

117TH CONGRESS
2D SESSION

S. _____

To impose a moratorium on large agribusiness, food and beverage manufacturing, and grocery retail mergers.

IN THE SENATE OF THE UNITED STATES

Mr. BOOKER (for himself, Mr. TESTER, Mr. MERKLEY, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To impose a moratorium on large agribusiness, food and beverage manufacturing, and grocery retail mergers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Food and Agribusiness
5 Merger Moratorium and Antitrust Review Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Concentration in the food and agricultural
9 economy, including mergers, acquisitions, and other
10 combinations and alliances among suppliers, pack-

1 ers, integrators, other food processors, distributors,
2 and retailers has been accelerating at a rapid pace
3 since the 1980s, and particularly since the 2007
4 through 2009 recession.

5 (2) The trend toward greater concentration in
6 food and agriculture has important and far reaching
7 implications not only for family farmers, but also for
8 food chain workers, the food we eat, the commu-
9 nities we live in, the integrity of the natural environ-
10 ment upon which we all depend, and for our collec-
11 tive public health.

12 (3) The infant formula industry, for example,
13 has reached an alarming level of corporate con-
14 centration with 4 companies now controlling nearly
15 90 percent of the infant formula market. A disrup-
16 tion in the supply of just 1 infant formula producer
17 now presents a grave risk to infant health in the
18 United States.

19 (4) In the past 4 decades, the top 4 largest
20 pork packers have seized control of 70 percent of the
21 market, up from 36 percent. Over the same period,
22 the top 4 beef packers have expanded their market
23 share from 32 percent to 85 percent. The top 4 flour
24 millers have increased their market share from 40
25 percent to 64 percent. The market share of the top

1 4 soybean crushers has jumped from 54 percent to
2 79 percent, and the top 4 wet corn processors con-
3 trol of the market has increased from 63 percent to
4 86 percent.

5 (5) Today the top 4 sheep, poultry, and fluid
6 milk processors now control 62 percent, 54 percent,
7 and 50 percent of the market, respectively.

8 (6) The top 4 grain companies today control as
9 much as 90 percent of the global grain trade.

10 (7) During the past 5 years there has been a
11 wave of consolidation among global seed and crop-
12 chemical firms, 3 companies now control nearly $\frac{2}{3}$
13 of the world's commodity crop seeds. Those same 3
14 companies now also control nearly 70 percent of all
15 agricultural chemicals and pesticides.

16 (8) In the United States, the 4 largest corn
17 seed sellers accounted for 85 percent of the market
18 in 2015, up from 60 percent in 2000. Over the past
19 20 years, the cost for an acre's worth of seeds for
20 an average corn farmer has nearly quadrupled, and
21 the cost of fertilizer has more than doubled. Yet
22 corn yields increased only 36 percent over that time,
23 and the price received for the sale of a bushel of
24 corn increased only 31 percent.

1 (9) A handful of firms dominate the processing
2 of every major commodity. Many of them are
3 vertically integrated, which means that they control
4 successive stages of the food chain, from inputs to
5 production to distribution. The growing number and
6 scale of cross-border agribusiness and food mergers
7 have put foreign firms, often with considerable gov-
8 ernment backing, into prominent and even dominant
9 positions in the United States beef, hog, poultry,
10 seed, fertilizer, and agrichemical sectors.

11 (10) Growing concentration of the agricultural
12 sector has restricted choices for farmers trying to
13 sell their products. As the bargaining power of agri-
14 business firms over farmers increases, concentrated
15 agricultural commodity markets are stacked against
16 the farmer, with buyers of agricultural commodities
17 often possessing regional dominance in the form of
18 oligopsony or monopsony relative to sellers of such
19 commodities.

20 (11) The high concentration and consolidation
21 of buyers in agricultural markets has resulted in the
22 thinning of both cash and futures markets, thereby
23 allowing dominant buyers to leverage their market
24 shares to move those markets to the detriment of
25 family farmers and ranchers.

