

107TH CONGRESS  
1ST SESSION

# S. 1076

To provide for the review of agriculture mergers and acquisitions by the Department of Agriculture and to outlaw unfair practices in the agriculture industry, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2001

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for the review of agriculture mergers and acquisitions by the Department of Agriculture and to outlaw unfair practices in the agriculture industry, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*

2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Agriculture Competi-

5       tion Enhancement Act”.

6       **SEC. 2. DEFINITIONS.**

7        In this Act:





#### 4 SEC. 3. SPECIAL COUNSEL FOR COMPETITION MATTERS.

5 (a) IN GENERAL.—There shall be established within  
6 the Department of Agriculture a Special Counsel for Com-  
7 petition Matters whose primary responsibilities shall be  
8 to—

16 (b) APPOINTMENT.—The Special Counsel for Com-  
17 petition Matters shall be appointed by the President sub-  
18 ject to the advice and consent of the Senate.

19 (c) PROSECUTORIAL AUTHORITY.—The Special  
20 Counsel for Competition Matters shall have the authority  
21 to bring any civil action authorized pursuant to this Act  
22 on behalf of the United States.

1 SEC. 4. AGRIBUSINESS MERGER REVIEW AND ENFORCE-  
2 MENT BY THE DEPARTMENT OF AGRI-  
3 CULTURE.

4 (a) NOTICE OF FILING.—The Assistant Attorney  
5 General or the Federal Trade Commission, as appropriate,  
6 shall notify the Secretary of Agriculture of any filing pur-  
7 suant to section 7A of the Clayton Act (15 U.S.C. 18a)  
8 involving a merger or acquisition described in subsection  
9 (b)(1), and shall give the Secretary of Agriculture the op-  
10 portunity to participate in the review proceedings.

11 (b) SPECIAL COUNSEL REVIEW.—

12 (1) IN GENERAL.—In addition to the antitrust  
13 review conducted by the Federal Trade Commission  
14 or Assistant Attorney General pursuant to section  
15 7A of the Clayton Act (15 U.S.C. 18a), and notwithstanding  
16 any participation in those antitrust review  
17 proceedings, the Special Counsel for Competition  
18 Matters, in consultation with the Chief Economist of  
19 the Department of Agriculture, shall, contemporaneously,  
20 observing the time period limitations provided  
21 under the antitrust laws and the Department of  
22 Justice merger guidelines, and utilizing the factors  
23 set forth in subsection (d), review, to determine  
24 whether the proposed transaction would cause substantial  
25 harm to the ability of independent producers

1 and family farmers to compete in the marketplace,  
2 any merger or acquisition involving—

3 (A) a dealer, processor, commission mer-  
4 chant, agricultural input supplier, broker, or  
5 operator of a warehouse of agricultural com-  
6 modities with annual net sales or total assets of  
7 more than \$100,000,000 merging or acquiring,  
8 directly or indirectly, any voting securities or  
9 assets of any other dealer, processor, commis-  
10 sion merchant, agricultural input supplier,  
11 broker, or operator of a warehouse of agricul-  
12 tural commodities with annual net sales or total  
13 assets of more than \$10,000,000; or

14 (B) a dealer, processor, commission mer-  
15 chant, agricultural input supplier, broker, or  
16 operator of a warehouse of agricultural com-  
17 modities with annual net sales or total assets of  
18 more than \$10,000,000 merging or acquiring,  
19 directly or indirectly, any voting securities or  
20 assets of any other dealer, processor, commis-  
21 sion merchant, agricultural input supplier,  
22 broker, or operator of a warehouse of agricul-  
23 tural commodities with annual net sales or total  
24 assets of more than \$100,000,000 if the acquir-  
25 ing person would hold—

1 (i) 15 percent or more of the voting  
2 securities or assets of the acquired person;  
3 or

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

18 (c) NOTIFICATION ON FAILURE TO PROCEED.—If  
19 the Assistant Attorney General or the Federal Trade Com-  
20 mission determines not to proceed against the parties of  
21 an agriculture merger or acquisition under the antitrust  
22 laws, the Assistant Attorney General or the Federal Trade  
23 Commission immediately shall notify the Special Counsel  
24 for Competition Matters of such decision.

