



PennState Law

Center for Agricultural
and Shale Law

Antitrust Litigation and Enforcement: Focus on the Protein Sector



2nd Annual PA Farm Show

Agricultural Law Symposium

Hour 2: **Emerging Legal Issues in Agricultural Markets**

Tuesday, January 11, 2022





2 parts to this discussion:

- **White House/Executive Branch Actions**
 - Since July 2021: Executive Order & 3 White House events (July, Sept., Jan.)
- **Multi-District Litigation re: Beef, Pork and Poultry (which have given rise to some criminal proceedings).**



Executive Order on Promoting Competition in the American Economy

JULY 09, 2021 • PRESIDENTIAL ACTIONS

See [Rapid Review: White House Executive Order on Competition Features Agriculture Prominently](#) & the [actual EO](#).

- Directs USDA to consider issuing **new rules under the Packers and Stockyards Act** making it easier for farmers to bring and win claims, stopping chicken processors from exploiting and underpaying chicken farmers, and adopting anti-retaliation protections for farmers who speak out about bad practices.
- Directs USDA to consider issuing **new rules defining when meat can bear “Product of USA” labels**, so that consumers have accurate, transparent labels that enable them to choose products made here.
- Directs USDA to develop a plan to **increase opportunities for farmers to access markets and receive a fair return**, including supporting alternative food distribution systems like farmers markets and developing standards and labels so that consumers can choose to buy products that treat farmers fairly.
- Encourages the FTC to **limit powerful equipment manufacturers from restricting** people’s ability to use independent repair shops or do DIY repairs—such as when tractor companies block farmers from repairing their own tractors.”
- Secretary Vilsack directed to:
 - (1) within 180 days, to **submit a plan** to promote competition in agricultural industries and to support value-added agriculture and alternative food distribution systems, listing specific means to accomplish those objectives;
 - (2) within 300 days, in consultation with the Federal Trade Commission, to **submit a report** on the effect of retail concentration and retailers’ practices on competition in the food industries and means to enhance access to markets; and
 - (3) **submit a report**, in consultation with Department of Commerce and United States Patent and Trademark Office, outlining concerns and strategies for increasing competition in the intellectual property system in seed and other input markets.



The Importance of Competition for the American Economy

JULY 09, 2021 • BLOG

- There is evidence that in the United States, markets have become more concentrated and perhaps less competitive across a wide array of industries: **four beef packers now control over [80 percent](#) of their market**, . . . (2nd paragraph)
- This is why today, President Biden will sign an Executive Order on Promoting Competition in the American Economy. It launches a whole-of-government effort to combat growing market power in the U.S. economy by seeking to ensure that markets are competitive. . .
- **Antitrust enforcement has become more lenient** over the last 40 years, and regulators have not had sufficient resources to enforce the laws on the books. . .
- To enforce the law, the DOJ and the FTC publish [merger guidelines](#) that lay out when a merger is likely to be challenged. Since the guidelines were first published in 1968, **enforcement practice has become increasingly [lenient](#)**. . . .
- Federal agencies have been bringing fewer antitrust cases. In fact, the **[number of criminal antitrust cases](#) brought by the DOJ in the last four years has declined** to an average of 22 a year, down from an average of over 60 cases a year across the previous six years. **On the civil side, from 2010 to 2019 only about [3 percent of mergers](#) that met the filing threshold** have received “second requests,” which are a more thorough review by the agencies. When mergers are challenged, they are at the extreme, where **[four or fewer competitors are remaining](#)**.
- Government **suits enforcing the laws against anticompetitive conduct have also been rare**. The [DOJ’s lawsuit against Google](#) and the [FTC’s lawsuit against Facebook](#), both filed in 2020, are the first major Federal monopolization cases since the [Microsoft case](#) in 1998.^[6] As the economy evolves with technology and “winner take all” markets become more important, it will be crucial to guard against anticompetitive conduct as well. These shifts have come at the same time that **judicial precedent has moved in the direction of [skepticism](#) towards antitrust enforcement**.

