

Fact Sheet

Prohibiting Anticompetitive Mergers Act

S.3847 / H.R.7101



Farm Action Fund



Farm Action

The Prohibiting Anticompetitive Mergers Act was introduced by Senator Warren and co-sponsored by Senators Booker, Sanders, and Baldwin. Its companion was introduced by Representative Jones and co-sponsored by Representatives Pocan, Bush, Ocasio-Cortez, Porter, Garcia, and Levin. This legislation makes anticompetitive mergers illegal, equips U.S. antitrust agencies with new enforcement tools, and empowers them to review past mergers and break up those deemed harmful to competition.

BACKGROUND

The Constitution prohibits political or economic oligarchies, which are incompatible with a republican form of government. Our existing antitrust laws — including the Sherman Act, the Clayton Act, and the FTC Act — were enacted to prohibit political and economic oligarchies; to protect fair, open, and competitive markets; to shield consumers, workers, and small producers from market power; and to prevent corporations from abusing their power to stifle competition and improperly influence democratic processes.

This changed under President Reagan, whose DOJ shifted these laws to promote efficiency and consumer welfare standards. Mergers proliferated as a result. In 1975, 109 companies pocketed half of all profits generated by firms in the US. In 2015, 30 firms pocketed that percentage of profits. Food and farm sectors were not spared in this wave of mergers: For example, from 1993 to 2019, the number of grocery stores nationwide declined by roughly 30 percent, as the combined market share of the four largest grocery retailers tripled to 69%.

Existing antitrust enforcement is clearly not enough to slow the pace of consolidation and its associated harms to competition. Currently, the weakened merger-review process requires the FTC and DOJ to obtain injunctions in court to block harmful mergers. These cost millions in litigation fees and are largely unsuccessful.

2021 saw more merger filings than any other year during the last decade — a staggering 70% increase over average number of filings in recent years. The increasingly-consolidated markets harm consumers, farmers, small businesses, and workers.

THE PROHIBITING ANTICOMPETITIVE MERGERS ACT ADDRESSES INDUSTRY CONSOLIDATION IN THREE WAYS:

- > **Makes illegal any mergers that harm competition**
- > **Overhauls the merger-review process by providing antitrust agencies with better tools to stop the most harmful mergers**
- > **Breaks up past harmful mergers by establishing procedures to conduct retrospective reviews and undo harmful deals**

THE FAR-REACHING IMPACTS OF CONCENTRATION

In the past, mergers have been allowed even if they resulted in a market share above 50%, or if they materially harmed competition, workers, or consumers; small or minority-owned businesses; local, rural, or low-income communities, communities of color; or privacy and innovation.

This has yielded a whole host of harms:

- Excessive market power costs American families \$5,000 per year on average and has depressed median wages by \$10,000.
- Consolidated corporations are more likely to engage in anti-worker labor practices, which disproportionately harm female workers and workers of color.
- Waves of bank mergers have shuttered community banks in rural communities, leading to an overwhelming loss of access to financing and dealing a devastating blow to the spirit of innovation and entrepreneurship that defines rural America.
- During periods of inflation, market concentration allows corporations to extract even more profit, as demonstrated by the highly-consolidated fertilizer manufacturers that increased prices between 150 - 210% from 2020 to 2021.
- In the agrifood system, a handful of consolidated companies dominate almost all aspects of food production — from seeds to grain processing to retail grocery — and use this power to dictate where and what food will be produced, who produces it and how, and who will get to eat it.



WHICH MERGERS WOULD BE AFFECTED, AND HOW?

By focusing on mergers that limit competition, the Prohibiting Anticompetitive Mergers Act targets the most effective opportunities to restore competition. The bill defines “prohibited mergers” as any deals by parties earning over \$5 billion; deals resulting in market shares over 33% for sellers or 25% for employers; and deals resulting in highly concentrated markets under the 1992 agency guidelines.

For too long, antitrust agencies had to combat consolidation with one hand tied behind their backs. By overhauling the merger-review process, this bill empowers the FTC and DOJ to reject mergers without a court order; prevent firms with a history of corporate crime or antitrust violations in the last ten years from acquiring other companies; and treat merger litigation as simple evaluations of agency process instead of complex, expensive court battles.

This bill’s lookback provision, which directs agencies to review every harmful merger from the 21st century, would be a powerful tool to correct past harms to competition. Given the state of concentration in today’s agriculture sectors and the ensuing impact on farmers, eaters, and rural communities, it is imperative that we put a stop to past and future anticompetitive corporate behavior.

The Prohibiting Anticompetitive Mergers Act will help us take control of our food system by bolstering competition all along the supply chain.

We must ensure the power to make decisions about the food and farm system lies in the hands of those who produce and consume food directly.

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