1 (12) Buyers with oligopsonistic or
2 monopsonistic power have incentives to engage in
3 unfair and discriminatory acts that cause farmers to
4 receive less than a competitive price for their goods.
5 At the same time, some Federal courts have incor-
6 rectly required a plaintiff to show harm to competi-
7 tion generally, in addition to harm to the individual
8 farmer, when making a determination that an un-
9 fair, unjustly discriminatory, deceptive, or pref-
10 erential act exists under the Packers and Stockyards
11 Act of 1921.

12 (13) The farmer's share of every retail dollar
13 has plummeted from 41 percent in 1950, to less
14 than 15 percent today, while the profit share for
15 farm input, marketing, and processing companies
16 has risen.

17 (14) While agribusiness conglomerates are post-
18 ing record earnings, farmers are facing desperate
19 times. Since 2013, net farm income for United
20 States farmers has fallen by more than half and me-
21 dian on farm income was negative in 2020.

22 (15) The benefits of low commodity prices are
23 not being passed on to American consumers. The
24 gap between what shoppers pay for food and what
25 farmers are paid is growing wider.

1 (16) The steadily rising price of food has out-
2 paced growth in incomes for typical workers. Since
3 the Great Recession, the annual growth of real
4 prices for food at the supermarket have risen nearly
5 3 times faster than typical earnings.

6 (17) There is growing consensus that economic
7 consolidation contributes to the widening gap in eco-
8 nomic opportunity in the United States and bigger,
9 more dominant firms are more likely to deliver prof-
10 its to investors than to raise wages or benefits.
11 Mega-mergers in the food and agribusiness indus-
12 tries can lead to growing monopsony power abuse re-
13 sulting in wage suppression, along with massive lay-
14 offs as companies shutter factories and facilities,
15 harming working families and communities.

16 (18) Concentration, low prices, anticompetitive
17 practices, and other manipulations and abuses of the
18 agricultural economy are driving small family farm-
19 ers out of business. Farmers are going bankrupt or
20 giving up, and few are taking their places; more
21 farm families are having to rely on other jobs to stay
22 afloat. Seventy-nine percent of farm household in-
23 come came from off farm work in 2020 , up from
24 53 percent in 1960.

1 (19) Eighty-one percent of America's farmed
2 cropland is now controlled by 15 percent of farms,
3 and the number of farmers leaving the land will con-
4 tinue to increase unless and until these trends are
5 reversed.

6 (20) The decline of small family farms under-
7 mines the economies of rural communities across
8 America; it has pushed Main Street businesses, from
9 equipment suppliers to small banks, out of business
10 or to the brink of insolvency.

11 (21) Increased concentration in the agribusiness
12 sector has a harmful effect on the environment; cor-
13 porate hog farming, for example, threatens the in-
14 tegrity of local water supplies and creates noxious
15 odors in neighboring communities. Concentration
16 also can increase the risks to food safety and limit
17 the biodiversity of plants and animals.

18 (22) The decline of family farming poses a di-
19 rect threat to American families and family values,
20 by subjecting farm families to turmoil and stress.
21 Farm advocates across the country are reporting an
22 increase in farmer suicides over the past several
23 years.

24 (23) The decline of family farming causes the
25 demise of rural communities, as stores lose cus-

1 tomers, churches lose congregations, schools and
2 clinics become under-used, career opportunities for
3 young people dry up, and local inequalities of wealth
4 and income grow wider.

5 (24) These developments are not the result of
6 inevitable market forces. Its problems arise rather
7 from policies made in Washington, including farm,
8 antitrust, and trade policies.

9 (25) Past congressional action to remediate
10 market failure, such as enacting country-of-origin la-
11 beling to provide transparency for domestic farmers,
12 ranchers, and consumers regarding agricultural com-
13 modity origins, have been overturned for key com-
14 modities by oligopolistic conglomerates that use un-
15 differentiated imports to reduce domestic farm
16 prices.

17 (26) To restore competition in the agricultural
18 economy, and to increase the bargaining power and
19 enhance economic prospects for family farmers, the
20 trend toward concentration must be reversed.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) AGRICULTURAL INPUT SUPPLIER.—The
24 term “agricultural input supplier” means any person
25 (excluding agricultural cooperatives) engaged in the

1 business of selling, in interstate or foreign com-
2 merce, any product to be used as an input (including
3 seed, germ plasm, hormones, antibiotics, fertilizer,
4 and chemicals, but excluding farm machinery) for
5 the production of any agricultural commodity, except
6 that no person shall be considered an agricultural
7 input supplier if sales of such products are for a
8 value less than \$10,000,000 per year.

