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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds the following:

(1) Concentration in the food and agricultural economy, including mergers, acquisitions, and other combinations and alliances among suppliers, pack-
ers, integrators, other food processors, distributors, and retailers has been accelerating at a rapid pace since the 1980s, and particularly since the 2007 through 2009 recession.

(2) The trend toward greater concentration in food and agriculture has important and far reaching implications not only for family farmers, but also for food chain workers, the food we eat, the communities we live in, the integrity of the natural environment upon which we all depend, and for our collective public health.

(3) The infant formula industry, for example, has reached an alarming level of corporate concentration with 4 companies now controlling nearly 90 percent of the infant formula market. A disruption in the supply of just 1 infant formula producer now presents a grave risk to infant health in the United States.

(4) In the past 4 decades, the top 4 largest pork packers have seized control of 70 percent of the market, up from 36 percent. Over the same period, the top 4 beef packers have expanded their market share from 32 percent to 85 percent. The top 4 flour millers have increased their market share from 40 percent to 64 percent. The market share of the top
4 soybean crushers has jumped from 54 percent to 79 percent, and the top 4 wet corn processors control of the market has increased from 63 percent to 86 percent.

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

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

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

(8) In the United States, the 4 largest corn seed sellers accounted for 85 percent of the market in 2015, up from 60 percent in 2000. Over the past 20 years, the cost for an acre’s worth of seeds for an average corn farmer has nearly quadrupled, and the cost of fertilizer has more than doubled. Yet corn yields increased only 36 percent over that time, and the price received for the sale of a bushel of corn increased only 31 percent.
(9) A handful of firms dominate the processing of every major commodity. Many of them are vertically integrated, which means that they control successive stages of the food chain, from inputs to production to distribution. The growing number and scale of cross-border agribusiness and food mergers have put foreign firms, often with considerable government backing, into prominent and even dominant positions in the United States beef, hog, poultry, seed, fertilizer, and agrichemical sectors.

(10) Growing concentration of the agricultural sector has restricted choices for farmers trying to sell their products. As the bargaining power of agribusiness firms over farmers increases, concentrated agricultural commodity markets are stacked against the farmer, with buyers of agricultural commodities often possessing regional dominance in the form of oligopsony or monopsony relative to sellers of such commodities.

(11) The high concentration and consolidation of buyers in agricultural markets has resulted in the thinning of both cash and futures markets, thereby allowing dominant buyers to leverage their market shares to move those markets to the detriment of family farmers and ranchers.
(12) Buyers with oligopsonistic or monopsonistic power have incentives to engage in unfair and discriminatory acts that cause farmers to receive less than a competitive price for their goods. At the same time, some Federal courts have incorrectly required a plaintiff to show harm to competition generally, in addition to harm to the individual farmer, when making a determination that an unfair, unjustly discriminatory, deceptive, or preferential act exists under the Packers and Stockyards Act of 1921.

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

(14) While agribusiness conglomerates are posting record earnings, farmers are facing desperate times. Since 2013, net farm income for United States farmers has fallen by more than half and median on farm income was negative in 2020.

(15) The benefits of low commodity prices are not being passed on to American consumers. The gap between what shoppers pay for food and what farmers are paid is growing wider.
(16) The steadily rising price of food has out-paced growth in incomes for typical workers. Since the Great Recession, the annual growth of real prices for food at the supermarket have risen nearly 3 times faster than typical earnings.

(17) There is growing consensus that economic consolidation contributes to the widening gap in economic opportunity in the United States and bigger, more dominant firms are more likely to deliver profits to investors than to raise wages or benefits. Mega-mergers in the food and agribusiness industries can lead to growing monopsony power abuse resulting in wage suppression, along with massive layoffs as companies shutter factories and facilities, harming working families and communities.

(18) Concentration, low prices, anticompetitive practices, and other manipulations and abuses of the agricultural economy are driving small family farmers out of business. Farmers are going bankrupt or giving up, and few are taking their places; more farm families are having to rely on other jobs to stay afloat. Seventy-nine percent of farm household income came from off farm work in 2020, up from 53 percent in 1960.
(19) Eighty-one percent of America’s farmed cropland is now controlled by 15 percent of farms, and the number of farmers leaving the land will continue to increase unless and until these trends are reversed.

