

November 8, 2022

Tom Vilsack, Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Dear Secretary Vilsack:

We were disappointed in the recent ruling against the Department of Justice that rejected its attempt to block the \$315 million acquisition of Imperial Sugar by U.S. Sugar Corporation. But what was even more concerning is the fact that USDA's senior sugar analyst Barbara Fesco provided testimony in support of the deal, which the district court relied on heavily in her ruling. In effect, your Department has actively undermined the ongoing and laudable work of the Department of Justice to protect consumers from corporate consolidation across numerous sectors of the economy.

The USDA's primary accountability is to the American people, not to the owners of multibillion-dollar private corporations. When food industry competition collapses, **American consumers and workers pay the price**. Food prices increase; wealth and political power are further concentrated; working conditions decline.

Indeed, as you know, addressing anticompetitive practices is an explicit policy objective of the Biden administration. The President stated the problem plainly in his 2021 [Executive Order on Promoting Competition in the American Economy](#): "Excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers." Citing agriculture, technology, healthcare, and telecommunications as four industries with disturbing levels of corporate consolidation, he said: "It is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly."

In remarks accompanying the signing of that Executive Order, President Biden [said](#) more simply, "We have to get back to an economy that grows from the bottom up and the middle out."

The Biden administration has taken admirable steps over the past two years to rein in the disproportionate power of corporate titans over American life. A newly reinvigorated Antitrust Division is actively enforcing laws and regulations, and filing suit. Yet antitrust enforcers have continued to face strong headwinds – including, it would seem, from officials within your own department.

As one congressional aide [said](#) in a recent Time Magazine article which reported on the *U.S. Sugar* decision and Ms. Fesco's testimony: "It is very concerning that USDA would undermine DOJ's antitrust efforts, which clearly contradicts the 'whole-of-government' approach in President Biden's executive order on competition. Any merger that results in two giant players dominating a market is obviously bad for competition, and consumers will likely suffer through higher prices."

Judge Noreika ruled – incorrectly, in our view – that allowing U.S. Sugar to proceed with its acquisition was in the best interest of the public. And she relied in part on Ms. Fesco's testimony that, according to her friends at U.S. Sugar, the company had no plans to raise prices. This is a textbook example of **regulatory capture**, the situation in which public agencies set policy based on the priorities of companies that have a stake in the outcome. Ms. Fesco may be an experienced and knowledgeable industry analyst -- but she is also both professionally and socially close to executives at the companies covered by USDA policy. And her policy recommendations, both to USDA and in expert testimony, should be built on facts, research, and economic science, not on the unenforceable promises of sugar industry executives she regularly interacts with.

We ask that you issue clarification both to the public and to the USDA workforce that USDA remains committed to the Biden Administration's policy on competition and consolidation and that you take steps within your department to reinforce the Administration's pro-consumer, pro-competition goals. We also ask that you issue department-wide guidelines governing the relationships between USDA officials and executives from industries they regulate, and we suggest a top-to-bottom review of industry influence at USDA may be in order.

Thank you for your attention to this matter.

Sincerely,

American Economic Liberties Project
Canadian Anti-Monopoly Project (CAMP)
Center for Digital Democracy
Demand Progress Education Fund
Open Markets Institute
The Revolving Door Project
R-CALF USA
Rural Organizing