FTC - DOJ Merger Guidelines Listening Forum | March 28, 2022

Lina Khan:

My name is Lina Khan, and I am Chair of the Federal Trade Commission. I'm joined today by my colleague, Jonathan Kanter, Assistant Attorney General for Antitrust at the Department of Justice. Thank you to Jonathan and to all of our speakers for being here today to discuss mergers and acquisitions in the food and agriculture industry and how farmers, independent grocers and other market participants have experienced the effects of this consolidation. This is the first of four public listening forums on the firsthand effects of mergers and acquisitions, and I'm very much looking forward to each discussion. I also want to thank the many consumers, entrepreneurs, businesses, and organizations that have already submitted comments in our public docket. The public comment period remains open through April 21st, 2022, and all are welcome to submit formal comments via regulations.gov.

Lina Khan:

Today, we're going to be hearing from participants in food and agriculture markets. This issue is especially salient for me because my path to the FTC actually started with a focus on agriculture markets. One of my first assignments in a new job more than a decade ago was to investigate the deep consolidation that had occurred across agriculture markets with farmers now often lacking choice in how to get their products to market. Some evidence suggests that this concentration across markets, be it in poultry, beef or seeds, has contributed to higher prices for American consumers, lower income for farmers and a food system that is less resilient.

Lina Khan:

Talking to farmers directly, meanwhile, can also reveal how the deep asymmetries of power in markets can also be enabling abusive market practices. Key aspects of the FTC's work are currently focused on how to ensure that the markets that farmers, workers, grocers and others in this industry rely on are open, fair, and competitive. We're looking at the ways in which repair restrictions by equipment manufacturers can limit options and raise cost performers, and we also are enforcing the antitrust laws in retail markets, including in the grocery context, which are responsible for the final step in getting food grown by farmers and ranchers to a family's table.

Lina Khan:

More generally, we are also taking a whole of government approach to ensuring that fair and competitive markets are available for farmers, independent grocers, consumers, and a host of market participants that rely on these markets. We are partnering closely with the Agriculture Department and the Justice Department to help put in place strong USDA rules that can forcefully protect farmer's rights under the Packers and Stockyards Act.

Lina Khan:

When reviewing potentially illegal mergers, we are also ensuring that our approach to measuring harm is rigorous and fully capturing the day to day realities that a range of participants in these markets face. The occasion for today's event is our joint effort with the DOJ to revise our merger guidelines, which provide a guide for how we identify mergers that violate the law. These guidelines were last updated in 2010 and have continued to evolve and develop. Fresh evidence of consolidation throughout the economy, including in agriculture markets, suggest that we need to take a hard look at how we're investigating mergers and enforcing our anti merger laws. We need to make sure that the guidelines reflect our modern economy, a goal that I know both the AEG and I share.

Lina Khan:

Like so many other sectors of the economy, agriculture markets have undergone enormous change over recent decades, both due to ongoing consolidation and attendant changes in market structure, as well as the advent of new technologies such as precision agriculture and increasingly data driven equipment. With these listening sessions, we want to ensure that we hear from a broad set of market participants, as we consider how to revise the merger guidelines. We want to make sure that the tools and analyses that we have developed over the years are attentive to real world effects of mergers and consolidation.

Lina Khan:

AAG Kanter will save his remarks for the end so that we can preserve more time to hear from our speakers. We have some folks who have prepared remarks with us to share directly at the meeting now. And then, after a brief discussion, we'll open things up for some public comments before AAG Cantor closes. Let's go ahead and hear from our first speaker. I'll turn things over to Dr. Catherine Badell.

Dr. Catherine Badell:

Thank you, and thank you for having this listening session. When I had children and we decided to move to a ranch in Western Colorado, I was familiar with the cattle business through my veterinary work. I knew that to be profitable on a small ranch, we would need to sell into a niche market. I had been watching the consolidation of processing and then feeders after JBS bought Swift in 2007 and five river feeders shortly after using funds the founders were later convicted of fraudulently receiving in Brazil. This should have resulted in their loss of inspection certificate here, but instead it set off the rapid consolidation of meat processing by Cargill, Tyson, National, as well as JBS.

Dr. Catherine Badell:

On the ranch, we developed a herd that would be grass fed, and we developed a brand of beef to sell locally. The business grew selling meat directly to consumers at farmer's markets and wholesale to local restaurants and small, independent groceries. The first barrier to expansion our business was the lack of access to quality processing. Consolidation had removed small and moderately size processing plants and the very small plants were over capacity and would close during the fall, September through December, for wild game processing. The big packers only wanted to process semi-low quantities, which would create a storage problem and was not something we could do.

Dr. Catherine Badell:

We would also run into the misrepresentation packers and distributors used to sell their commodity meat as raised on a family farm. They created brands like Gold Canyon and Aspen Ridge and would convince my restaurants to purchase their meat at a premium. I would have to call my customer's attention to the deceit behind the labels. When I tried to sell into institutional markets, I encountered the inclusionary contracts distributors used to ensure that the large part of the institution's purchases remained with the distributor. These could be volume discounts, free shipping, free cases and gifts. Since meat purchase costs constitute a large percentage of sales, these institutions could not buy from me without losing their perks from the distributor.

Dr. Catherine Badell:

Access to grocery stores was similarly blocked by the necessity of supplying a large number of stores in a chain, paying slotting fees, dealing with category captions who track sales and placement. These practices effectively shut out all but the largest companies with the financial resources to back up their brands. In addition to hurting me as a new brand, this behavior limits consumer choice and increases prices paid at the grocery store. This type of behavior is the direct result of lack of competition in grocery that has resulted from the mergers like City Market, our hometown chain, was bought by Dillon Company in 1969 and then acquired by Kroger in 1983, consolidating all the grocery stores in the Grand Valley under one name.

Dr. Catherine Badell:

This is my story as I tried to make a living from my ranch and to offer a local brand of beef to my community. I have many colleagues with similar stories. New entrants are blocked at all levels from lack of profitable cattle markets, lack of processing and exclusionary behavior in distribution and retail. This has all been the result of keeping competition out and result in even more extreme market and price control consolidation, but also limits consumer choice. The consolidation and mergers of the past disregarded the impact on supply chain resilience, consumer choice, and the impact on rural communities which depend on agricultural independence and a more circular economy. Consolidation and centralization have removed our ability to feed ourselves. It's crazy that we send our food off for processing and then buy it back and have to truck it at great distances.