(20) The decline of small family farms undermines the economies of rural communities across America; it has pushed Main Street businesses, from equipment suppliers to small banks, out of business or to the brink of insolvency.

(21) Increased concentration in the agribusiness sector has a harmful effect on the environment; corporate hog farming, for example, threatens the integrity of local water supplies and creates noxious odors in neighboring communities. Concentration also can increase the risks to food safety and limit the biodiversity of plants and animals.

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

(23) The decline of family farming causes the demise of rural communities, as stores lose cus-
tomers, churches lose congregations, schools and
clinics become under-used, career opportunities for
young people dry up, and local inequalities of wealth
and income grow wider.

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

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGRICULTURAL INPUT SUPPLIER.—The
term “agricultural input supplier” means any person
(excluding agricultural cooperatives) engaged in the
business of selling, in interstate or foreign commerce, any product to be used as an input (including seed, germ plasm, hormones, antibiotics, fertilizer, and chemicals, but excluding farm machinery) for the production of any agricultural commodity, except that no person shall be considered an agricultural input supplier if sales of such products are for a value less than $10,000,000 per year.

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

(3) Commission merchant.—The term “commission merchant” means any person engaged in the business of receiving in interstate or foreign commerce any agricultural commodity for sale, on commission, or for or on behalf of another, except that no person shall be considered a commission merchant if the only sales of such commodities are for a value less than $10,000,000 per year.
(4) DEALER.—The term “dealer” means any person (excluding agricultural cooperatives) engaged in the business of buying, selling, or marketing agricultural commodities in interstate or foreign commerce, except that—

(A) no person shall be considered a dealer with respect to sales or marketing of any agricultural commodity of that person’s own raising; and

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

(5) INTEGRATOR.—The term “integrator” means an entity that contracts with farmers for grower services to raise chickens or hogs to slaughter size and weight. The integrator owns the chickens or hogs, supplies the feed, slaughters, and further processes the poultry or pork.

(6) PROCESSOR.—The term “processor” means any person (excluding agricultural cooperatives) engaged in the business of handling, preparing, or manufacturing (including slaughtering and food and beverage manufacturing) of an agricultural commodity, or the products of such agricultural commodity, for sale or marketing for human consump-
tion, except that no person shall be considered a processor if the only sales of such products are for a value less than $10,000,000 per year.

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

TITLE I—MORATORIUM ON LARGE AGribusiness, FOOD AND BEVERAGE MANUFACTURING, AND GROCERY RETAIL MERGERS

SEC. 101. MORATORIUM ON LARGE AGribusiness, FOOD AND BEVERAGE MANUFACTURING, AND GROCERY RETAIL MERGERS.

(a) IN GENERAL.—

(1) MORATORIUM.—Until the date referred to in paragraph (2) and except as provided in subsection (b)—

(A) no dealer, processor, commission merchant, agricultural input supplier, broker, or
operator of a warehouse of agricultural commodities or retailer with annual net sales or total assets of more than $160,000,000 shall merge or acquire, directly or indirectly, any voting securities or assets of any other dealer, processor, commission merchant, agricultural input supplier, broker, or operator of a warehouse of agricultural commodities or retailer with annual net sales or total assets of more than $16,000,000; and

(B) no dealer, processor, commission merchant, agricultural input supplier, broker, or operator of a warehouse of agricultural commodities or retailer with annual net sales or total assets of more than $16,000,000 shall merge or acquire, directly or indirectly, any voting securities or assets of any other dealer, processor, commission merchant, agricultural input supplier, broker, or operator of a warehouse of agricultural commodities or retailer with annual net sales or total assets of more than $160,000,000 if the acquiring person would hold—
(i) 15 percent or more of the voting securities or assets of the acquired person; or

(ii) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

(2) DATE.—The date referred to in this paragraph is the effective date of comprehensive legislation—