THE WHITE HOUSE



BRIEFING ROOM

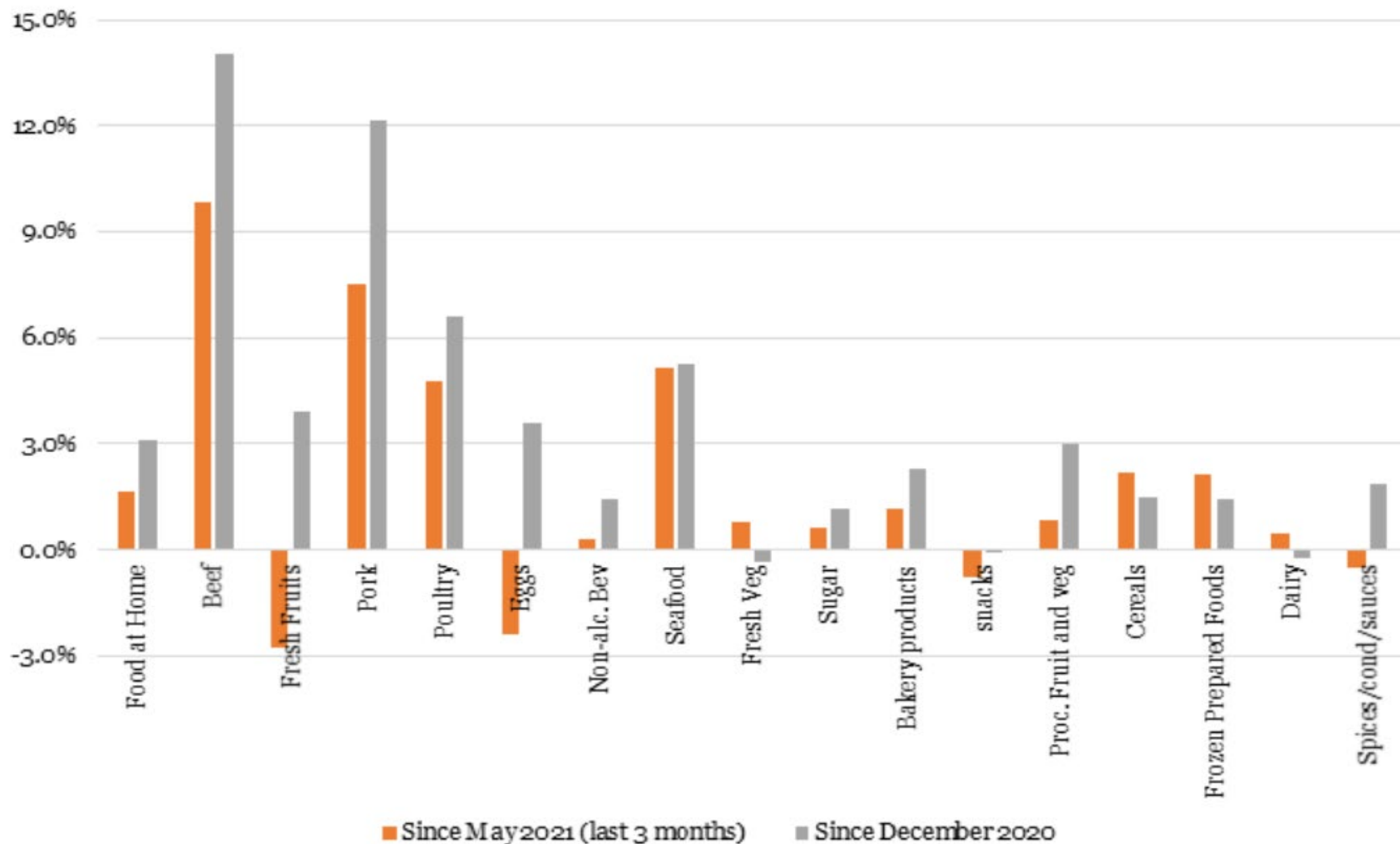
Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families

SEPTEMBER 08, 2021 • BLOG

White House Announces Intent to Address Effects on Consumers, Farmers and Ranchers of Meat Processing Industry Consolidation

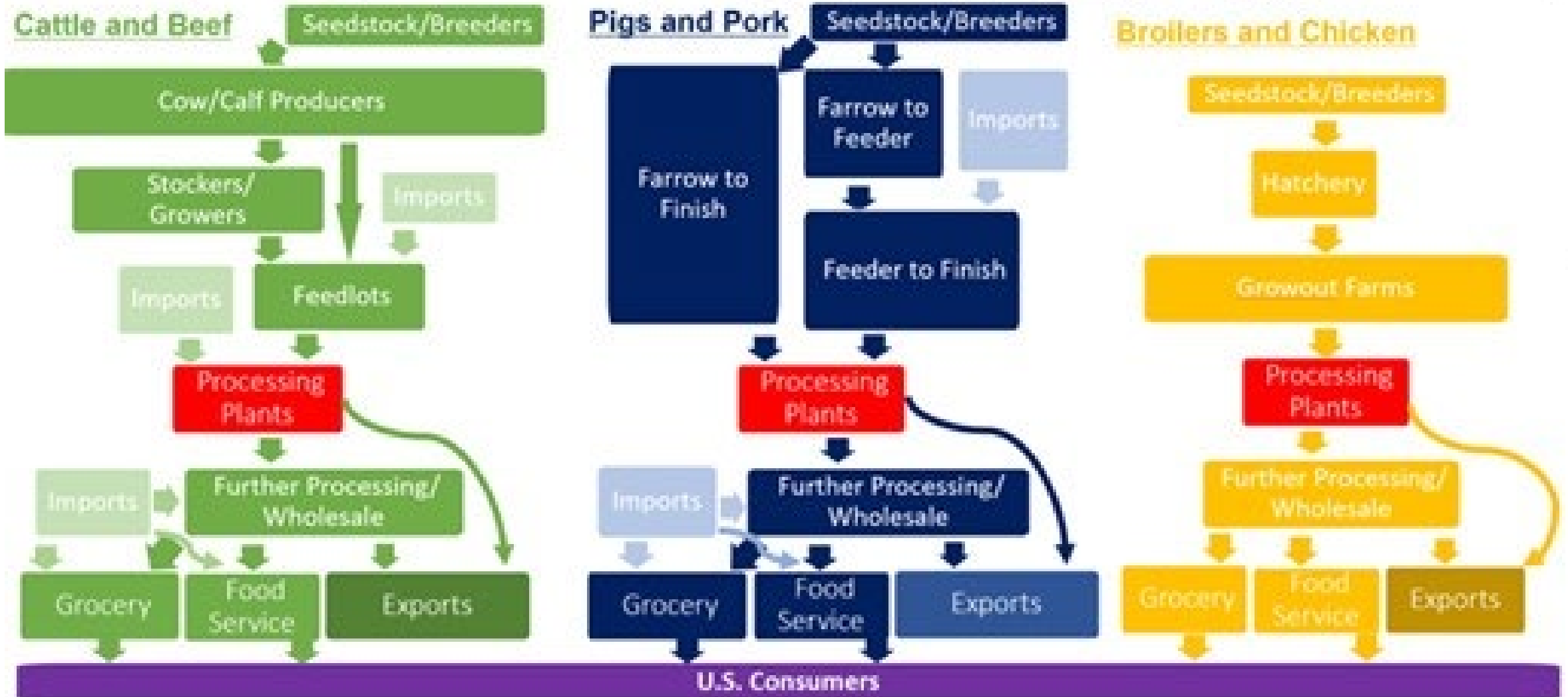
On **September 8, 2021**, The White House published a policy outline on its official website titled [“Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families”](#) and conducted a [Press Briefing](#) with Agriculture Secretary Vilsack and National Economic Council Director Brian Deese in support. According to the document and Press Secretary Jen Psaki, the administration will address the following: (a) a “corporate consolidation problem with meat-processing giants;” (b) measures to reduce consumer prices and increase farmer and rancher earnings and “create a more competitive food supply chain;” (c) “stepping up antitrust enforcement;” and (d) legislation “to make cattle markets more transparent and fair.”