Dr. Catherine Badell:

We need to decentralize the food system for resilience and environmental health. We need your help to do this. We must reexamine antitrust and anti-competitive laws and prioritize resistance and environmental impacts of past and future mergers. Consolidation and anti-competitive behavior have become the norm in all sectors of agriculture. Lack of enforcement has given big business free reign to solidify control of markets of both inputs, processing, agriculture, distribution, and retail.

Dr. Catherine Badell:

As you look for solutions, please do not put the burden of filing suits on small businesses being impacted. I and my colleagues can't possibly win against these companies with our limited resources. It must fall on you in government to protect us. Thank you so much for your time and for the listening session.

Lina Khan:

Thanks so much, Catherine. We'll next go to Mike Salguero.

Mike Salguero:

Hi, good afternoon, Chair Khan and AAG Kanter. My name is Mike Salguero and on behalf of ButcherBox employees, members, partners, farmers, ranchers, and fishermen, I'm honored to share my perspective on the impact that mergers and acquisitions have had on our business industry in the marketplace.

Mike Salguero:

ButcherBox is the largest direct to consumer brand delivering humanely raised meat and sustainable seafood to our member's doorsteps. Our company began with a simple mission to make high quality meat more accessible to all. We discovered that that meant doing something not so simple, rethinking our food system. We're in pursuit of a better way, one that's focused on animal welfare, supporting farmers and treating our planet with respect. To achieve our mission, we face an uphill battle. The current framework of the meat industry works for a few big firms that have achieved vast economies of scale for conventional meat production.

Mike Salguero:

As you may be aware, 80% of beef, 70% of pork, and over 50% of poultry production is controlled by a few large companies. Such consolidation has slowed the growth of our business, restricted flexibility and resiliency within the industry and contributed to unnecessarily high prices for consumers, low profits for farmers and ranchers and a host of negative environmental impacts. As a result, there was no scalable supply chain for grass fed beef when we started our business in 2015. We made the difficult decision to source all of our grass fed beef from Australia until we better understood how to construct a grass fed supply chain that would scale in the US. Ironically, it's not that there aren't enough farmers and ranchers raising grass fed beef in America. Instead, the anti-competitive nature of meat processing has completely restricted our ability to grow.

Mike Salguero:

Because we do not own a beef processing plant, we must operate as a fee for service customer at beef processing plants. In general, the big four packers are not willing to offer this service, so that means we must seek processing in the other 20% of the industry that is independent. Of that 20%, many are too small to work with our volumes or don't meet our food safety requirements. This reduces the pool to about 5% of total meat packing plants. Of that share, some plants don't offer fee for service or don't have capacity. In summary, the number of plants we can work with to grow a scaled domestic grass fed beef industry can be counted on two hands. This is currently the biggest limiting factor to growing domestic grass fed beef. Our business is further constricted because of our certified humane animal welfare guidelines that we are committed to which limits the amount of time an animal can spend in transport, which is anywhere from eight to 16 hours. Combined with restricted options for processing cattle, there are geographic regions of the country that we simply cannot source from.

Mike Salguero:

In addition, vertical integration has enabled the big four to streamline their operations and gain cost efficiencies. They benefit generously at the expense of the animal, the consumer and the environment. Overall, the high volumes presented by large players leaves very little incentive for meat processors to work with smaller entities, even the likes of ButcherBox the largest grass fed beef provider in the US.

Mike Salguero:

Ultimately, this combination of factors makes it extremely difficult for us to identify processors who are willing to do business with us. We found two and then built our supply network of grass fed ranchers around them. Today, our grass fed beef program is about 20% domestically sourced. I'm proud of the progress we've made, but I'm extremely frustrated by how challenging it has been to move just a fifth of our business back to American soil. I want to be able to source 100% of ButcherBox's grass fed beef from American ranchers but unless the stronghold on processing capacity is loosened, I'm not optimistic we'll be able to do that.

Mike Salguero:

I got into this business because I wanted to provide better meat to Americans and I've stayed in this business, in fact I view it as my life's work, because I've learned how broken this system is. Conventional meat production disregards animal welfare practices, and is a detriment to soil and water quality. It results in meat and seafood that is less nutrient dense and even contributes to health consequences. In short, the major players have been able to reap the benefits of unhindered consolidation with no accountability for the externalities of the system.

Mike Salguero:

As the FTC and DOJ review the merger guidelines, I ask that the enforcement approach shift away from the narrow interpretation of prioritizing consumer welfare by chasing efficiency and low customer crisis. A more holistic lens must be taken, one that considers the broader impact of mergers in an industry. In the case of meat and meat packing consolidation, this narrow view has resulted in negative impacts to independent farmers and ranchers, animals, the environment, and access to healthy nutrient dense meat for all Americans. Thank you for taking time to hear my perspective.

Lina Khan:

Thank you so much, Mike. We'll next go to Kevin.

Kevin Ellis:

Thank you for the opportunity to speak with you today. I am the CEO of Cayuga Marketing, which is an independent co-op in upstate New York. But the point I want to make today is that the combination of the consolidation of fluid milk processors, exclusive contracting and USDA regulations reduces competition for raw milk and hurts dairy farmers. It also causes farmers to make less money for their product and reduces the production of dairy products in the long term.

Kevin Ellis:

A little bit about Cayuga Marketing, we are a co-op based in Auburn, New York. We are the 22nd largest milk cooperative in the United States and we're just selling north of 1.4 billion pounds of milk annually. Cayuga Marketing has 28 family farms market its milk in Federal Order One which extends from Maine all the way to Virginia. Federal orders serve to maintain stable marketing relationships for all milk handlers and producers supplying processors within each marketing area, thus facilitating the orderly marketing of milk, which I want to stress the word orderly.

Kevin Ellis:

But to do this, producers must be pooled to receive the uniform price in the federal orders. In Federal Order One, this means that no less than 10% of a cooperative's milk production must be sold to a Class One plant, which produces regular drinking milk that you would find in grocery stores.