(A) addressing the problem of market concentration in the food and agricultural sector; and

(B) containing a section stating that the legislation is comprehensive legislation as provided in section 101 of the Food and Agriculture Merger Moratorium and Antitrust Review Act of 2019; or

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

(e) EXEMPTIONS.—The classes of transactions described in section 7A(c) of the Clayton Act (15 U.S.C. 18a(e)) are exempt from subsection (a).
(d) AVOIDANCE.—Any transaction or other device entered into or employed for the purpose of avoiding the moratorium contained in subsection (a) shall be disregard, and the application of the moratorium shall be determined by applying subsection (a) to the substance of the transaction.

(e) RULEMAKING.—The Attorney General shall promulgate regulations that the Attorney General determines are necessary to implement this section.

TITLE II—AGRICULTURE CONCENTRATION AND MARKET POWER REVIEW COMMISSION

SEC. 201. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Food and Agriculture Concentration and Market Power Review Commission (hereafter in this title referred to as the “Commission”).

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

(1) study the nature and consequences of concentration in America’s food and agricultural economy; and

(2) make recommendations on how to change underlying antitrust laws and other Federal laws and regulations to keep a fair and competitive agri-
culture marketplace for family farmers, other small
and medium sized agriculture producers, generally,
and the communities of which they are a part.

(c) Membership of Commission.—

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

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

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

(C) Three persons, 1 of whom shall be a
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.
(B) Other Consideration.—In appointing Commission members, every effort shall be made to ensure that the members—

(i) are representative of a broad cross sector of agriculture and antitrust perspectives within the United States; and

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

(d) Period of Appointment; Vacancies.—

(1) In General.—Members shall be appointed not later than 60 days after the date of enactment of this Act and the appointment shall be for the life of the Commission.

(2) Vacancies.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) Initial Meeting.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) Meetings.—The Commission shall meet at the call of the Chairperson.

(g) Chairperson and Vice Chairperson.—The members of the Commission shall elect a chairperson and
vice chairperson from among the members of the Commis-

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

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

SEC. 202. DUTIES OF THE COMMISSION.

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

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

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

(2) Current trends in concentration of the food
and agricultural sector and what this sector is likely
to look like in the near and longer term future.
(3) The effects of rising concentration on suppliers, workers and farmers, including independent and contract farmers, with respect to—

(A) competition in markets for their products and services;
(B) income and benefit levels;
(C) income distribution;
(D) income volatility;
(E) other material benefits; and
(F) wages and benefits of employees.

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

(5) The impacts of concentration in the seed industry on genetic diversity in farm fields and any related impacts on food security.

(6) The impacts of this concentration upon food shoppers, including the reasons that low farm prices have not resulted in corresponding drops in supermarket prices.

(7) Whether farming is approaching a scale that is larger than necessary from the standpoint of productivity.
(8) The effect of current laws and administrative practices in supporting and encouraging this concentration.

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

(10) Accurate and reliable data on the national and international markets shares of multinational agribusinesses, and the portion of their sales attributable to exports.

(11) Barriers that inhibit entry of new competitors into markets for the processing of agricultural commodities, such as the meat packing industry.

(12) The extent to which developments, such as packer ownership of livestock, formula pricing, marketing agreements, production contracting, forward contracting, and vertical integration tend to give processors, agribusinesses, integrators, and other buyers of agricultural commodities additional market power over farmers and suppliers in local markets.

(13) The extent to which mergers cause wage suppression, layoffs, or reduced benefits to workers in the food and agricultural sector.
(14) Such related matters as the Commission
determines to be important.

SEC. 203. FINAL REPORT.

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

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

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

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

SEC. 204. POWERS OF COMMISSION.

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

(b) INFORMATION FROM FEDERAL AGENCIES.—The
Commission may secure directly from any Federal depart-
ment or agency such information as the Commission con-
siders necessary to carry out the provisions of this title.

Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

SEC. 205. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—
(1) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

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

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission
may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 206. SUPPORT SERVICES.

The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

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