25 (d) STANDARD OF REVIEW.—

11 (A) the effect of the acquisition or merger  
12 on prices paid to producers who sell to, buy  
13 from, or bargain with, one or more of the par-  
14 ties involved in the merger or acquisition;

15 (B) the likelihood that the acquisition or  
16 merger will result in significantly increased  
17 market power for the new or surviving entity;

18 (C) the likelihood that the acquisition or  
19 merger will increase the potential for anti-  
20 competitive or predatory conduct by the new or  
21 surviving entity; and

22 (D) whether the acquisition or merger will  
23 adversely affect producers in a particular re-  
24 gional area, including an area as small as a sin-  
25 gle State.

1       (e) EVIDENTIARY POWERS.—The Special Counsel for  
2 Competition Matters shall have the same powers as pos-  
3 sessed by the Assistant Attorney General and the Federal  
4 Trade Commission under the antitrust laws, to obtain evi-  
5 dence necessary to make determinations for the review de-  
6 scribed in subsection (b).

7       (f) ACCESS TO ATTORNEY GENERAL AND FEDERAL  
8 TRADE COMMISSION INFORMATION.—The Assistant At-  
9 torney General or the Federal Trade Commission, as ap-  
10 propriate, shall make available to the Special Counsel for  
11 Competition Matters any information, including any testi-  
12 mony, documentary material, or related information rel-  
13 evant to the review conducted by the Special Counsel  
14 under this section which is under the control of the Assis-  
15 tant Attorney General or the Federal Trade Commission.  
16 Each agency will share information, consistent with appli-  
17 cable confidentiality restrictions, in order to provide the  
18 others with information believed to be potentially relevant  
19 and useful to the others' enforcement responsibilities.  
20 Such information may include legal, economic, and tech-  
21 nical assistance.

22       (g) TRANSMITTAL OF FINDINGS OF SPECIAL COUN-  
23 SEL FOR COMPETITION MATTERS.—After receiving notice  
24 pursuant to subsection (a) and conducting the review re-  
25 quired in subsection (b), the Secretary of Agriculture shall

1 report to the Assistant Attorney General or the Federal  
2 Trade Commission, as appropriate, and the parties, the  
3 findings of the review, including any recommended condi-  
4 tions on the merger or suggested remedies.

5 (h) RESPONSE TO SPECIAL COUNSEL FINDINGS.—

6 (1) ANTITRUST AGENCY RESPONSE TO FIND-  
7 INGS.—The Assistant Attorney General or the Fed-  
8 eral Trade Commission, as appropriate, shall provide  
9 the Special Counsel for Competition Matters a re-  
10 sponse, including the rationale as to why such find-  
11 ings and recommendations are accepted or rejected.

12 (2) PARTY OPPORTUNITY TO ADDRESS FIND-  
13 INGS.—The parties to the merger or acquisition af-  
14 fected by such findings shall have the opportunity to  
15 make changes to their operations or structure, and  
16 to negotiate with the Special Counsel for Competi-  
17 tion Matters an acceptable resolution to any con-  
18 cerns raised in the findings.

19 (i) ENFORCEMENT.—

20 (1) JUDICIAL ACTION.—Not later than 30 days  
21 after notification by the Assistant Attorney General  
22 or the Federal Trade Commission of their deter-  
23 mination not to proceed against the parties, the Spe-  
24 cial Counsel for Competition Matters, if he or she is  
25 not satisfied with the review of, or the conditions

1       placed on, the merger or acquisition by the Assistant  
2       Attorney General or the Federal Trade Commission,  
3       may challenge the transaction in Federal court  
4       based on the findings conducted in the review under  
5       this section.

6               (2) ENFORCEMENT AND DAMAGES.—The en-  
7       forcement and damage provisions of the antitrust  
8       laws shall apply with respect to a violation of the  
9       substantial harm to producers and family farmers  
10      standard of subsection (d) in the same manner as  
11      such sections apply with respect to a violation of the  
12      antitrust laws.

13               (j) CONFORMING AMENDMENTS TO ANTITRUST  
14  LAWS.—Section 7A of the Clayton Act (15 U.S.C. 18a)  
15  is amended by inserting at the end the following:

16               “(k)(1) Notwithstanding the threshold requirements  
17  of sections 1, 2, and 3, the Federal Trade Commission  
18  and the Assistant Attorney General may require, at the  
19  request of the Secretary of Agriculture, notification pursu-  
20  ant to the rules under subsection (d)(1) from the parties  
21  to a proposed merger or acquisition in the agriculture in-  
22  dustry.

23               “(2) The Assistant Attorney General or the Federal  
24  Trade Commission, as appropriate, shall give the Sec-  
25  retary of Agriculture the opportunity to participate in the

1 review under the antitrust laws of any proposed merger  
2 or acquisition involving the agriculture industry.”.