Kevin Ellis:

Cayuga Marketing has historically maintained its pooling status by selling milk to three separate Class One fluid milk bottlers, one of which was acquired by our competitor, Dairy Farmers of America Co-op in 2021. Commonly referred to as DFA, they terminated our contract at the end of 2021 and the subsequent result was we're no longer able to pool 100% of our milk produced from our producers. Instead, we're now paying another cooperative in Federal Order One a pooling access fee so that our producers can receive the uniform price in Federal Order One. Paying this fee hurts our farmers. The fee also makes it hard for us to compete with DFA to attract other farmers with better service and higher fees.

Kevin Ellis:

This problem's not just happening in New England, DFA's terminated the cooperative contracts across the country and forced independent producers to become members of DFA or be forced to lose their milk market or find alternative milk markets. DFA's control of Dean Foods plants combined with their long term full supply agreements with other fluid milk bottlers and the USDA regulation has given them a disproportionate share of pooling access. This has forced independent producers and other cooperatives into disorderly marketing situations just to gain pool access.

Kevin Ellis:

Cayuga Marketing has also been forced into relationships that carry higher credit risk and higher hauling costs to maintain our pooled status. This again hurts our farmers. In its first seven years of operations, Cayuga Marketing has become known for running an efficient cooperative and we receive numerous inquiries each year from other dairy farmers who desire to become members of Cayuga Marketing. But we are unwilling to offer producers a viable alternative milk market because of our limited pool access. To combat this, we've been forced to make a strategic investment into a fluid bottling plant so that we can ensure our long term viability. But I want to point out, most smaller cooperatives and independent producers don't have access to capital required to build their own fluid milk manufacturing plant.

Kevin Ellis:

I am happy to follow

Kevin:

... follow up with any questions from the FTC or DOJ today or any time in the future to talk about resolutions and recommendations that we would have to build a more robust, competitive landscape for milk producers. Thank you.

Speaker 1:

Thanks so much, Kevin. Really appreciate your sharing your perspective. Next, we'll go to Sarah Lloyd.

Sarah Lloyd:

Yeah. Hello. Thank you very much for this opportunity. I appreciate all the work that everyone is doing to try to improve market fairness and make sure that small and medium-scale firms, farms, businesses, co-ops, et cetera, can have a go at it. My husband and I are dairy farmers here in Wisconsin. We're kind of medium-sized by Wisconsin standards. We milk about 450 cows. We're three families; my husband, his brother, my in-laws. And although I think that we're huge, we end up being a real ant in these increasingly consolidated and merged supply chains.

Sarah Lloyd:

Just to give some examples, one thing about dairy farmers or any kind of commodity producers is we're getting squeezed on both sides, so when we have to buy things from input suppliers that are increasingly consolidating, we get squished with higher prices that they pay, that we have to pay to them. And then when we go to sell our milk on the other side, then we are dealing with increasingly consolidate entities on the processor, distributor, and retailer side. And so we are experiencing at our farm that cost price squeeze.

Sarah Lloyd:

But the ways that we need the DOJ and the FTC and other entities to be able to assess the competitiveness, it needs to be a system's look, because what we see are things like the frozen pizza factory merges and gets bigger, and then they want the mozzarella cheese processor to get bigger to meet their needs. Then that mozzarella cheese processor starts looking for bigger and bigger dairy farms to meet their scale, and then we get our input supplier, this happened to us, all this looking for bigger and bigger because entities were merging and getting consolidated.

Sarah Lloyd:

Then the guy that sells us the semen for our artificial insemination for our dairy cows came and said, "Well, I'm going to have to raise our prices to you, because I had to give a volume discount to that really big farm." And so these cascading effects come down onto the smaller entities. For my off-farm job, I work with a group of fresh vegetable farmers that have started to aggregate to sell into grocery buyers. When we have seen the consolidation in the grocery industry, it becomes increasingly difficult to get your truck into the dock because the really larger, fresh vegetable suppliers get expedited dock positions in the warehouses of the larger and increasingly larger grocery chains. And so that involves really long wait times, increased transportation costs.

Sarah Lloyd:

I think how these things fit together throughout the supply chain is really important. Most of what I can see in how things are assessed from merger and acquisition is a lot of times, it's looking at what the consumer ends up paying or a retail price impact. What that also does is it kind of pits the farmer and the consumer against each other all the time, so that farmers can't get a higher price because that will increase consumer prices. But these increasingly consolidated entities in-between are soaking up all of the money in the marketplace and leaving the consumer and the small and medium-size farmer out in the cold.

Sarah Lloyd:

And we're struggling to survive as a business, as a farmer and as an active member of our community, so I really appreciate the opportunity to share what we're experiencing, and hope that DOJ and FTC can work to make the markets more accessible and fair to everyone. Thanks.

Speaker 1:

Thanks so much, Sarah. That's certainly our goal. Next, we'll go to Todd.

Todd:

Hello everyone. Thanks for having these listening sessions. I'm a family farmer in Grand Forks County in North Dakota. I grow wheat and soybeans. Seed sector amalgamation has resulted in fewer seed choices for farmers appropriate to the specific regional conditions or climate. I encourage the DOJ, FTC to consider the effect of past mergers on loss of choice across both GMO and conventional seed.

Todd:

Prior to 1996, before the advent of the first genetically modified crops, seed companies and university breeding programs were regional and tailored their varieties to the specific needs of regional soils, climate, and the needs of both farmers and end users. Consolidation in the agricultural biotechnology industry has affected price, availability, and choice in both GMO seed and conventional seed. Of course, GMO seed traits are worthless without the crop germplasm in which they're invested.

Todd:

For that reason, the acquisition of independent seed companies was vital to the business model of large agribusiness corporations. When the largest agricultural chemical biotechnology companies have absorbed the majority of independent seed companies, they obtained those companies germplasm. This, first of all, constrained conventional commodity crop seed lines, limiting choice for farmers who plant a conventional seed. These same companies negotiated contractual arrangements with agriculture universities to access their germplasm resources and obtain germplasm from seed collections under the direction of the consultative group on international agricultural resources, as well as [inaudible 00:24:59] crops around the world.

Todd:

Farmers benefit when there is competition between companies resulting in stacked traits that are affordable, appropriate for the cropping situation, and where farmers have a choice of regionally appropriate seed. The merger of so many previous regional seed companies has led to higher prices for GMO trait seed and stacked traits that do not meet the needs of farmers because they contain traits that are unnecessary for a particular farmer's needs, or they constrain a farmer to a particular seed herbicide system.

