NATIONAL FAMILY FARM COALITION

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Lina Kahn
Chair of the Federal Trade Commission

The National Family Farm Coalition, a 35-year partnership of 30 small farmer, rancher, and fishery folk organizations in 42 states, is grateful for the opportunity to comment on Unfair and Coercive Business Contracts in the agricultural sector. Our small food producers are similarly affected by what is happening to other small enterprises and businesses.

Consolidation of farms and supply chains is an existential threat to our members. Market forces incentivize business ownership assets to consolidate and concentrate, representing “a powerful mechanism for transferring wealth from the many among the working and middle classes to the few... at the top of the income… distribution” (Khan and Vaheesan, 2017). In farming, the “get bigger or get out” mentality of Federal officials has accelerated farming concentration and the harmful practices that the FTC is gathering information about.

Perhaps the most critical and well documented case of this is in the poultry industry and the misuse of contracts for abusive practices. Contracts in agriculture are nothing new; they offer clarity and accountability. However, contracts are becoming more and more complex and with such jargon that lay persons cannot understand their implications. As a result, many corporations take advantage of them to, as FTC mentioned, intimidate producers.

A particular type of contract, called a production contract, is one of the most used agreements in livestock and poultry sectors. Production contracts indicate an agreement where the contractor (generally a company or processor) owns the animals throughout the whole chain of production but contracts the job of raising them out to an independent farmer (O’Donoghue et al. 2011). This represents a shift away from a more traditional livestock market, where independent farmers raised and owned their animals and sold them to a company or at an auction. Production contracts have come to dominate livestock production—almost 97% of the chicken we eat in the U.S. is raised on a farm under a production contract (McDonald et al. 2018).

This corporate ownership has put most of the market in livestock production into the hands of a few companies (McDonald et al. 2018) and the risk for farmers goes beyond making them fail economically. It also leaves the consumer at the mercy of broken food chain systems. Power corrupts, and absolute power corrupts absolutely. The COVID-19 pandemic has compounded vulnerabilities; our market’s convenience stems from its lack of diversification which is also its weakness.

These predatory contracts leave farmers with limited options; from farm owners they become unwilling employees without benefits. Among the tactics we observed are class action waivers and liability disclaimers. While farmers retain ownership of the land and the installations, they continue to assume the risks of operations while being exploited by multinational corporations that subject them to their whims, even deciding the quality of poultry provided to them. Loyalty and silence are rewarded and complaints of unfair practices are penalized.

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Another practice, exclusive purchase agreements, can similarly constrain the autonomy and flexibility of small family farms. The agreements force farmers not only into meeting quotas but even determine farm structures and features, requiring farmers to make adjustments to buildings, livestock living conditions, and the like. Farmers must keep investing if they want to maintain their contracts, while the companies remain unaccountable to the functions and risks at the farm. Vertical price maintenance restrictions ensure that farmers stay afraid and silent to change the system, while corporations ensure greater profits. Farmers own the facilities and are responsible for upgrading them according to the companies' whims, while the companies supply the chicks and the feed and dictate the price farmers are paid (Leonard, 2014).

We applaud the recent developments to invest in new processing plants, but the success of these initiatives can only be accomplished by opening the markets for competition. The current system is not fair nor sustainable. While we focused on poultry in these comments, similar models affect beef producers, fisheries, fruits and vegetables.

The dairy industry also merits special attention. NFFC supports cooperatives, but the development of so called cooperatives in the dairy industry is not transparent and follows similar practices to the poultry industry. For decades, dairy policy has pushed farmers to "get big or get out." Today, 5% of dairy operations produce 56% of U.S. milk, and thousands of family dairy farmers have left the business in recent years (Newton and Kuethe, 2014).

Although not on the FTC mandate, the NFFC believes that we need to revamp federal farm policy to include parity prices and supply management to stop the flow of artificially-cheap inputs to factory farms. The Commission has tools at your disposal for that purpose. It is a necessary step towards leveling the playing field so that livestock farmers with diversified operations or those that practice rotational grazing can be economically viable (Starbuck, 2020).

Parity principles, including price floors and supply management are the logical path towards raising farm income. Supply management programs will need to be designed so that they do not disproportionately benefit the largest producers while creating barriers for new or historically underserved farmers. Additionally, we must take other actions to support farmers and rural communities, including enforcing our nation's antitrust laws to provide farmers with fair and competitive markets (Starbucks, 2020).

In closing, we underscore once more that concentration restricts competition. NFFC has a long history of defending family farmers and our comments to the Department of Justice and Department of Agriculture are in the public record. We hope that with a renewed commitment from the FTC our recommendations will be considered and implemented.

Thank you

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