Food at Home inflation by product Accumulated Price Change



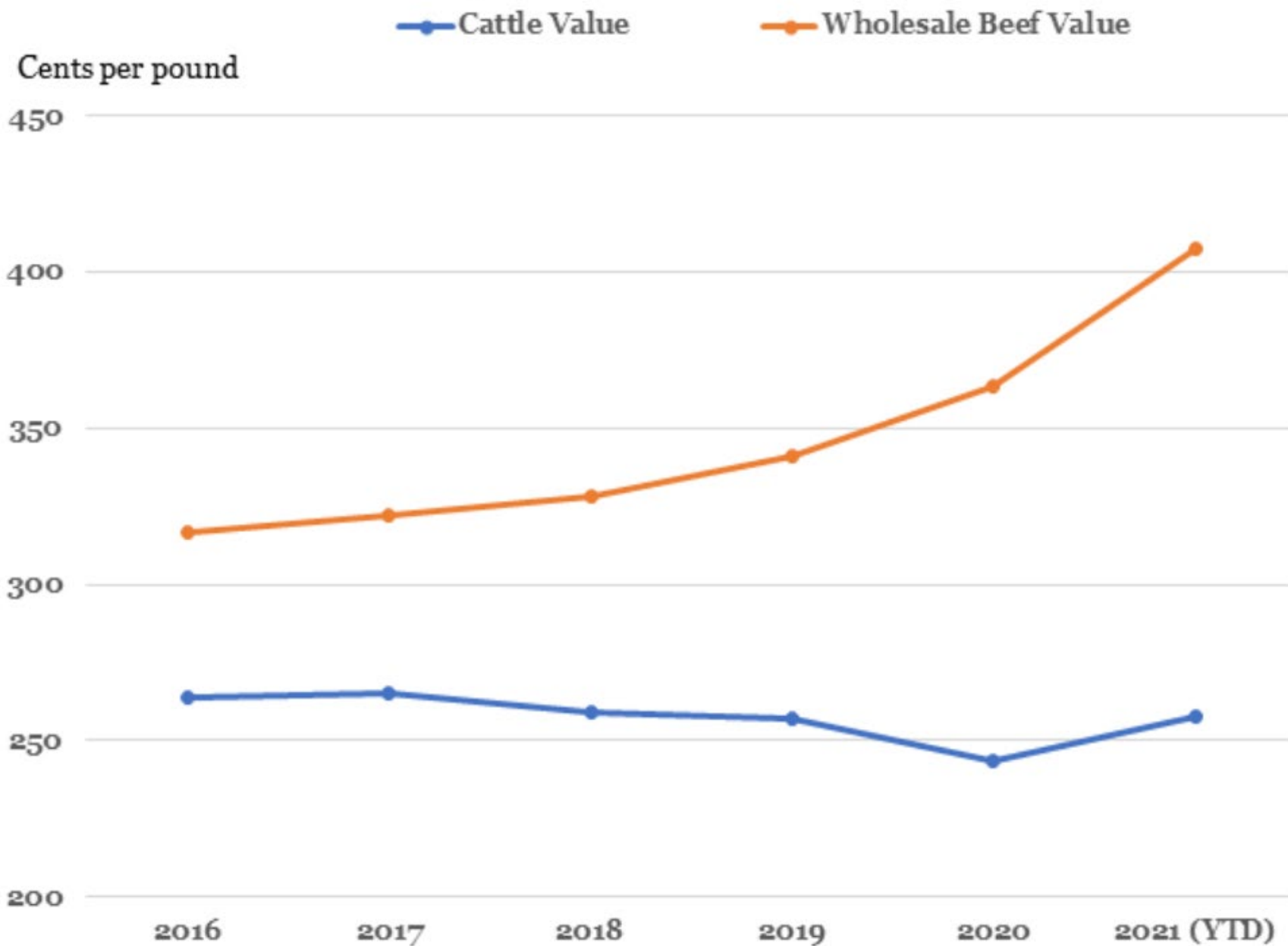
U.S. Beef, Pork, and Broiler Supply Chains

Note: This is a simplification of supply chains and does not include, for example, inputs, chicken eggs, turkeys, sheep and lamb, supply chains in other countries, etc



- **Four large conglomerates overwhelmingly control meat supply chains, driving down earnings for farmers while driving up prices for consumers . . .**
- **The industry is highly consolidated, and serves as a key choke point in the supply chain (see figure below). . .**
- Today, just four firms control approximately 55-85% of the market for these three products, according to U.S. Department of Agriculture data. That reflects dramatic consolidation of the industry over the last five decades, as the large conglomerates have absorbed more and more smaller processors. In 1977, the largest four beef-packing firms controlled just 25% of the market, compared to 82% today. In poultry, the top four processing firms controlled 35% of the market in 1986, compared to 54% today. And in pork, the top four hog-processing firms controlled 33% of the market in 1976, compared to 66% today. . . .
- That consolidation gives ***these middlemen the power to squeeze both consumers and farmers and ranchers***. There's a long history of these ***giant meat processors making more and more, while families pay more at the grocery store and farmers and ranchers earn less*** for their products. Absent this corporate consolidation, prices would be lower for consumers and fairer for farmers and ranchers.
- The ***meat-processors are generating record profits during the pandemic, at the expense of consumers, farmers, and ranchers***.
- The dynamic of a **hyper-consolidated pinch point** in the supply chain ***raises real questions about pandemic profiteering***.
- During the pandemic, wholesale prices for beef rose much faster than input prices for cattle.
- That means that the prices the processors pay to ranchers aren't increasing, but the prices collected by processors from retailers are going up.