Todd:

The seed chemical industry has long argued that expansion through merger is necessary to maintain or generate expanded levels of research and development. However, instead of innovation into new chemistries and modes of action to address selective weed control, R&D and the merged companies has led to a rehashing of the same broad spectrum chemistries, but in different packages. One example is the Bayer XtendFlex for 2022, a triple-stacked soybean trait containing tolerance of dicamba, glyphosate, and glufosinate, all herbicides ranging roughly from 30 to 60 years old.

Todd:

Seed herbicide systems used since 1996 have resulted in global rise of herbicide resistance with some weed species that became resistant within only a few years of an introduction of Roundup Ready corn and soybeans rotated on millions of acres in the US. While such, quote, "innovative technologies", unquote, may prove helpful in the time being without research into new chemistries, weed herbicide resistance will continue to evolve and farmers will be left with fewer weed control choices, and may face years of struggle with weed resistance due to lack of new, innovative weed control chemistry on the market.

Todd:

Multiple companies in competition in R&D is essential for ensuring that incentives remain strong to continue existing and prospective product development programs. Farmers already pay high prices for seed technology, and increasingly struggle with products that contain unwanted, unneeded traits or just plainly don't work anymore. Farmers rarely seem to be able to profit from a rise in commodities when input costs, justified or not, immediately rise to consume those profits. Those input costs rise when competition is not there to keep those costs in check. Issues raised above a stable competition and innovation and raised input prices for my farming operation. Again, I hope that the DOJ and the FTC can look into these issues. Thank you.

Speaker 1:

Thanks so much, Todd, for sharing that really fascinating perspective. Next, we will go to Anthony.

Anthony Pena:

Good afternoon. My name is Anthony Pena. I'm a second generation owner-operator. I operate under the banners of Super Fresh Markets and Save-A-Lot. We're located in the New England area, in Connecticut, Massachusetts, and Rhode Island. The grocery is a very tough business, long hours, many sacrifices, but it's a rewarding one. It's unique. It's special. This is the business that I'm proud to be in, and I hope that my children can carry that same love for the business as I did for my father. I've been working in the grocery almost all my life. My father started a small bodega in Yonkers, New York in the '80s. From that bodega, he continued to work hard and grow our group into supermarkets that we have today.

Anthony Pena:

Currently, we have nine stores across those three states, and happily employ hundreds of people that are now part of our extended family. Our stores cater to diverse group of people with all different economic backgrounds and ethnic backgrounds. Because of that, our stores aren't a one size fit all. They are part of the community. The merchandising we have in these stores truly reflect those communities in which we cater to. For example, one of our stores in Holyoke serves mostly to the Puerto Rican community, while another one operates mostly in the Columbian neighborhood. We cater to that.

Anthony Pena:

We have stores, for example, in Indian Orchard that have a lot of Portuguese customs. You'll find things in those stores like different varieties of bacalao, a salted fish that you won't find in other stores.

Another store that we have in Springfield, Massachusetts, in a predominantly heavily college community, we cater to those students who are on a budget. They're going to school, they're away, they're dorming, and they need to make sure that they are within budgets for the meals.

Anthony Pena:

That's the beauty of independent main street grocers. It's not a cookie cutter operation. We are an integral part of the community. These kinds of stores are endangered. As I continue to look at the numbers, they're critically endangered. That's not because they don't provide customers value. The reality is that in our retail industry, there's a concentrated economic power in the hands of just a few companies. The more enormous corporations, like a Walmart and the big box stores, they use that power to benefit themselves and thwart competition, making it much more difficult for us to continue to sell those essential product at the most reasonable prices to the consumers and where we serve.

Anthony Pena:

In some cases, these stores are selling identical products for lower prices than I can buy them for at wholesale. Let me give you an example; orange juice, for example. It's a must-have commodity in grocery stores. Just months ago, I was buying a 59-ounce orange juice just north of $4 a unit, where we couldn't get the supplier to sell it to us simply because there are none or their limited quantities are available to us. Meanwhile, I go to the bigger box like a Walmart or a club store. Not only do they have it fully stocked, but they have it about half the price that I would buy it for at cost.

Anthony Pena:

Direct store delivery, they run right past our stores and make sure that Walmart is fully stocked and fully displayed in merchandise. You can't blame them. Walmart's abuse of its buying power and demand on-time delivery during supply chain crisis means suppliers have no choice but to meet their demands first. What about ours? Economic discrimination happens every day, all across the country. It happens because the current rules don't consider how retail concentration results in gatekeeper's power. Mega retailers set the rules for suppliers and the competitors, enabling them to capture higher profits rather than pass the savings to the consumer.

Anthony Pena:

Meanwhile, I'm forced to buy fewer products at higher prices, and my consumers are suffering. Merger policies shouldn't forget about the benefits that my store brings to the consumers. You should look at service. You should look at accessibility. You should look at the convenience of the locations in which small guys like us operate. If mergers and concentrations continue as they have, independent stores will continue to close. People will have fewer choices, and you'll only have options that few enormous corporations want you to have.

Anthony Pena:

Is that really a world you want people to live in? Is that really the community-based stores that you really want? We work incredibly hard to serve the hardworking people who depend on us, and all we ask is a fair chance to keep doing it and continue to doing it with much pride, so that our future generations can continue to do the business in the same way we did it, if not even better. I'd like to thank you for your time.

Speaker 1:

Thanks so much, Anthony, for sharing those incredibly important points. Next, we will go to Tom.

Tom:

Hi. Good afternoon. Thank you for having me today. I really appreciate it. First of all, I want to say, Anthony, I'm a fourth generation retailer and I can 100% relate to everything you said there. It was a great way to encapsulate the challenges of the independent retailer. I'm a co-owner of Charley Family Shop 'N Save. We have three stores. We have two stores in Greensburg, Pennsylvania, and one in Murrysville. The grocery industry has definitely shaped my family, family story in America. Our story is the definition of the American dream.

Tom:

My great-grandfather came to America from Syria in 1900 when he was 16 years old. He didn't speak English, didn't speak a word of English. He started selling fruit off the back of his bike. Eventually, he grew that into getting a truck, and then from that, he grew into a warehouse where he serviced Western Pennsylvania. Grocery retail, clearly in my DNA. I've been doing it since I was 12 years old, worked through high school and college, working grocery on the way. I left the industry for a couple years to get some experience outside of my area and my market, but the industry kept calling me back.

