 1.5 billion miles’ worth of data, won’t even stop at traffic lights. Today’s AI systems do their best to reproduce the functioning of the human brain’s neural networks, but their emulations are very limited. They use a technique called deep learning: After you tell an AI exactly what you want it to learn and provide it with clearly labeled examples, it analyzes the patterns in those data and stores them for future application. The accuracy of its patterns depends on completeness of data, so the more examples you give it, the more useful it becomes. Herein lies a problem, though: An AI is only as good as the data it receives, and is able to interpret them only within the narrow confines of the supplied context. It doesn’t “understand” what it has analyzed, so it is unable to apply its analysis to scenarios in other contexts. And it can’t distinguish causation from correlation. The larger issue with this form of AI is that what it has learned remains a mystery: a set of indefinable responses to data. Once a neural network has been trained, not even its designer knows exactly how it is doing what it does. They call this the black box of AI. Businesses can’t afford to have their systems making unexplained decisions, as they have regulatory requirements and reputational concerns and must be able to understand, explain, and prove the logic behind every decision that they make. Then there is the issue of reliability. Airlines are installing AI-based facial-recognition systems and China is basing its national surveillance systems on such systems. AI is being used for marketing and credit analysis and to control cars, drones, and robots. It is being trained to perform medical data analysis and assist or replace human doctors. The problem is that, in all such uses, AI can be fooled. Google published a paper last December that showed that it could trick AI systems into recognizing a banana as a toaster. Researchers at the Indian Institute of Science have just demonstrated that they could confuse almost any AI system without even using, as Google did, knowledge of what the system has used as a basis for learning. With AI, security and privacy are an afterthought, just as they were early in the development of computers and the Internet. Leading AI companies have handed over the keys to their kingdoms by making their tools open source. Software used to be considered a trade secret, but developers realized that having others look at and build on their code could lead to great improvements in it. Microsoft, Google, and Facebook have released their AI code to the public for free to explore, adapt, and improve. China’s Baidu has also made its self-driving software, Apollo, available as open source. Software’s real value lies in its implementation: what you do with it. Just as China built its tech companies and India created a $160 billion IT services industry on top of tools created by Silicon Valley, anyone can use openly available AI tools to build sophisticated applications. Innovation has now globalized, creating a level playing field—especially in AI.

#### No US-China war.

Charles C. Krulak & Alex Friedman 21, former President of Birmingham-Southern College, former Commandant of the US Marine Corps, M.S. from George Washington University; former Chief Financial Officer of the Bill & Melinda Gates Foundation, J.D. from Columbia University, “The US and China Are Not Destined for War,” Project Syndicate, 08-17-2021, https://www.project-syndicate.org/commentary/us-china-not-destined-for-war-by-charles-c-krulak-and-alex-friedman-1-2021-08

True, throughout history, when a rising power has challenged a ruling one, war has often been the result. But there are notable exceptions. A war between the US and China today is no more inevitable than was war between the rising US and the declining United Kingdom a century ago. And in today’s context, there are four compelling reasons to believe that war between the US and China can be avoided.

First and foremost, any military conflict between the two would quickly turn nuclear. The US thus finds itself in the same situation that it was in vis-à-vis the Soviet Union. Taiwan could easily become this century’s tripwire, just as the “Fulda Gap” in Germany was during the Cold War. But the same dynamic of “mutual assured destruction” that limited US-Soviet conflict applies to the US and China. And the international community would do everything in its power to ensure that a potential nuclear conflict did not materialize, given that the consequences would be fundamentally transnational and – unlike climate change – immediate.

A US-China conflict would almost certainly take the form of a proxy war, rather than a major-power confrontation. Each superpower might take a different side in a domestic conflict in a country such as Pakistan, Venezuela, Iran, or North Korea, and deploy some combination of economic, cyber, and diplomatic instruments. We have seen this type of conflict many times before: from Vietnam to Bosnia, the US faced surrogates rather than its principal foe.

Second, it is important to remember that, historically, China plays a long game. Although Chinese military power has grown dramatically, it still lags behind the US on almost every measure that matters. And while China is investing heavily in asymmetric equalizers (long-range anti-ship and hypersonic missiles, military applications of cyber, and more), it will not match the US in conventional means such as aircraft and large ships for decades, if ever.

A head-to-head conflict with the US would thus be too dangerous for China to countenance at its current stage of development. If such a conflict did occur, China would have few options but to let the nuclear genie out of the bottle. In thinking about baseline scenarios, therefore, we should give less weight to any scenario in which the Chinese consciously precipitate a military confrontation with America. The US military, however, tends to plan for worst-case scenarios and is currently focused on a potential direct conflict with China – a fixation with overtones of the US-Soviet dynamic.