9 (2) BROKER.—The term “broker” means any
10 person engaged in the business of negotiating sales
11 and purchases of any agricultural commodity in
12 interstate or foreign commerce for or on behalf of
13 the vendor or the purchaser, except that no person
14 shall be considered a broker if the only sales of such
15 commodities are for a value less than \$10,000,000
16 per year.

17 (3) COMMISSION MERCHANT.—The term “com-
18 mission merchant” means any person engaged in the
19 business of receiving in interstate or foreign com-
20 merce any agricultural commodity for sale, on com-
21 mission, or for or on behalf of another, except that
22 no person shall be considered a commission mer-
23 chant if the only sales of such commodities are for
24 a value less than \$10,000,000 per year.

1 (4) DEALER.—The term “dealer” means any
2 person (excluding agricultural cooperatives) engaged
3 in the business of buying, selling, or marketing agri-
4 cultural commodities in interstate or foreign com-
5 merce, except that—

6 (A) no person shall be considered a dealer
7 with respect to sales or marketing of any agri-
8 cultural commodity of that person’s own rais-
9 ing; and

10 (B) no person shall be considered a dealer
11 if the only sales of such commodities are for a
12 value less than \$10,000,000 per year.

13 (5) INTEGRATOR.—The term “integrator”
14 means an entity that contracts with farmers for
15 grower services to raise chickens or hogs to slaugh-
16 ter size and weight. The integrator owns the chick-
17 ens or hogs, supplies the feed, slaughters, and fur-
18 ther processes the poultry or pork.

19 (6) PROCESSOR.—The term “processor” means
20 any person (excluding agricultural cooperatives) en-
21 gaged in the business of handling, preparing, or
22 manufacturing (including slaughtering and food and
23 beverage manufacturing) of an agricultural com-
24 modity, or the products of such agricultural com-
25 modity, for sale or marketing for human consump-

1 tion, except that no person shall be considered a
2 processor if the only sales of such products are for
3 a value less than \$10,000,000 per year.

4 (7) RETAILER.—The term “retailer” means any
5 person (excluding agricultural cooperatives, coopera-
6 tive retailers, and cooperative distributors) licensed
7 as a retailer under the Perishable Agriculture Com-
8 modities Act of 1930 (7 U.S.C. 499a(b)), except
9 that no person shall be considered a retailer if the
10 only sales of such products are for a value less than
11 \$10,000,000 per year.

12 **TITLE I—MORATORIUM ON**
13 **LARGE AGRIBUSINESS, FOOD**
14 **AND BEVERAGE MANUFAC-**
15 **TURING, AND GROCERY RE-**
16 **TAIL MERGERS**

17 **SEC. 101. MORATORIUM ON LARGE AGRIBUSINESS, FOOD**
18 **AND BEVERAGE MANUFACTURING, AND GRO-**
19 **CERY RETAIL MERGERS.**

20 (a) IN GENERAL.—

21 (1) MORATORIUM.—Until the date referred to
22 in paragraph (2) and except as provided in sub-
23 section (b)—

24 (A) no dealer, processor, commission mer-
25 chant, agricultural input supplier, broker, or

1 operator of a warehouse of agricultural com-
2 modities or retailer with annual net sales or
3 total assets of more than \$160,000,000 shall
4 merge or acquire, directly or indirectly, any vot-
5 ing securities or assets of any other dealer,
6 processor, commission merchant, agricultural
7 input supplier, broker, or operator of a ware-
8 house of agricultural commodities or retailer
9 with annual net sales or total assets of more
10 than \$16,000,000; and

11 (B) no dealer, processor, commission mer-
12 chant, agricultural input supplier, broker, or
13 operator of a warehouse of agricultural com-
14 modities or retailer with annual net sales or
15 total assets of more than \$16,000,000 shall
16 merge or acquire, directly or indirectly, any vot-
17 ing securities or assets of any other dealer,
18 processor, commission merchant, agricultural
19 input supplier, broker, or operator of a ware-
20 house of agricultural commodities or retailer
21 with annual net sales or total assets of more
22 than \$160,000,000 if the acquiring person
23 would hold—

- 1 (i) 15 percent or more of the voting
2 securities or assets of the acquired person;
3 or
4 (ii) an aggregate total amount of the
5 voting securities and assets of the acquired
6 person in excess of \$15,000,000.