Tom:

At its core, grocery retail is a community-centered problem-solving job, and that is what I love to do. Independent retailers across the board don't shy away from these problems. This is kind of what we do, right? We take on problems. We take on challenges specifically around the community. But I do want to address what we've all been talking about today, is this challenge of consolidation and abuse of power from these big box retailers and these large organizations. There is a few enormous, dominant retailers using their powers to get around the rules that are designed to protect us.

Tom:

Like we heard earlier, Walmart's a great example. They've gotten so big that they can dictate terms to suppliers. Those terms include lower prices, better package deals, and exclusive products that I personally, I can't go to my supplier and say, "Hey, I want to buy this item because I saw it at Walmart." Even if I'm willing to pay more, they won't give it to me because they're considered a different channel of trade. Which doesn't make any sense at all, because their customers are literally shopping four feet away from my store, like right across the road.

Tom:

They're in the same neighborhood, shopping in the store for similar products from the same exact concept. But since they have this channel of trade, it circumvents the discrimination that would be traditionally looked at as antitrust. It creates economic discrimination. Honestly, it's kind of absurd. I've been doing this for a profession as a leader in my organization for 10 years, and this has been my number one frustration of things that I can't control within my organization. Why is it that there is a different channel of trade for these competitors?

Tom:

Now, I work with one of the largest wholesalers in the entire country, and we still can't touch their prices that Walmart secures for itself. At this very moment, last week, I went to Walmart just because I knew this was going on and knew I was going to be talking. I was like, "I'm going to

Tom:

I'm going to go check some prices at Walmart. And I took 30 items, random, completely random, and 10 of those 30 items, their retail price to consumers was below the cost that we paid before we pay fees from our wholesaler. And you might say, "Well, they're more efficient." But whenever we look at our wholesaler, we are dealing with the largest wholesaler in the entire country, $20 billion in sales last year. How is it that Walmart is that much more efficient than our wholesaler? The answer is they're not right. They're leveraging the power that they have over these suppliers. Now, the question is, here's the result, rather than competing these massive players shut down competition by demanding lower prices without justifying this efficiency. They're not justifying that they're more efficient. They just can't. And they're creating this exclusive supply channel that only they have access to.

Tom:

We really need a level playing field. 30 years ago in my market, it was all independent resource. That's all you saw. 15 years ago, there were probably five or six. Now there's one, me. Only independent retailer really left in my community of size. I'm not going anywhere anytime soon, but if I look down the road another 30 years, it's not getting any easier with the rules the way they're set up right now. And also when you think about consumer welfare, you can't just assume the consolidation automatically creates better service for those consumers. The opposite can be true also. Customers also value, quality and choice. Our stores, personally, we have expert butchers who know every single cut of meat in the entire store, and they have extremely high quality standards. We don't sell ground meat. That is more than a day outside of grinding.

Tom:

So, if we grind the meat and it's 24 hours later, it's off the shelf, it just doesn't sell. Walmart on the other hand has no skilled butchers in the entire organization and their ground meat, they get 20 day shelf life off it. If we continue to let companies like Walmart, set the rules and avoid competition, that's literal really what the market's going to be. It's going to be three week old meat. It's going to be cookie cutter big box stores with fewer fresh and local options. And if consumer welfare is something that we're really concerned with, we have to do something about this. I really, I truly appreciate you finding [inaudible 00:38:19] again, I know what you're living with, I live with it every day. And I just want to say thank you very much.

Lina Khan:

Thank you, Tom. Next. We'll go to Greg.

Greg Gunthorp:

Thank you. Good afternoon. I'm Greg Gunthorp, owner of Gunthorp Farms, an integrated, pasture-based, pork, poultry and sheep farm in Northeast Indiana. We have an on-farm USDA inspected, very small processing plant. Our products are served at places like O'Hare airport. The Clubhouse at Wrigley [inaudible 00:38:50] Field and Disney. We started direct marketing in 1998. My family sold commodity hogs for at least four generations. Before that we know how to adapt and flex. We know how to compete. We are the definition of resilience. Our lives aren't difficult today because we aren't good at what we do or we aren't willing to work hard and smart. Our lives are hard because the USDA, the FTC, and the DOJ have been on big since the 1970s, creating a no rules environment in which the biggest cheaters win, leaving farm families like mine without a fair market.

Greg Gunthorp:

After 8 cent hogs, we adapted. Instead of selling hogs, we sold pork. Consumers want to know how their food is raised, how it's processed and how it's handled. While government regulators slept, the big players invaded our space. Every viable niche we've come up with to differentiate ourselves has been stolen and bastardized. Whether it's natural, family farm product of USA, free range, pastured, humane, grass-fed regenerative, or even organic, big ag and their food service and retail partners have knocked us off with false, misleading and fraudulent labeling and marketing. I have a degree in agricultural economics from Purdue University, but do not claim to be an economist. I do however, understand that functioning commodity markets require many buyers and many sellers and low barriers to entry and exit. Functioning markets, especially niche markets, require transparency in truth and labeling, messaging and advertising. Today's market is not a market. Today's no rules marketplace has destroyed our ability to feed ourselves effectively, harming both commodity and niche producers, as well as consumers. If we are to rebuild local, regional food systems, we need antitrust enforcement, subsidy reform, labeling reform and inspection reform.

Greg Gunthorp:

Here's what I believe we need right now. We need to ensure government programs aimed at rebuilding our food system aren't stolen by the same corporations that failed us. We need to fix the false labeling issues. Start immediately with the product of USA, but don't stop there.

Greg Gunthorp:

Organic should always be the safe Harbor for small producers. You guys need to get over your jurisdictional fights within USDA and the Department of Justice on concentration in mergers, also FTC and USDA need to get over your jurisdictional issues on labeling and advertising. Both of you need to be strong, need to restore ethics and reverse agency capture, need to stand behind small producers and processors on due process issues, need to stop being afraid to prosecute, stop settling cases without effective, corrective actions. Take on [inaudible 00:42:17] competitive merger cases, such as the JBS Mountain Rosen lamb, or the current Sanderson Wayne Continental Cargill merger, and you need to redirect enforcement at the problems, instead of the solutions. Personally, we get three USDA inspectors a day at the farm, while large processors are beginning to be able to self-inspect. I want to thank you for the opportunity to speak today, and thank you for holding these listening sessions. I want to remind you that in rural America, concentration and competition are not partisan issues. They're American issues.

