

March 21, 2024

The Honorable Amy Klobuchar
Chair
Senate Subcommittee on Competition Policy,
Antitrust and Consumer Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Massie
Chair
House Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Lee
Ranking Member
Senate Subcommittee on Competition Policy,
Antitrust and Consumer Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lou Correa
Ranking Member
House Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust
2138 Rayburn House Office Building
Washington, D.C. 20515

Chair Klobuchar, Chair Massie, Ranking Member Lee, and Ranking Member Correa:

I write today to urge the House and Senate antitrust subcommittees to convene hearings to further explore the findings of the Federal Trade Commission's recent 6(b) report on the causes behind pandemic-era grocery supply chain disruptions¹. The report supports the National Grocers Association's ("NGA") longstanding assertion that consolidation and buyer power in the grocery sector lead to discriminatory practices against independent grocers, resulting in elevated prices and diminished choices for consumers. Notably, the report reveals how major national grocers capitalized on supply chain disruptions during the pandemic to solidify their market dominance to the detriment of competition and consumer welfare. These findings necessitate further investigation and consideration of legislative remedies to foster a fairer marketplace in the U.S. supermarket sector.

NGA represents more than 1,800 independent grocery retailers, wholesalers, and suppliers. For over 40 years, NGA has been the voice of the independent supermarket industry, advocating for policies that allow independent grocers and wholesalers to grow their businesses, create jobs, and serve at the heart of their communities. Independent grocers account for 33% of total grocery sales, representing 1.2% of the national economy. This equates to more than \$250 billion in annual sales, 1.1 million jobs, and nearly \$42 billion in wages.

Despite the size of our membership in the aggregate, our individual members are small local and regional stores and wholesalers. These businesses compete directly with much larger firms in the

¹ FEDERAL TRADE COMM'N, FEEDING AMERICAN IN A TIME OF CRISIS: THE UNITED STATES GROCERY SUPPLY CHAIN AND THE COVID-19 PANDEMIC (Mar. 21 2024), <https://www.ftc.gov/reports/feeding-america-time-crisis-ftc-staff-report-united-states-grocery-supply-chain-covid-19-pandemic>.

purchase of consumer products, and often in the sale of those products as well. But they also frequently operate in rural and urban markets that the larger chains neglect, providing essential services to underserved communities.

One of the greatest challenges our members face is the unprecedented buyer power exercised by the largest retail and grocery chains. These giants use that buyer power to extract discounts and delivery terms from suppliers that would not prevail in a competitive market, pushing suppliers beyond what they would otherwise concede.²

Ordinarily, greater scale creates efficiencies that allow retailers to pass on savings to consumers. However, despite the fact that many independent grocers purchase through cooperatives that can match the large retailers scale by purchasing goods by the truckload, suppliers do not offer them the same discounts—potentially in violation of the Robinson-Patman Act. Not only do suppliers not extend these discounts to the large firms' competitors, but in what is known as the waterbed effect, they are often forced to recoup their lost profits by raising prices for everyone else.³

Pandemic-era disruptions and inflation pressures have underscored the urgency of addressing systemic issues within the grocery supply chain. Early in the pandemic, inconsistent distribution and apparent shortages of consumer goods staples made it difficult for consumers to obtain high-demand products like paper products, cleaning supplies, and popular packaged food brands. Inflation has disproportionately impacted independents because dominant grocery players use their negotiating power to resist inflationary cost increases, leaving suppliers with no choice but to raise prices on their smallest customers at a faster rate. The FTC's 6(b) report corroborates this finding:

- **Inconsistent allocations** – Dominant firms like Walmart imposed strict delivery requirements during the height of the pandemic that pressured suppliers to favor them over rivals;
- **Consolidation causes supply chain fragility** – concentration in the grocery supply chain undermined market resilience and created market fragility;
- **Worsening price discrimination** – Price discrimination against independent grocers worsened as manufacturer promotional spending declined; and
- **Higher consumer prices** – Big chains drove up prices for everyone by manipulating the supply chain in their favor.

² Beyond price concessions, these conditions include meeting strict on-time delivery requirements that force suppliers to prioritize delivery to the largest chains at the expense of other buyers—even if when large chains purchase more than they can sell. In a process known as diversion, the large chains often resell their excess supply to their competitors at marked up prices, further exacerbating the disparity in prices.

³ See, e.g., Roman Inderst & Tommaso M. Valletti, *Buyer Power and “The Waterbed Effect,”* LIX J. INDUST. ECONOMICS 1, 2, (2011); Paul W. Dobson & Roman Inderst, *The Waterbed Effect: Where Buying and Selling Power Come Together*, 2008 WIS. L. REV. 331, 336-37 (2008) (discussing the circumstances that can give rise to the waterbed effect, and how the phenomenon can distort downstream competition and harm consumers).

Although the economic pain felt since Covid has been particularly acute for the independent segment, these grocers have suffered for decades due to a lack of equal access to pricing, promotions, and packaging deals that are provided for large firms. For example, dominant retailers have imposed arbitrary “channels of trade” classifications on manufacturers to justify discrimination against independent grocers and wholesalers on price, product availability, and packaging options. Economic discrimination has also impacted private label supply, limiting independent grocers’ ability to offer product alternatives to budget-conscious consumers. The report concluded that “as supply chains normalize, some of these symptoms may subside, but the underlying issues remain.”

NGA urges the Senate and House antitrust subcommittees to thoroughly investigate the findings of the 6(b) report and the broader problem of consolidation and economic discrimination in the grocery sector and its impact on consumers. Specifically, the subcommittees should consider the adequacy of the current antitrust laws to address anticompetitive behavior and scrutinize federal agencies’ historical enforcement practices. Independent and local grocers aren’t asking for special treatment, only to be able to compete on a level playing field. Consumers shouldn’t be deprived of more options to find affordable groceries for their families.

Thank you for your attention to this critical matter. I look forward to your leadership in addressing these pressing concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Jones", with a stylized flourish at the end.

Chris Jones
Chief Government Relations Officer & Counsel
National Grocers Association

CC:

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jim Jordan
Chair
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerry Nadler
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515