U.S. Chamber of Commerce

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January 19, 2022

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Jordan:

The Chamber writes in connection with your hearing, currently scheduled for January 19, 2022, titled, "*Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on America's Food Supply.*" We ask the Committee to consider several points: (1) Changes in food prices, particularly recent price increases, are a result of macroeconomic trends, including supply and demand shocks (as well as America's fiscal and monetary policies); (2) alleged economic concentration in particular industries should not serve as a scapegoat for what is economy-wide inflation; and (3) to the extent that the Committee continues to worry about concentration, existing antitrust and regulatory laws are fully capable of addressing any competitive issues in the industry. As part of a constructive solution, the Committee should examine fiscal, monetary, regulatory, and labor policies to increase supply and reduce prices. The Chamber and its members are ready to work collaboratively on addressing these issues.

I. Macroeconomic Trends Explain Higher Food Prices

Former Secretary of the Treasury Lawrence Summers, a senior official in the administrations of both Presidents Clinton and Obama, recently wrote the following:

> We have a serious inflation problem whatever the precise CPI [consumer price index] reading. Inflation is running well ahead of anything seen during the guns and butter Vietnam episode and 50 percent above where it was when Pres Nixon imposed wage price controls.[1]

Indeed, inflation is running rampant across the entire economy. Last fall, inflation reached a four-decade high of 6.8%.[2] As Secretary Summers pointed out, in October 2021, prices for commodity goods *outside* of food and energy rose at more than a 12 percent annual rate. Used-car prices accelerated to more than a 30 percent annual inflation rate and new cars to a 17 percent rate. Inflation is also running high across the globe. In recent months, Japan, China, and Germany all reported their highest inflation in more than a decade.[3]

Driven largely by disruptions caused by the pandemic, macroeconomic trends explain these high prices. For example, the price of oil, "the most important global determinant of inflation," is very high and not expected to decline rapidly.[4] The labor market is also very

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[1] https://twitter.com/LHSummers/status/1481241779508846599?cxt=HHwWjoC94Z3jto4pAAAA.
[2] https://www.wsj.com/articles/what-is-inflation-cause-stock-market-11637623703.
[3] *See* https://www.washingtonpost.com/opinions/2021/11/15/inflation-its-past-time-team-transitory-stand-down/.
[4] *Id.*

tight, with vacancy and quit rates at record highs. As Secretary Summers points out, workers who switch jobs are receiving double-digit pay increases, costs that ultimately are passed along to consumers.[5] Finally, consumers are flush with savings from various stimulus programs and depressed spending on services during the pandemic's height, leading them to spend more on scarce goods.[6] Basic economics makes clear that in times of increased demand and constricted supply, prices rise.

II. Alleged Economic Concentration Is Not the Cause of Higher Prices

Policymakers should not scapegoat the business community for higher prices. As the Washington Post's Editorial Board explains in a recent piece titled, *The White House once again offers a bizarre message on inflation*, the business community is not to blame for higher prices:

> President Biden is facing mounting criticism for inflation's rise to its highest level since 1982. Unfortunately, the White House's latest response is to blame greedy businesses. Economists across the political spectrum are rightly calling out the White House for this foolishness. Even some within the White House are questioning this approach.
>
> Inflation, which was relatively low for years, did not suddenly rise in recent months because businesses decided now was the ideal time to squeeze their customers. What actually happened is that demand soared for many products as the economy recovered. Often, there were not enough products to meet it, thanks to supply chain hiccups and labor shortages, so prices went up. In a surprise to many, consumers kept buying goods such as cars and washing machines even at higher prices.[7]

Indeed, the Post specifically refuted the President's narrative that industry concentration causes higher food prices:

> Mr. Biden grandly announced steps this month to crack down on the beef, poultry and pork industries for being too concentrated and using their power "to overcharge grocery stores and, ultimately, families." The White House is also targeting other industries, including health care and technology, for more antitrust scrutiny.
>
> There may be legitimate reasons to look carefully at these industries and how they operate, but pinning the current inflation problems on corporate greed is a flimsy argument that won't stop Americans from beefing about inflation.[8]

Perhaps most troubling, recent efforts by the administration to blame high meat prices on market concentration are reportedly driven by political advisors and are not supported by the economic evidence. On January 10, 2022, the *Washington Post* reported:

> In November and December, at least four Democratic polling experts told senior White House officials that they needed to find a new approach as public frustration over

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[5] *Id.*
[6] *See* https://www.washingtonpost.com/opinions/2022/01/10/white-house-again-offers-bizarre-message-inflation/.
[7] *Id.*
[8] *Id.*