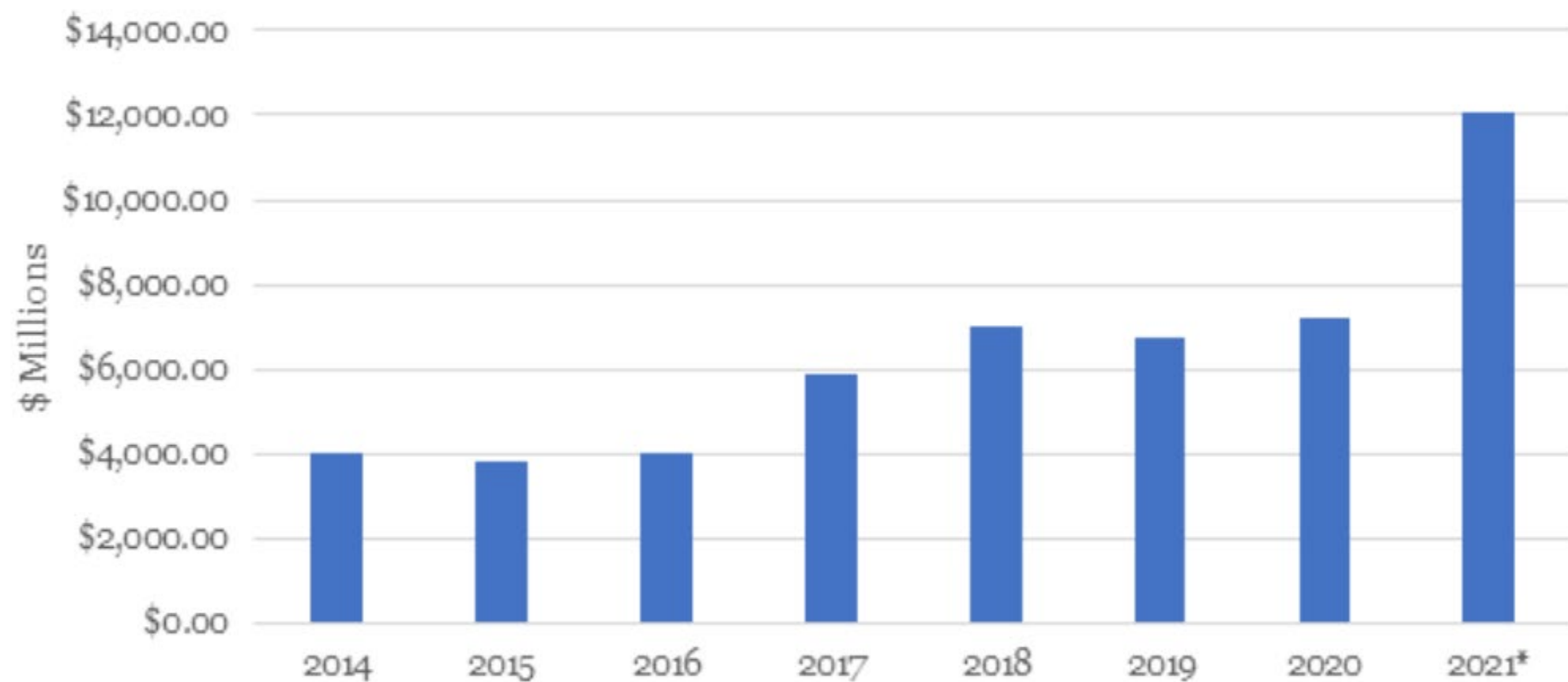
Cattle Input Prices vs. Wholesale Beef Prices