7 (2) DATE.—The date referred to in this para-
8 graph is the effective date of comprehensive legisla-
9 tion—

10 (A) addressing the problem of market con-
11 centration in the food and agricultural sector;
12 and

13 (B) containing a section stating that the
14 legislation is comprehensive legislation as pro-
15 vided in section 101 of the Food and Agri-
16 business Merger Moratorium and Antitrust Re-
17 view Act of 2019; or

18 (b) WAIVER AUTHORITY.—The Attorney General
19 shall have authority to waive the moratorium imposed by
20 subsection (a) only under extraordinary circumstances,
21 such as insolvency or similar financial distress of 1 of the
22 affected parties.

23 (c) EXEMPTIONS.—The classes of transactions de-
24 scribed in section 7A(c) of the Clayton Act (15 U.S.C.
25 18a(c)) are exempt from subsection (a).

1 (d) AVOIDANCE.—Any transaction or other device en-
2 tered into or employed for the purpose of avoiding the
3 moratorium contained in subsection (a) shall be dis-
4 regarded, and the application of the moratorium shall be
5 determined by applying subsection (a) to the substance of
6 the transaction.

7 (e) RULEMAKING.—The Attorney General shall pro-
8 mulgate regulations that the Attorney General determines
9 are necessary to implement this section.

10 **TITLE II—AGRICULTURE CON-**
11 **CENTRATION AND MARKET**
12 **POWER REVIEW COMMISSION**

13 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

14 (a) ESTABLISHMENT.—There is established a com-
15 mission to be known as the Food and Agriculture Con-
16 centration and Market Power Review Commission (here-
17 after in this title referred to as the “Commission”).

18 (b) PURPOSES.—The purpose of the Commission is
19 to—

- 20 (1) study the nature and consequences of con-
21 centration in America’s food and agricultural econ-
22 omy; and
23 (2) make recommendations on how to change
24 underlying antitrust laws and other Federal laws
25 and regulations to keep a fair and competitive agri-

1 culture marketplace for family farmers, other small
2 and medium sized agriculture producers, generally,
3 and the communities of which they are a part.

4 (c) MEMBERSHIP OF COMMISSION.—

5 (1) COMPOSITION.—The Commission shall be
6 composed of 12 members as follows:

7 (A) Three persons, 1 of whom shall be a
8 person currently engaged in farming or ranch-
9 ing, shall be appointed by the President pro
10 tempore of the Senate upon the recommenda-
11 tion of the Majority Leader of the Senate, after
12 consultation with the Chairs of the Committee
13 on Agriculture, Nutrition, and Forestry and of
14 the Committee on the Judiciary.

15 (B) Three persons, 1 of whom shall be a
16 person currently engaged in farming or ranch-
17 ing, shall be appointed by the President pro
18 tempore of the Senate upon the recommenda-
19 tion of the Minority Leader of the Senate, after
20 consultation with the ranking minority member
21 of the Committee on Agriculture, Nutrition,
22 and Forestry and of the Committee on the Ju-
23 diciary.

24 (C) Three persons, 1 of whom shall be a
25 person currently engaged in farming or ranch-

ing and 1 of whom shall be a representative of organized labor, shall be appointed by the Speaker of the House of Representatives, after consultation with the Chairs of the Committee on Agriculture and of the Committee on the Judiciary.

(D) Three persons, 1 of whom shall be a person currently engaged in farming or ranching, shall be appointed by the Minority Leader of the House of Representatives, after consultation with the ranking minority member of the Committee on Agriculture, Nutrition, and Forestry and of the Committee on the Judiciary.