Lina Khan:

Thank you so much, Greg. Thank you everybody who we've heard from today for sharing your experiences and stories. I'll just share a quick few quick reactions and then turn it over to the AAG. I'm really struck by some of the challenges, the common challenges that you all have helped surfaced across a variety of markets, be it in cattle, dairy, seed, retail, poultry, pork, and the ways in which some of the accounts you've shared highlight the very real ways in which significant consolidation can result in higher costs, lower quality, reduced choice, but can also enable firms to engage in business practices, such as dictating terms or engage in discriminatory conduct that can also undermine open and fair competition. And so all of these accounts are going to be top of mind for us. I'm also struck by some of the particular harms that you noted that might be more agriculture specific that we should keep in mind.

Lina Khan:

And so, the ways in which consolidation might create homogeneity and SAP regional diversities in ways that could undermine resiliency of the food system as a whole, strikes me as an enormously important consideration at a macro level. And then I'm also struck by how a few of the comments, and Sarah, in particular, noted how consolidation in any single market can have effect for direct participants in that market, but also can have cascading ramifications across the supply chain and across even seemingly unrelated markets, which seems to be an important dynamic for us to keep in mind as well. So in closing, I just really want to thank everybody who took the time to share their stories with us today. It's easy sometimes for antitrust debates to become academic and unmoored from market realities. And I'm just so grateful to everybody who took the time to speak with us, to make sure that we're really fully accounting for some of these realities. And with that, I will turn it over to AAG KANTER

Jonathan Kanter:

Yeah. Thank you, Chair Khan and thank you to all of you for the incredibly courageous and insightful comments. It's extremely important for us that we hear from experts who are living and breathing these issues on a daily basis. And you are experts. You are on the front lines, you know industries, you are witnessing conduct and the effects of consolidation firsthand. And so it's important that we provide you access to us and that we are here to listen and incorporate your feedback because it is critical to effective antitrust enforcement and critical to merger enforcement, and something that we have to take in mind and consider, as we revise the merger guidelines.

Jonathan Kanter:

I, similar to Chair Khan wanted to walk through some of the things that I heard that I found to be quite significant and noteworthy for us to focus on as we consider revisions to the merger guidelines. The use of exclusionary practices, something that came up quite a bit as something that's a very real consequence of consolidation and a very effective and insidious tool that could be used to effectuate market power as a result of consolidation. Heard a lot about innovation in various different forms, and including animal welfare. These are important innovations that we should be mindful of as we think about the impact of concentration. We've heard about less money for farmers. This is critical to the US economy. It's critical to the wellbeing of our communities. We've heard about farmers squeezed on both sides, being stuck in the middle, the increase in take rates, which is a phenomenon that we're seeing across many industries, agriculture being a significant example.

Jonathan Kanter:

I was also struck by the system wide look at this, the vicious cycle of consolidation, where consolidation in one market fuels consolidation in another market and raises barriers to entry. And those cascading facts that Chair Khan referred to are quite concerning.

Jonathan Kanter:

Again, a lot of the specifics are important for us to understand from a policy perspective, realities like independence, not having access to docks for their trucks and having cost effective transportation. That's a big problem and the kind of issues that we need to be mindful of as we consider the effects of consolidation. On the seed side, we heard about seed resistance and the importance of R and D and innovation. And that's the kind of competitive dynamic we have to preserve. We've heard about the importance of businesses that are investing in local communities, local communities serve vibrant local economies and the ability of community oriented businesses, which I relate to on personal level, not having a one size fits all and being able to service the needs of a community, which are dynamic and different, depending on where you are.

Jonathan Kanter:

That really is the American dream, which we've heard about. And the need of taking on community challenges is a significant benefit to our society, to our consumers, to local communities and businesses that we must preserve. And eliminating independence does come at a cost and that is service to those communities. And I think that's something we should think about. And also making sure that we're considering the depth of services provided as part of competition. We heard about expert butchers, for example, that's the level of expertise care, that's extremely important for local communities health and a significant benefit of competition.

Jonathan Kanter:

Finally, we heard about the use of tactics to effectuate market power, some of which include mislabeling. And again, these are market realities that we need to be mindful of as we think about the way in which firms can exercise market power, as they consolidate, and the importance of transparency with... And markets that have low barriers to entry and liquidity. So, I was incredibly moved by the comments, your courage, and I think it's extremely important for us to hear from you and thank you for taking the time today.

Jonathan Kanter:

So with that, I think we're now going to turn the mic over to Lindsay. Who's going to facilitate participation from our public speakers. So, Lindsay, take it away.

Lindsay Kryzak:

Thank you. I will remind our next speakers that the FTC is recording this listening forum, which can be maintained, used, and disclosed to the extent authorized or required by applicable law regulation or order and may made available in whole or in part in the public record in accordance with the FTC's rules. Each speaker today will be given two minutes to address Chair Khan, Assistant Attorney General Kanter, staff from both agencies and the public. I will remind some of you who just recently joined to unmute yourselves before you speak. But our first speaker today is Angela Huffman. Angela.

Angela Huffman:

Thank you. I'm a co-founder of Farm Action, and I appreciate the opportunity to share firsthand experiences of our members. I want to bring two issues that are a great concern to us. In December, we sent a letter to the Justice Department, requesting an investigation into the suspicious spike in fertilizer prices that began early last fall. Farmers are reporting fertilizer costs up to two to three times what they were in 2020. These numbers proceed Russia's invasion of Ukraine, which will only put further pressure on our farmers. In North America, two companies control all the potash and four companies control 75% of nitrogen, because these companies tie the price of fertilizer to the price farmers get paid for their crops, the farmer can never get ahead. Because of these rising costs, many farmers can't afford the fertilizer they need this year. The burden is greater for smaller scale farmers who don't have access to the credit this season's startup expenses will require.

Angela Huffman:

This year, their options are to plant fewer acres or use less fertilizer. Both of which lead to reduced yields. They could also change their plans for the season and plant crops that need less fertilizer, instead of nutrient intense crops like wheat and corn, these choices farmers are forced to make, will only lead to greater food insecurity.