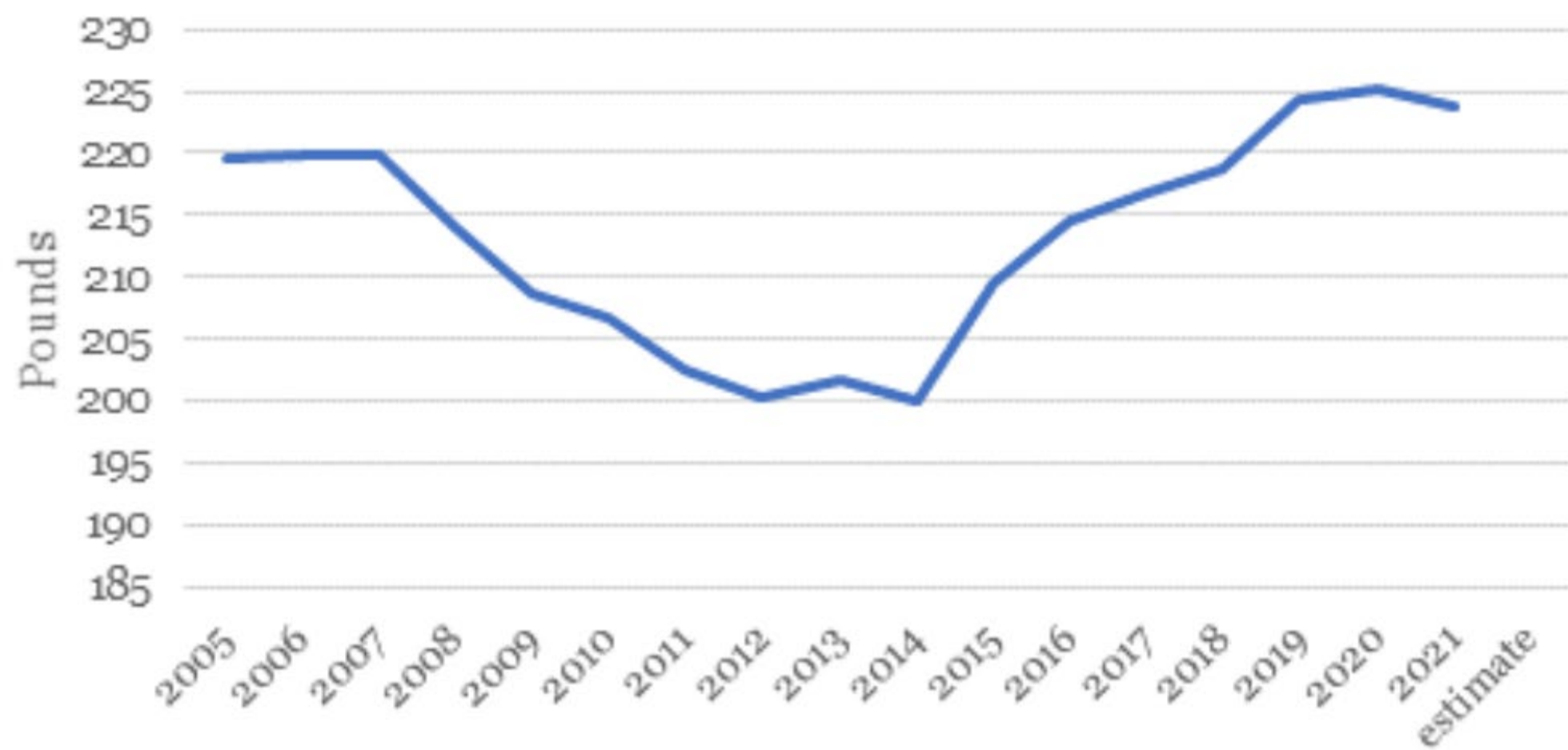
Leading Meat Processors' Profitability



Leading Processors' Aggregate Net Income



Per Capita Consumption of Red Meat & Poultry (United States)





Just last week . . .

White House Announces Plan to Increase Competition in Meat and Poultry Industries; USDA and DOJ Announce Joint Antitrust Initiative

On **January 3, 2022**, the White House held a [roundtable conference](#) with Agriculture Secretary Tom Vilsack, Attorney General Merrick B. Garland, and several independent producers to discuss anticompetitive industry practices and announce the administration's [Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain](#).



FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain

JANUARY 03, 2022 • STATEMENTS AND RELEASES

[Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain](#)

The plan encompasses four primary focus areas to increase competition in the meat and poultry industries:

- 1) a [joint initiative](#) between the U.S. Department of Agriculture (USDA) and the Department of Justice (DOJ),
- 2) \$1 billion in funding to expand independent processing facilities and support workers,
- 3) new regulations for the “[Packers and Stockyards Act](#)” (PSA) and “[Product of USA](#)” labeling, and
- 4) increased market transparency through new [market reports](#).

Under the new USDA/DOJ [initiative](#), the agencies will develop a streamlined process by February 2, 2022 for concerned producers to submit complaints regarding potential PSA and antitrust violations, in which the agencies state they will “protect the confidentiality of the complainants, if they so request, to the fullest extent possible under the law” and “support[] the strongest possible whistleblower protections.” The agencies also state that they will cooperate to share information and case data and that USDA will refer potential PSA violations to the DOJ for antitrust enforcement.