(2) QUALIFICATIONS OF MEMBERS.—

(A) APPOINTMENTS.—Persons who are appointed under paragraph (1) shall be persons who—

(i) have experience in farming or ranching, expertise in agricultural economics and antitrust, or have other pertinent qualifications or experience relating to agriculture and food and agriculture industries; and

(ii) are not officers or employees of the United States.

1 (B) OTHER CONSIDERATION.—In appoint-
2 ing Commission members, every effort shall be
3 made to ensure that the members—

4 (i) are representative of a broad cross
5 sector of agriculture and antitrust perspec-
6 tives within the United States; and

7 (ii) provide fresh insights to analyzing
8 the causes and impacts of concentration in
9 agriculture industries and sectors.

10 (d) PERIOD OF APPOINTMENT; VACANCIES.—

11 (1) IN GENERAL.—Members shall be appointed
12 not later than 60 days after the date of enactment
13 of this Act and the appointment shall be for the life
14 of the Commission.

15 (2) VACANCIES.—Any vacancy in the Commis-
16 sion shall not affect its powers, but shall be filled in
17 the same manner as the original appointment.

18 (e) INITIAL MEETING.—Not later than 30 days after
19 the date on which all members of the Commission have
20 been appointed, the Commission shall hold its first meet-
21 ing.

22 (f) MEETINGS.—The Commission shall meet at the
23 call of the Chairperson.

24 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
25 members of the Commission shall elect a chairperson and

1 vice chairperson from among the members of the Commis-
2 sion.

3 (h) QUORUM.—A majority of the members of the
4 Commission shall constitute a quorum for the transaction
5 of business.

6 (i) VOTING.—Each member of the Commission shall
7 be entitled to 1 vote, which shall be equal to the vote of
8 every other member of the Commission.

9 **SEC. 202. DUTIES OF THE COMMISSION.**

10 (a) IN GENERAL.—The Commission shall be respon-
11 sible for examining the nature, the causes, and con-
12 sequences concentration in America's agricultural econ-
13 omy in the broadest possible terms.

14 (b) ISSUES TO BE ADDRESSED.—The study shall in-
15 clude an examination of the following matters:

16 (1) The nature and extent of concentration in
17 the food and agricultural sector, including food pro-
18 duction, manufacturing, transportation, processing,
19 distribution, marketing, retailing, and farm inputs
20 such as machinery, fertilizer, and seeds.

21 (2) Current trends in concentration of the food
22 and agricultural sector and what this sector is likely
23 to look like in the near and longer term future.

1 (3) The effects of rising concentration on sup-
2 pliers, workers and farmers, including independent
3 and contract farmers, with respect to—

4 (A) competition in markets for their prod-
5 ucts and services;

6 (B) income and benefit levels;

7 (C) income distribution;

8 (D) income volatility;

9 (E) other material benefits; and

10 (F) wages and benefits of employees.

11 (4) The impacts of this concentration upon
12 rural communities, rural economic development, and
13 the natural environment.

14 (5) The impacts of concentration in the seed in-
15 dustry on genetic diversity in farm fields and any re-
16 lated impacts on food security.

17 (6) The impacts of this concentration upon food
18 shoppers, including the reasons that low farm prices
19 have not resulted in corresponding drops in super-
20 market prices.

21 (7) Whether farming is approaching a scale
22 that is larger than necessary from the standpoint of
23 productivity.

1 (8) The effect of current laws and administra-
2 tive practices in supporting and encouraging this
3 concentration.

4 (9) Whether the existing antitrust laws provide
5 adequate safeguards against, and remedies for, the
6 impacts of concentration upon family farms, the
7 communities they comprise, and the food shoppers of
8 this Nation.

9 (10) Accurate and reliable data on the national
10 and international markets shares of multinational
11 agribusinesses, and the portion of their sales attrib-
12 utable to exports.

13 (11) Barriers that inhibit entry of new competi-
14 tors into markets for the processing of agricultural
15 commodities, such as the meat packing industry.

16 (12) The extent to which developments, such as
17 packer ownership of livestock, formula pricing, mar-
18 keting agreements, production contracting, forward
19 contracting, and vertical integration tend to give
20 processors, agribusinesses, integrators, and other
21 buyers of agricultural commodities additional market
22 power over farmers and suppliers in local markets.