This raises the risk of being blindsided by other threats. Time and again since the Korean War, asymmetric threats have proven the most problematic to national security. Building a force that can handle the worst-case scenario does not guarantee success across the spectrum of warfare.

The third reason to think that a Sino-American conflict can be avoided is that China is already chalking up victories in the global soft-power war. Notwithstanding accusations that COVID-19 escaped from a virology lab in Wuhan, China has emerged from the pandemic looking much better than the US. And with its Belt and Road Initiative to finance infrastructure development around the world, it has aggressively stepped into the void left by US retrenchment during Donald Trump’s four-year presidency. China’s leaders may very well look at the current status quo and conclude that they are on the right strategic path.

Finally, China and the US are deeply intertwined economically. Despite Trump’s trade war, Sino-American bilateral trade in 2020 was around $650 billion, and China was America’s largest trade partner. The two countries’ supply-chain linkages are vast, and China holds more than $1 trillion in US Treasuries, most of which it cannot easily unload, lest it reduce their value and incur massive losses.

To be sure, logic can be undermined by a single act and its unintended consequences. Something as simple as a miscommunication can escalate a proxy war into an interstate conflagration. And as the situations in Afghanistan and Iraq show, America’s track record in war-torn countries is not encouraging. China, meanwhile, has dramatically stepped up its foreign interventions. Between its expansionist mentality, its growing foreign-aid program, and rising nationalism at home, China could all too easily launch a foreign intervention that might threaten US interests.

Cyber mischief, in particular, could undercut conventional military command-and-control systems, forcing leaders into bad decisions if more traditional options are no longer on the table. And Sino-American economic ties may come to matter less than they used to, especially as China moves from an export-led growth model to one based on domestic consumption, and as two-way investment flows decline amid escalating bilateral tensions.

A “mistake” on the part of either country is always possible. That is why diplomacy is essential. Each country needs to determine its vital national interests vis-à-vis the other, and both need to consider the same question from the other’s perspective. For example, it may be hard to accept (and unpopular to say), but civil rights within China might not be a vital US national interest. By the same token, China should understand that the US does indeed have vital interests in Taiwan.

The US and China are destined to clash in many ways. But a direct, interstate war need not be one of them.

#### The status quo solves---the US combines deterrence-by-denial with punishment.

Luis Simón 20, research professor at the Institute for European Studies, director of the Brussels office of the Elcano Royal Institute, PhD in International Relations from the University of London, “Between punishment and denial: Uncertainty, flexibility, and U.S. military strategy toward China,” Contemporary Security Policy, Vol. 41, No. 3, 01-21-2020, <https://www.tandfonline.com/doi/full/10.1080/13523260.2020.1713604>

However, there are also tradeoffs between punishment and denial. Indeed, most experts and defense officials argue that different concepts require different capability mixes, as well as different approaches to force posture and alliance management.13 Deterrence by punishment tends to emphasize long range air and sea strike assets based off theater, i.e., outside the range of China’s A2/AD capabilities (Harris Jr., 2017, p. 15). In turn, deterrence by denial underscores the potential of in-theater short and medium range missiles and platforms to complicate Chinese military movement, as well as the sort of asymmetric warfare capabilities that can raise the costs of a potential Chinese military invasion and occupation (Heginbotham & Heim, 2015; Thomas, 2013). Punishment and denial also have different implications in terms of force posture and the role of allies. The role of regional bases and allies is rather passive and supportive in a punishment concept, to the point of becoming almost redundant for core missions like long-range strike (Martinage, 2014; Woolf, 2014). Conversely, denial requires a more extensive use of regional bases as well as the active engagement of local allies and partners. To be sure, allies can pursue denial strategies on their own—it helps plan for scenarios in which Washington is itself averse to escalation risks (i.e., decoupling).

Punishment and denial strategies also assume different attitudes toward the problem of escalation. Advocates of punishment argue that unless the United States shows it is in a position to defeat thus punish–China militarily, its commitment to provide extended deterrence will not be credible.14 In that sense, they are less concerned about the risk of escalation, not least because they believe that U.S. “escalation dominance” reinforces deterrence. The flip side of the argument is that allies may worry that the United States will not escalate on their behalf. Thus, those who advocate for denial attach greater importance to the need to contain any possible conflict with China, and warn about the perils of escalation to a full conventional (or even nuclear) war (Talmadge, 2017).