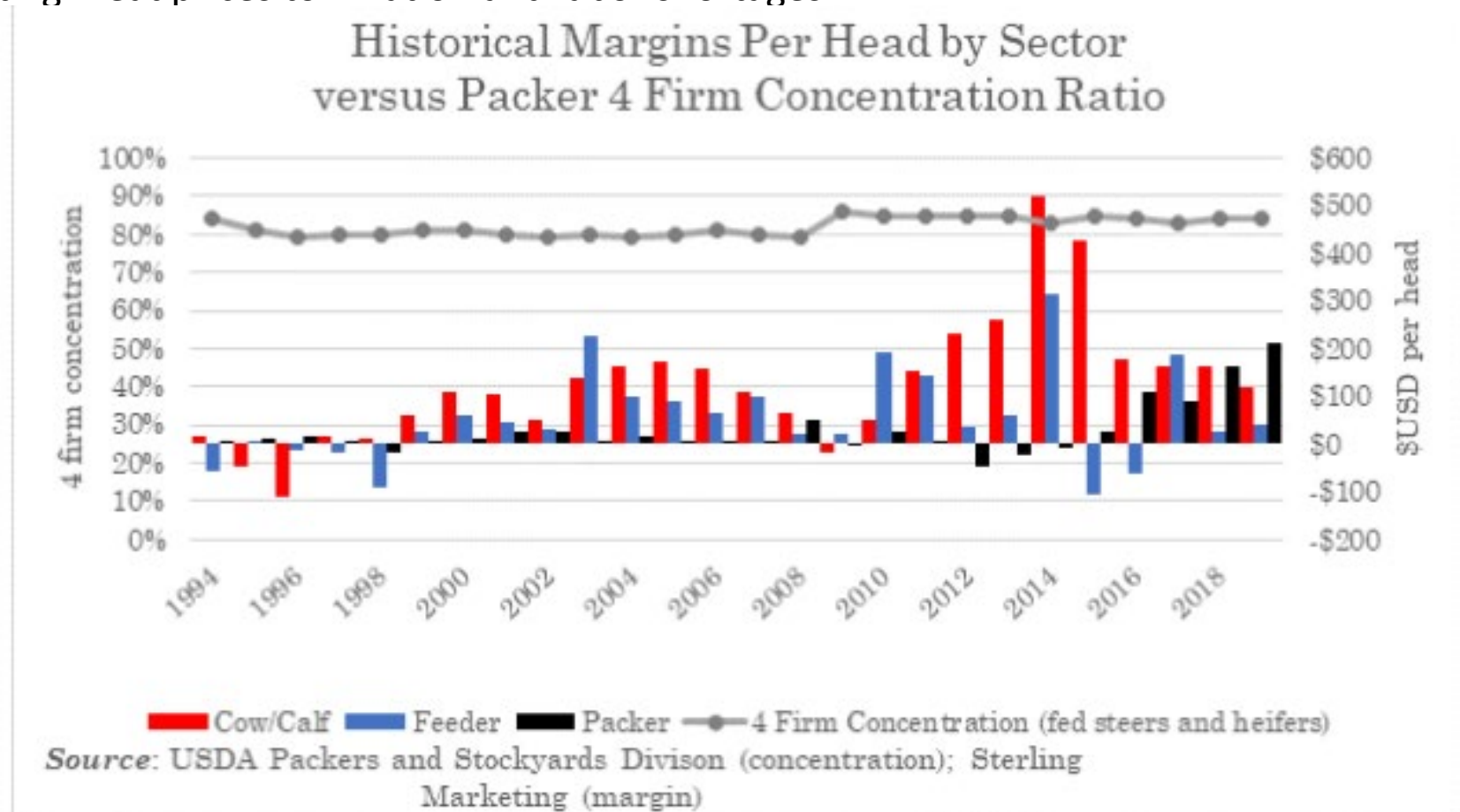
- Additionally, while the administration began working on the new regulations and issuing the market reports and this past summer and has already [previously announced](#) some of the [funding measures](#), the roundtable announcement included information regarding \$375 million for facility expansions, released through two upcoming grant phases, and \$275 million in lender funding.
- Phase I of the facility funding, available Spring 2022, will disperse \$150 million and Phase II, available Summer 2022, will disperse \$225 million.
- USDA states that, for Phase I, it will prioritize proposals with the most immediate impacts and estimates the funding will initiate fifteen projects.
- Additionally in Summer 2022, USDA states it will seek lender applications for \$275 million to further fund expansion projects for independent meat and poultry processors.



Protein Sector response?

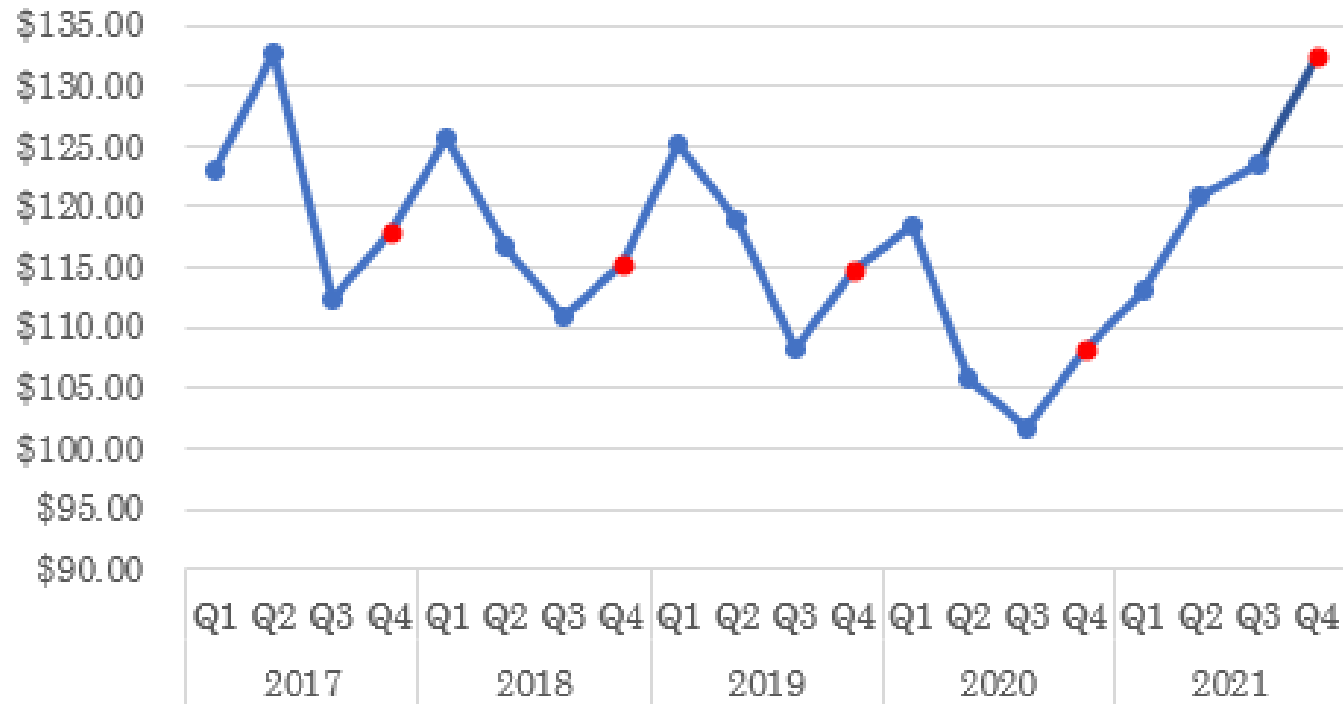
In response to the roundtable announcement, **North American Meat Institute** issued a [press release](#) denouncing the administration's efforts and attributing meat prices to inflation and labor shortages.