23 (13) The extent to which mergers cause wage
24 suppression, layoffs, or reduced benefits to workers
25 in the food and agricultural sector.

1 (14) Such related matters as the Commission
2 determines to be important.

3 **SEC. 203. FINAL REPORT.**

4 (a) IN GENERAL.—Not later than 12 months after
5 the date of the initial meeting of the Commission, the
6 Commission shall submit to the President and Congress
7 a final report which contains—

8 (1) the findings and conclusions of the Commis-
9 sion described in section 202; and

10 (2) recommendations for addressing the prob-
11 lems identified as part of the Commission’s analysis.

12 (b) SEPARATE VIEWS.—Any member of the Commis-
13 sion may submit additional findings and recommendations
14 as part of the final report.

15 **SEC. 204. POWERS OF COMMISSION.**

16 (a) HEARINGS.—The Commission may hold such
17 hearings, sit and act at such times and places, take such
18 testimony, and receive such evidence as the Commission
19 may find advisable to fulfill the requirements of this title.
20 The Commission shall hold at least 1 or more hearings
21 in Washington, D.C., and 4 in different agriculture re-
22 gions of the United States.

23 (b) INFORMATION FROM FEDERAL AGENCIES.—The
24 Commission may secure directly from any Federal depart-
25 ment or agency such information as the Commission con-

1 siders necessary to carry out the provisions of this title.
2 Upon request of the Chairperson of the Commission, the
3 head of such department or agency shall furnish such in-
4 formation to the Commission.

5 (c) POSTAL SERVICES.—The Commission may use
6 the United States mails in the same manner and under
7 the same conditions as other departments and agencies of
8 the Federal Government.

9 **SEC. 205. COMMISSION PERSONNEL MATTERS.**

10 (a) COMPENSATION OF MEMBERS.—Each member of
11 the Commission shall be compensated at a rate equal to
12 the daily equivalent of the annual rate of basic pay pre-
13 scribed for level IV of the Executive Schedule under sec-
14 tion 5315 of title 5, United States Code, for each day (in-
15 cluding travel time) during which such member is engaged
16 in the performance of the duties of the Commission.

17 (b) TRAVEL EXPENSES.—The members of the Com-
18 mission shall be allowed travel expenses, including per
19 diem in lieu of subsistence, at rates authorized for employ-
20 ees of agencies under subchapter I of chapter 57 of title
21 5, United States Code, while away from their homes or
22 regular places of business in the performance of services
23 for the Commission.

24 (c) STAFF.—

1 (1) IN GENERAL.—The Chairperson of the
2 Commission may, without regard to the civil service
3 laws and regulations, appoint and terminate an execu-
4 tive director and such other additional personnel as
5 may be necessary to enable the Commission to per-
6 form its duties. The employment of an executive di-
7 rector shall be subject to confirmation by the Com-
8 mission.

9 (2) COMPENSATION.—The Chairperson of the
10 Commission may fix the compensation of the execu-
11 tive director and other personnel without regard to
12 the provisions of chapter 51 and subchapter III of
13 chapter 53 of title 5, United States Code, relating
14 to classification of positions and General Schedule
15 pay rates, except that the rate of pay for the execu-
16 tive director and other personnel may not exceed the
17 rate payable for level V of the Executive Schedule
18 under section 5316 of such title.

19 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
20 Federal Government employee shall be detailed to the
21 Commission without reimbursement, and such detail shall
22 be without interruption or loss of civil service status or
23 privilege.

24 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
25 TENT SERVICES.—The Chairperson of the Commission

1 may procure temporary and intermittent services under
2 section 3109(b) of title 5, United States Code, at rates
3 for individuals which do not exceed the daily equivalent
4 of the annual rate of basic pay prescribed for level V of
5 the Executive Schedule under section 5316 of such title.

6 **SEC. 206. SUPPORT SERVICES.**

7 The Administrator of the General Services Adminis-
8 tration shall provide to the Commission on a reimbursable
9 basis such administrative support services as the Commis-
10 sion may request.

11 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated \$2,000,000
13 to the Commission as required by this title to carry out
14 the provisions of this title.