Rather than focusing on the question of whether punishment or denial is king, the key question for the United States seems to be how to integrate both concepts in the context of a broader strategic response to China’s rise and improving military position in the Western Pacific.15 The 2015 National Military Strategy (NMS) speaks simultaneously of denying an advantage to an adversary and defeating such adversary (Joint Chiefs of Staff, 2015, p. 5), the latter being a precondition for deterrence by punishment. In the event of aggression, “denying adversaries their goal will be an immediate objective,” and that would lay the foundations for defeating the adversary.16 In a more detailed document that addresses the specific threat posed by China’s A2/AD capabilities in the Western Pacific, Pacific Commander U.S. Admiral Harry B. Harris Jr. also embraces both punishment and denial, as he speaks simultaneously about the need for the United States to preserve an “advantage in a denied environment” (2017, p. 15) as well as working with regional allies to “enhance denial capabilities” (2017, p. 31). Multiple DoD officials involved in the making of U.S. strategy toward China corroborate that both punishment and denial are part of Washington’s strategic inventory to deter China in the Western Pacific.17 The problem, however, is that it is always easier to think flexibly than to act flexibly.

#### The FTC is expanding its authority AND is even broader than Sherman and Clayton

David **McLaughlin 21**, Reporter for Bloomberg News, “U.S. FTC’s Lina Khan Vows Return to Agency’s Trustbusting Roots”, 7/28/21, <https://www.bloomberg.com/news/articles/2021-07-29/u-s-ftc-s-lina-khan-vows-return-to-agency-s-trustbusting-roots>

The new chair of the U.S. Federal Trade Commission said she intends to use the **full arsenal** of the agency’s authority to take on dominant companies that are thwarting competition and signaled she’s not afraid to pursue **risky cases** that officials have shied away from in the past.

In a meeting with reporters Wednesday at the FTC’s headquarters in Washington, 32-year-old Lina Khan said the agency has failed to use the **full scope** of its powers laid out by Congress, which created the agency as an antitrust watchdog in 1914.

“There has been a bit of a missed opportunity, especially over the last few decades, to **take full advantage** of the institutional tools that Congress granted the agency,” Khan said in a wide-ranging interview.

Khan’s remarks to reporters followed her testimony earlier Wednesday at a hearing on Capitol Hill, her first since President Joe Biden named her chair of the agency in June. His nomination of Khan put one of the most prominent advocates for **more forceful antitrust** actions against companies in charge of the commission and indicated the administration’s intent to **toughen competition policy.**

Less than two months into her tenure, Khan is already taking steps to **restore the agency’s power.** In July, she and her two fellow Democrats on the commission voted to rescind an Obama administration competition policy that put limits on how the agency uses its authority to bring antitrust cases. Advocates for more aggressive enforcement have said the FTC can use that authority -- known as Section 5 of the FTC Act -- more broadly than the 2015 policy allowed.

In Wednesday’s interview, Khan said that Section 5 is a **key aspect** of the FTC’s authority that’s **broader than** the two main antitrust laws in the U.S. -- the **Sherman** Act **and** the **Clayton** Act.

#### Renewed antitrust enforcement is coming AND massive.

Eric J. **Savitz &** Max A. **Cherney 8-20**, Associate Editor, Technology, Barron's; Technology Reporter, Barron's, "The White House Wants to Rein in Big Tech. Here’s How." Barrons, 08/20/2021, <https://www.barrons.com/articles/white-house-big-tech-51629428885>.

The era of the U.S. government giving **free rein** to technology companies as they grow and flourish is over. The momentum **around** regulation has been building for at least five years, roughly corresponding to a speech that Sen. Elizabeth Warren (D., Mass.) delivered in 2016, when she singled out tech companies in arguing that “in America, competition is dying.”

That technology companies are **living** in a new era of oversight is **no longer up for debate**. The view among both **Dem**ocrat**s** and **Republicans** is that the status quo must change.

President Joe Biden has made his view clear with the **appointment** of progressive reformists to his administration. In a **sprawling ex**ecutive **o**rder that tackles **corporate power**, the Biden administration is seeking to **rein in Big Tech** in numerous areas, including **data collection** and **surveillance**, while also asking the Federal Trade Commission to take a closer look at mergers.

#### AND applies to nearly all sectors.

Florian **Ederer 21**, Associate Professor of Economics, "Does Big Tech Gobble Up Competitors?" Yale Insights, 08/04/2021, <https://insights.som.yale.edu/insights/does-big-tech-gobble-up-competitors>.

Will Biden’s executive order make a difference? What else does government need to do to prevent these acquisitions?

I think the executive order is a step in the right direction. It is quite **far reaching** because it orders **every part of the Federal government**—not just the antitrust enforcers—to focus on creating fair competition and to reduce product and labor market power, especially in **concentrated** markets. Furthermore, the executive order is **not confined** to a few specific industries, but includes industries from **railroads** and **shipping** to **pharma**ceuticals and **ag**riculture. It is also encouraging that the executive order acknowledges that killer acquisitions impede competition.