Angela Huffman:

Our other concern today is the right to repair. Earlier this month, we joined with other farm groups to file a petition with FTC, asking for an investigation into John Deere's abusive restrictions that prevent farmers and independent mechanics from repairing farm equipment. Farmers are forced to rely on equipment dealers, which oftentimes take weeks or months to complete a repair. Small errors, like a sensor misfire can cost farmers several hundred dollars in repair work, plus tens of thousands of dollars in the loss of precious small windows in which they're able to get into the field because the equipment dealer is holding a monopoly on repair. Farmers are also experiencing price gouging. Farmers are at the mercy of these companies and need antitrust action. Thank you for the opportunity to raise these issues.

Lina Khan:

Thank you, Angela. Our next speaker is Patty Lavera. Patty.

Patty Lavera:

Hi, my name is Patty Lavera and I'm actually a Policy Consultant. I work with a couple of different groups. One is the Organic Farmer's Association, another is a coalition called the Campaign for Family Farms and the Environment. But actually both groups which represent different types of farmers constantly raise concerns about lack of competition. And there are different examples because they're in different sectors of agriculture, but they all have examples of mergers that should not have been improved, that have proven detrimental to the markets they participate in. In some cases, and I can tee up, I think Ed Maltby is going to talk about one that we are dealing with right now in organic. There's a specific regional problem for organic dairy farmers in the Northeast. And this is five years after a merger with an inadequate remedy where we basically just shuffled around market share and a brand moved from one dominant buyer to another dominant buyer. And now one of those dominant

Patty Lavera:

Prominent buyers is leaving and it's causing real heartache for that sector of organic dairy farmers in that region and it was a remedy that everybody said was going to fail, and it did. So it indicates what we're not measuring when mergers are being considered, there's those regional impacts, and just how dependent farmers are in a region on a couple of big buyers. We've had several references from other speakers about innovation, and there are lots of sectors of the food system where innovation doesn't have anywhere to go, because like Greg was talking about, brands get gobbled up, retailers change their terms.

Patty Lavera:

When Amazon bought Whole Foods and changed the terms for how they source things and went to a more central system, that hurts innovators in the food supply who might be running on such low margins that change in the payment terms, changing how you do in store samples, changing shipping rules, all of that can be the difference. Or you just can't be big enough to provide them what they need in their new model of how they source things.

Patty Lavera:

Then finally I'll just say there's a lot of things that are hard to get into the calculations from the mergers being considered about what we lose when small farms go away, that used to serve what we call ag of the middle, and this is a phenomenon we talk about in farm policy, that we have very, very small farms who are kind of trapped in direct to consumer markets, because they don't have anywhere to grow to, because we don't have mid sized processing buyers, or retail anymore, and that we have mega firms and the supply chains that they run. And what we see in a lot of rural communities is that loss of the ag of the middle, is a devastating impact on rural communities and lots of other things that come from that, so I'll just leave it at that. Thank you.

Facilitator:

Thanks Patty. Our next speaker is Chris Peterson. Chris? Chris I think you're still on mute, would you unmute?

Chris Peterson:

Sorry.

Facilitator:

It's all right.

Chris Peterson:

Chris Peterson, Clear Lake Iowa, been an independent family farmer and pig farmer all my life. I started out in the 70s raising pigs. It was so good back then, we had buying stations, probably half a dozen in a 20 mile radius. Farmers were in control as far as supply and demand and prices go. I used to have packers and buyers of packers stopping by the farm offering bids.

Chris Peterson:

The farmers controlled, and that started to disappear. The packers evidently didn't like that system so they started to change things. They bought up the regional packing plant, such as Dubuque Pack, a regional brand in Dubuque Iowa. I got paid dividends on my pigs that cut good when I delivered there.

Chris Peterson:

You used to get paid at the scale at the regional buying stations, now you got paid at the packing plant, you get shrink, the weight loss and transportation and it all adds up, everything was stacked against the family farmer it seems. In a great yield I was making seven to eight, nine dollars a pig, so that made a big difference.

Chris Peterson:

It went to a system where the independents had to buy shackle space, a time slot, and a date to get your pigs killed. You delivered the pigs, if you missed that date, semi load or whatever, you waited another week or two for the next round.

Chris Peterson:

Then the eight cent hogs happened, and that was consolidation on steroids where the big money, the big packers, got enough market power to run the hogs down to about eight cents, about 40,000 of us went out, forced us to do a bankruptcy, that's why we do Berkshires today into a niche market. You'd be a fool to sell pigs into the so called commercial market.

Chris Peterson:

Approximately 92% of independent pig farmers are now gone, replaced by this top down system. The family farms over the decades have got the shaft and now the consumers are feeling the pain getting the shaft too with high meat prices which there's no reason for it. I could go into a lot more of this.

Chris Peterson:

My opinion is you people need to dust off the Packers and Stockyards Act of 100 years ago and start enforcing it. Concentration and consolidation is killing family farms in rural America. So, I'm hoping you people restore my faith in government, it's pretty well lost over the years. Thank you for listening.

Facilitator:

Thank you Chris. Our next speaker is Edward Maltby. Edward?

Edward Maltby:

Yes, good afternoon. I represent Organic Dairy Farmers in the north east. They're not able to comment themselves because of their contractual restrictions, or because of intimidation from their milk co-op who penalize them if they comment publicly on their contractual arrangements.

Edward Maltby:

The corporate consolidation of the organic dairy market, the power of international companies that dominate the supply side, and the retail market. Firstly the recent exit of Danone Horizon has resulted in only buyer for organic farmer's milk in New England and New York. That one buyer sets the price and conditions of any contract or corporate agreement leaving the organic dairy farmer with no choice but to accept the pay price, the average is 20% below the cost of production in the north east. The other choice is to leave dairying with all the resulting effect on the rural community and their family.

Edward Maltby:

CROPP Cooperative is that one buyer and it's a capitalistic co-op. It is now the only major buyer for organic milk used in New England and New York. The crisis in New England and New York caused by the Horizon brand decision to exit the area is a vivid regional example of the impacts of consolidation that plague the entire organic dairy sector, not just north east but across the mid west and the west.