"The chart below shows that since 1994, profit margins have varied between all sectors of the fed cattle market with no one sector benefiting consistently at the expense of another."





5 Area Negotiated Fed Cattle Price



“And, according to USDA Data, fed cattle prices are rising on their own, without government intervention. Fourth quarter 2021 fed cattle prices are the highest in five years (even as wholesale beef prices have followed seasonal demand and decreased steadily since Labor Day, the end of the traditional annual high demand period).”



Producer response?

(Are the beef trade groups conflicted?)

American Farm Bureau Federation issued a [statement praising](#) the administration's initiatives, stating that the antitrust reporting system and stronger regulations "will go a long way to ensuring fairness in the industry."

Farmers and Families Deserve Fair Meat Prices



"AFBF appreciates the Biden administration's continued work to ensure a fair and competitive meat processing system. We must get to the bottom of why farmers and ranchers continue to receive low payments while families across America endure rising meat prices.

"Farmers and ranchers want a fair shake. The joint initiative between USDA and the Department of Justice to create an online portal to report competition law violations, and efforts to strengthen the Packers & Stockyards Act, will go a long way to ensuring fairness in the industry. More accurately defining 'Product of the USA' labeling will also allow families to make more well-informed decisions at the grocery store.

"We are encouraged by the administration's willingness to work with lawmakers on both sides of the aisle to improve price discovery in the cattle markets. We urge bipartisanship throughout this process. Securing fair prices for farmers and for families is a goal that transcends party lines."

Multi-District Litigation re: Beef, Pork and Poultry ?

The screenshot shows the top navigation bar of the Penn State Law Center for Agricultural and Shale Law website. The navigation menu includes: HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC (highlighted), WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. A search bar with a magnifying glass icon and a 'SUBSCRIBE FOR UPDATES' button are also visible. Below the navigation bar, a breadcrumb trail reads: HOME > ISSUE TRACKERS > AGRICULTURAL LAW ISSUE TRACKERS.

Agricultural Law Issue Trackers

Penn State Law’s Center for Agricultural and Shale Law is making available a research tool – the Issue Tracker – aimed at simplifying the historical developments relevant to selected agricultural legal topics by documenting relevant federal and state legislative, regulatory and litigation/judicial proceedings in a reverse chronological timeline format. The Issue Tracker also supplements legal developments, as appropriate, with relevant actions and statements of stakeholders directly involved.



Agricultural Antitrust



Biden Administration’s First 100 Days on Food and Agricultural Policy



Bioengineered Food Disclosure

[Agricultural Law Issue Trackers](#) – [Agricultural Antitrust](#)



AGRICULTURAL ANTITRUST



ALL ISSUE TRACKERS

AGRICULTURAL ANTITRUST

Scope of the Agricultural Antitrust Issue Tracker

Litigation - Federal (59)

Litigation - State (1)

BIDEN ADMINISTRATION'S FIRST 100 DAYS ON FOOD AND AGRICULTURAL POLICY

BIOENGINEERED FOOD DISCLOSURE

CELL-CULTURED FOOD REGULATIONS

CERCLA / EPCRA REPORTING

COVID-19

DICAMBA

GENETICALLY MODIFIED SALMON

GLYPHOSATE

H-2A PROGRAM

Scope of the Agricultural Antitrust Issue Tracker

This issue tracker focuses on criminal and civil litigation to enforce antitrust laws and regulations in place in the United States for agricultural products. The litigation covered is not exhaustive but focuses on selected cases receiving national attention. This issue tracker covers the period from 2018 to the present.

Litigation - Federal

1. Food Lion, LLC et al. v. Dairy Farmers of America, Inc. (USDC M.D. North Carolina, No. 1:20-cv-442)

4.2.21 - Parties [filed](#) a joint stipulation of dismissal of case with prejudice.

3.3.21 - according to a [mediator's report](#), complete settlement of the case was reached at mediation conferences held Feb. 22-23, 2021. While the report states that a settlement agreement is in preparation, no details of the settlement have been released.

2.24.21 - The district court filed an entry of settlement, which sought to compel the company to divest one of the three North Carolina Dean Foods processing facilities it obtained in its April 2020 bankruptcy sale acquisition of Dean Foods.

7.24.20 - The district court [issued](#) an order denying Defendant's motion to dismiss.



Multi-District Litigation re: Beef, Pork and Poultry (cont.)

[In re Broiler Chicken Antitrust Litigation](#) (USDC N.D. Illinois, No. 1:16-cv-08637)

In re: Broiler Chicken Antitrust Litigation

Broiler Chicken Antitrust Litigation

Case No. 16-cv-08637

[Home](#)

[Important Documents](#)

[FAQs](#)

[File a Claim](#)

[Claim Status](#)

[Notice Request](#)

[Contact Us](#)

[Español](#)

WELCOME TO THE BROILER CHICKEN ANTITRUST LITIGATION WEBSITE

On October 5, 2021, the Court granted Preliminary Approval of settlements with the Mar-Jac and Harrison Poultry Defendants.

Two more settlements have been reached in a class action antitrust lawsuit filed on behalf of Direct Purchaser Plaintiffs ("Plaintiffs") of Broiler chicken. The two new settlements are with Defendants Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, Inc. (collectively, "Mar-Jac") and Harrison Poultry, Inc. ("Harrison Poultry") (collectively, "New Settlements" with the "New Settling Defendants"). Previous settlements (the "Previous Settlements") were filed on behalf of Plaintiffs with Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc. (collectively, "Tyson"); Pilgrim's Pride Corporation ("Pilgrim's Pride"); Peco Foods, Inc. ("Peco"); George's, Inc. and George's Farms, Inc. (collectively, "George's"); Amick Farms, LLC ("Amick"); and Fieldale Farms Corporation ("Fieldale Farms") (collectively, the "Previous Settling Defendants"). Together, the New Settling Defendants and Previous Settling Defendants are referred to as "Settling Defendants" and the Previous Settlements and the New Settlements are collectively referred to as the "Settlements."