> price hikes became widespread and highly damaging to Biden's popularity, according to three people with knowledge of the private conversations.
>
> "What we said is, 'You need a villain or an explanation for this. If you don't provide one, voters will fill one in. The right is providing an explanation, which is that you're spending too much,'" one Democratic pollster who, like the others, spoke on the condition of anonymity to reflect private conversations, told The Washington Post. "That point finally became convincing to people in the White House."[9]

The same article noted:

> Senior officials at the Treasury Department, for instance, have been unsettled by the White House's attempts to blame some large corporations for inflation, skeptical of that explanation for the recent rise in prices, according to four people with knowledge of internal administration dynamics.[10]

It is worth noting that concentration in the meat packing industry has been remarkably stable for at least a quarter century.[11] At the same time, margins for sectors across the meat supply chain have been quite volatile reflecting both supply and demand, changes in input costs and the complexities of the meat market.[12] In fact, meat processors experienced negative margins as recently as 2014, while during the same year the profits reaped by cow/calf producers reached historic highs.[13]

Recent attention has focused on the divergence in cattle prices and the ultimate price paid by consumers. Academic research, however, helps explain how shocks, such as those caused by the pandemic, can impact packer capacity, and simultaneously result in lower cattle prices and higher wholesale meat prices.[14] A 2021 report from the Agricultural and Food Policy Center at Texas A&M University prepared as a result of a Congressional inquiry noted:

> While not necessarily a popular position, most economic research confirms that the benefits to cattle producers due to economies of size in packing largely offset the costs associated with any market power exerted by packers. Research indicates that there is market power, but its effect has been small.[15]

The antitrust agencies themselves also bely the notion that industrial concentration necessarily harms competition in any particular market. In 2018, the U.S. Department of Justice and Federal Trade Commission concluded that "the claims of increasing concentration are unsupported by data for meaningful markets."[16] Relying on multiple papers that looked at data from the U.S. Census Bureau, the agencies states that measures of industry

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[9] *See* https://www.washingtonpost.com/us-policy/2022/01/10/white-house-inflation-strategy/.
[10] *Id.*
[11] *See* USDA Packers and Stockyards Annual Reports at https://www.ams.usda.gov/reports/psd-annual-reports.
[12] *See* https://www.meatinstitute.org/ht/a/GetDocumentAction/i/194719 and https://www.afpc.tamu.edu/research/publications/710/cattle.pdf.
[13] *Id.*
[14] *See* https://www.aeaweb.org/conference/2021/preliminary/paper/Fys35G6S
[15] *See* https://www.afpc.tamu.edu/research/publications/710/cattle.pdf.
[16] *See* https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/market_concentration_united_states.pdf.

concentration are meaningless for competition analysis because industrial sectors are not relevant antitrust markets. Antitrust markets depend, in part, on geographic markets and consumer substitution patterns, and are generally much narrower than industrial markets. For example, as the agencies point out, manufacturers of pencils and wooden blocks would be in the same industrial sector, but those two items cannot substitute for one another in consumption and therefore would fall into different antitrust markets.[17]

Finally, both current FTC Commissioner Noah Philips and former commissioner Josh Wright warned against blaming inflation on the business community. As they explained,

> Antitrust reformers are too focused on corporate size. Fetishizing outdated ideas from the 1960s and before, they propose reforms that would focus myopically on bigness, punish lower prices, and embrace the higher prices of their preferred cartels. At a time of historic inflation, these ideas are bad for all Americans, and they will hurt the poor the most.[18]

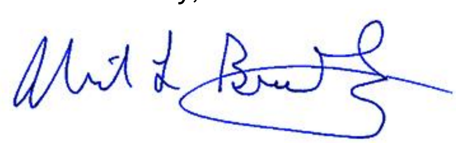
III. Existing Antitrust Laws Can Address Any Competitive Concerns in the Food Industry

To the extent that the Committee continues to worry about industrial concentration and high food prices, existing antitrust and other laws already prohibit anticompetitive conduct. In addition to the venerable Sherman and Clayton Acts, which broadly prohibit anticompetitive conduct, the Packers and Stockyards Act of 1921 regulates competition in meatpacking, livestock dealers, market agencies, live poultry dealers, and swine contractors.

Rather than rework the nation's antitrust laws, policymakers should explore other avenues to encourage competition and lower prices for consumers. As former Secretary Summers explained, policymakers should work to reduce tariffs, raise supplies of fossil fuels, and relax regulations.[19] All of these tools would allow the business community to serve the needs of consumers more efficiently and at lower prices.

The Chamber thanks the Committee for the opportunity to share its views.

Sincerely,



Neil L. Bradley

cc: Members of the Committee on the Judiciary

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[17] *See id*.
[18] *See* https://www.wsj.com/articles/inflation-rises-antitrust-reformers-lower-prices-competition-consumer-benefit-brandeis-biden-11640032926.
[19] *See* https://www.washingtonpost.com/opinions/2021/11/15/inflation-its-past-time-team-transitory-stand-down/.