Edward Maltby:

In the organic dairy market there are two national brands, Horizon Organic owned by Danone north America whose parent company is Danone. Danone is headquartered in France and Organic Valley owned by CROPP Cooperative based in Wisconsin.

Edward Maltby:

The leading retail set up of organic dairy products is store brand, private label products supplied by a crop cooperative and large CAFO vertically integrated organic dairies who have the economy to scale and allow them to undercut competition in the price sensitive store brand, private label retail market, which by its nature, has a lower retail price than branded, organic products.

Edward Maltby:

Previous government decisions have allowed this consolidation to worsen and should be revisited. When Danone purchased White Wave in 2017, the Department of Justice mandated that a condition of purchase was that Stonyfield Organic, owned by Danone with a supply contract with CROPP Cooperative, would have to be sold as a remedy to prevent a monopoly in the region. Stonyfield Organic was sold to Lactalis, the second largest dairy corporation in the world.

Edward Maltby:

With Horizon exiting the area and canceling contracts with 89 organic family farms, leaving only one major buyer, that's CROPP Cooperative. CROPP's major customers are in the north east, their raw milk is Lactalis, Lactalis purchase 80% of its total milk supplies from CROPP and purchase the other 20% by direct procurement from north east farms or other sources.

Edward Maltby:

To cut so many farms at one time in a market that's still in recovery, rather than waiting for some basic corrections, does not reflect the intent of the agreement signed by Danone when it completed the White Wave purchase. The Department of Justice-

Facilitator:

Thank you Ed, thanks Ed. Our next speaker is Lia Biondo. Lia?

Lia Biondo.:

Afternoon. I'm Lia Biondo, executive vice president of the United States Cattleman's Association. Thank you for the opportunity to provide comment here today.

Lia Biondo.:

Over 100 years ago marked the first and last major regulatory action on the US meat packing industry. The creation of the Packers and Stockyards Act occurred at a time when the national packing company and conglomeration of three of the largest meat processes of the time controlled 45% of the nation's total slaughter capacity, and 97% of the slaughter capacity in the west.

Lia Biondo.:

Today, the big four meat packers as they are now collectively known, have pushed past an 80% controlling share of the US steer and cow for slaughter. The game has changed but the rules have remained stagnant. Without bold action, the United States risks losing its independent livestock producers.

Lia Biondo.:

As USCA vice president Justin Tupper said last June when he testified before the senate agriculture committee, we can either work to eliminate the occurrence of anti-competitive practices and market manipulation in the meat packing sector, or as we've seen and done in the past in other industries, we can break the model so they can not have as much influence or ownership of the market.

Lia Biondo.:

I can't say it better than Mr Tupper or Doctor [Pordell 01:04:15] or Mr [Gunthorpe 01:04:15], or any of the other speakers who have already provided their perspective here today. In short, we need the Department of Justice, the Federal Trade Commission and other relevant regulatory agencies to step in, evaluate current market conditions and provide a pathway forward for a fairer, more competitive market place. Thank you.

Facilitator:

Thank you Lia. Our next speaker is Carrie [Ballcombe 01:04:40]. Carrie?

Carrie Ballcombe:

Thank you, thank you for the opportunity to speak today. A lot of the folks that are on these calls I've been networking with for over 25 years, and we're not at the point yet where we've seen creative change in the way that our producers are treated. The first thing is that we need to stop co-opting the niche labeling and let the producers who have created these wonderful labels and are filling them, to have the big guys stop taking those markets away from them. There needs to be more oversight on labeling the product in USA, as Greg mentioned, is paramount. 85% of the grass fed that enters this country is labeled product of the USA, there's no telling how it's raised, we don't know and we need to stop that immediately.

Carrie Ballcombe:

The time has come to clearly define the size of a farm and the ownership of farms, is it small, very small? Processing should be defined by number of employees and the number of animals, and also to stop that so that we can have differentiation of market place. The ownership of what a farm is needs to be clearly defined by the agencies represented here today, so that a farm that is owned offshore and goes by the name farm, should not be allowed to do that, there needs to be some transparency in that.

Carrie Ballcombe:

All of the people that have spoken before and all the people that are speaking now, we speak with one voice and it's time for the American family farmer, through your agencies, to realign with our values, create markets so that our rural economies can thrive and survive and we can get a fair shake for these folks. So thank you very much for the opportunity and I will let it back to somebody who needs to get their two cents in. But I thank you for having this discussion, it's very important.

Facilitator:

Thank you Carrie. Our next speaker is Dianne Atler. Dianne? Dianne, I think you're still on mute. I'm going to jump to Irmer Duran. Irmer? Okay, I think they both are here but Dianne and Irmer, I apologize we cannot see or hear you, so I will circle up with both of you to make sure we can get your comments into the record at a later date. With that I'm going to turn it back to over to you Assistant Attorney General Kanter for the remainder of the meeting.

Jonathan Kanter:

Thank you so much, and thanks to you all for those insightful comments. As I sit here and listen, as I noted before your expertise is just so important, your first hand experience is so important. It's also important that these are not just listening sessions, but that the listening sessions become action and so I can't tell you how tremendously valuable this has been for all of us and we are taking this extremely seriously and your comments are extremely [inaudible 01:08:40]. Agriculture plays such a vital role in our society, it is essential that markets, especially markets that effect our food, remain competitive and free from anti competitive conduct.

Jonathan Kanter:

Any anti trust violation, consolidation that negatively impacts farming harms communities, it harms our food supply and it threatens the health and safety of our nation. So we must remain vigilant and we must remain willing to not just be courageous in thinking about the path forward but to be careful and considerate of all points of view.

Jonathan Kanter:

That's why today is so valuable, and why what we've heard today will be extremely informative as we go forward and consider revisions to the merger guidelines, and considering, and I trust enforcement in this area as a whole. So I thank you so much on behalf of Chair Kahn, the FTC, the Department of Justice Anti Trust Division and we are always open and available to hear from you in connection with projects like the merger guidelines, but also in connection with specific investigations and concerns. We'll be working to provide additional opportunities to hear from all of you in the future, but again I appreciate your courage in coming forward and speaking publicly about these issues which are so important and so valuable.

Jonathan Kanter:

Thank you so much for your time today, thank you Lindsay and our hosts with preparing the technology and we wish you all the best and Lindsay, I'll hand it back to you.