Who is Included in the Settlements?

The Court decided that, for settlement purposes, Settlement Class members are defined as follows for the New Settlements:

All persons who purchased Broilers directly from any of the Defendants or any Co-Conspirator identified in this action, or their respective subsidiaries or affiliates, for use or delivery in the United States from at least as early as January 1, 2008, until December 20, 2019.



[In re Broiler Chicken Antitrust Litigation](#) (USDC N.D. Illinois, No. 1:16-cv-08637)

Who is Included in the Settlements?

The Court decided that, for settlement purposes, Settlement Class members are defined as follows for the New Settlements:

All persons who purchased Broilers directly from any of the Defendants or any Co-Conspirator identified in this action, or their respective subsidiaries or affiliates, for use or delivery in the United States from at least as early as January 1, 2008, until December 20, 2019.

What is this Case About?

Plaintiffs allege that Defendants and their Co-Conspirators conspired to fix, raise, maintain, and stabilize the price of Broilers, beginning at least as early as January 1, 2008. Plaintiffs allege that Defendants implemented their conspiracy in various ways, including via coordinated supply restrictions, sharing competitively sensitive price and production information, and otherwise manipulating Broiler prices, with the intent and expected result of increasing prices of Broilers in the United States, in violation of federal antitrust laws. The Settling Defendants have not admitted any liability concerning and continue to deny the legal claims alleged. The Court did not decide which side was right, but both sides agreed to the Settlements to resolve the case. The case is still proceeding on behalf of the Direct Purchaser Plaintiffs against all other Defendants who have not settled with the Plaintiffs.

[Home](#)[Notice/FAQS](#)[Court Documents](#)[Español](#)[Contact Information](#)

[In Re Pork Antitrust Litigation #1](#)

(USDC
Minnesota, No.
0:18-cv-01776)
(*Direct
Purchasers*)

This official website is maintained by the Settlement Administrator under the supervision of Co-Lead Counsel for the members of the Settlement Class in *In re Pork Antitrust Litigation*, Case No. 0:18-cv-01776 (the Direct Purchaser Plaintiff Action), which is pending in the United States District Court for the District of Minnesota.

On August 4, 2021, a Settlement was reached in a class action antitrust lawsuit filed on behalf of Direct Purchaser Plaintiffs against Defendant Smithfield Foods, Inc. and related or affiliated entities.

Direct Purchaser Plaintiffs previously reached a Settlement with Defendant JBS. On July 26, 2021, the Court granted final approval to the JBS Settlement. Direct Purchaser Plaintiffs are not distributing any proceeds from the JBS Settlement to qualifying members of the Settlement Class at this time, but instead intend to combine any distribution of the JBS Settlement proceeds with proceeds from future settlements or other recoveries in the litigation. You will be provided further notice of any such future settlements or recoveries. For more detail, please review the Approval Order.

If You Purchased Any Pork Product

**directly from a Pork producer for use or delivery
in the United States from January 1, 2009, through January 12, 2021,**

**A CLASS ACTION
SETTLEMENT MAY AFFECT
YOUR RIGHTS**


Pork Antitrust Litigation Settlement

[Home](#)

[FAQs](#)

[Documents](#)

[Contact](#)



If you purchased any Pork product in the United States from January 1, 2009, through May 3, 2021, for business use in commercial food preparation, a class action settlement may affect your rights.

A Settlement has been reached in a class action antitrust lawsuit filed on behalf of Commercial and Institutional Indirect Purchaser Plaintiffs with Defendants JBS USA Food Company, JBS USA Food Company Holdings, Swift Pork Company, and related or affiliated entities ("JBS" or "Settling Defendants"). This Settlement only applies to Settling Defendants and does not dismiss claims against other Defendants in the case entitled *In re: Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions)*, Case No. 0:18-cv-01776 (D. Minn.)

If approved by the Court, the Settlement will resolve a lawsuit over whether JBS combined and conspired in restraint of trade, the purpose and effect of which was to suppress competition and to allow JBS and other Pork producers to charge supra-competitive prices for Pork products during the Settlement Class Period, in violation of federal and state laws. If approved, the Settlement will avoid litigation costs and risks to Commercial and Institutional Indirect Purchaser Plaintiffs and JBS and will release JBS from liability to members of the Settlement Class.

The Settlement requires JBS to pay \$12,750,000. In addition to this monetary payment, JBS has agreed to provide specified cooperation in the Commercial and Institutional Indirect Purchaser Plaintiffs' continued prosecution of the litigation. There will be no payments to the Settlement Class at this time. If you are a Settlement Class member, you will be notified later of an opportunity to file a claim.

The Court has not decided whether JBS did anything wrong, and JBS denies any wrongdoing.

Your legal rights are affected whether you act or do not act. Please read this website carefully.

Current Status

The Court in charge of this case must still decide whether to approve the Settlement and the requested attorneys' fees and expenses.

Important Dates

January 1, 2009 - May 3, 2021

Class Period

September 11, 2021

Deadline to Exclude Yourself from the Settlement

September 11, 2021

Deadline to Object to the Settlement



In Re DPP Beef Litigation (USDC Minnesota, No. 0:20-cv-01319)

- **In Re Cattle Antitrust Litigation** (USDC
Minnesota, No. 0:19-cv-01222)

(some portions of the record are sealed)

Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.





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Thank you!

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