3 **SEC. 5. PROHIBITIONS AGAINST UNFAIR PRACTICES IN**  
4 **TRANSACTIONS INVOLVING AGRICULTURAL**  
5 **COMMODITIES AND ENFORCEMENT.**

6 (a) **UNLAWFUL PRACTICES.**—It shall be unlawful for  
7 any dealer, processor, commission merchant, or broker of  
8 any agricultural commodity to—

9 (1) engage in or use any unfair, unjustly dis-  
10 criminatory, or deceptive practice or device;

11 (2) make or give any undue or unreasonable  
12 preference or advantage to any particular person or  
13 locality in any respect whatsoever, or subject any  
14 particular person or locality to any undue or unrea-  
15 sonable prejudice or disadvantage;

16 (3) sell or otherwise transfer to or for any other  
17 dealer, processor, commission merchant, or broker,  
18 or buy or otherwise receive from or for any other  
19 dealer, processor, commission merchant, or broker,  
20 any article for the purpose or with the effect of ap-  
21 portioning the supply between any such persons, if  
22 such apportionment has the tendency or effect of re-  
23 straining commerce or of creating a monopoly;

24 (4) sell or otherwise transfer to or for any other  
25 person, or buy or otherwise receive from or for any

1 other person, any article for the purpose or with the  
2 effect of manipulating or controlling prices, or of  
3 creating a monopoly in the acquisition of, buying,  
4 selling, or dealing in, any article, or of restraining  
5 commerce;

6 (5) engage in any course of business or do any  
7 act for the purpose or with the effect of manipu-  
8 lating or controlling prices, or of creating a monop-  
9 oly in the acquisition of, buying, selling, or dealing  
10 in, any article, or of restraining commerce;

11 (6) conspire, combine, agree, or arrange with  
12 any other person—

13 (A) to apportion territory for carrying on  
14 business;

15 (B) to apportion purchases or sales of any  
16 article; or

17 (C) to manipulate or control prices; or

18 (7) conspire, combine, agree, or arrange with  
19 any other person to do, or aid or abet the doing of,  
20 any act made unlawful by paragraph (1), (2), (3),  
21 (4), or (5).

22 (b) PROCEDURE BEFORE SECRETARY FOR VIOLA-  
23 TIONS.—

24 (1) COMPLAINT; HEARING; INTERVENTION.—If  
25 the Secretary has reason to believe that any dealer,

1 processor, commission merchant, or broker, has vio-  
2 lated or is violating any provision of this section, the  
3 Secretary shall cause a complaint in writing to be  
4 served upon the dealer, processor, commission mer-  
5 chant, or broker, stating the charges in that respect,  
6 and requiring the dealer, processor, commission mer-  
7 chant, or broker, to attend and testify at a hearing  
8 at a time and place designated therein, at least 30  
9 days after the service of such complaint; and at such  
10 time and place there shall be afforded the dealer,  
11 processor, commission merchant, or broker, a rea-  
12 sonable opportunity to be informed as to the evi-  
13 dence introduced against him (including the right of  
14 cross-examination), and to be heard in person or by  
15 counsel and through witnesses, under such regula-  
16 tions as the Secretary may prescribe. Any person for  
17 good cause shown may on application be allowed by  
18 the Secretary to intervene in such proceeding, and  
19 appear in person or by counsel. At any time prior  
20 to the close of the hearing the Secretary may amend  
21 the complaint; but in case of any amendment adding  
22 new charges the hearing shall, on the request of the  
23 dealer, processor, commission merchant, or broker,  
24 be adjourned for a period not exceeding 15 days.

(2) REPORT AND ORDER; PENALTY.—If, after such hearing, the Secretary finds that the dealer, processor, commission merchant, or broker, has violated or is violating any provisions of this section covered by the charges, the Secretary shall make a report in writing in which the Secretary shall state his findings as to the facts, and shall issue and cause to be served on the dealer, processor, commission merchant, or broker, an order requiring such dealer, processor, commission merchant, or broker, to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may proceed

1 to recover such penalty by an action in the appropriate  
2 district court of the United States.

3 (3) AMENDMENT OF REPORT OR ORDER.—Until  
4 the record in such hearing has been filed in a court  
5 of appeals of the United States, as provided in sub-  
6 section (c), the Secretary at any time, upon such no-  
7 tice and in such manner as the Secretary deems  
8 proper, but only after reasonable opportunity to the  
9 dealer, processor, commission merchant, or broker,  
10 to be heard, may amend or set aside the report or  
11 order, in whole or in part.

12 (4) SERVICE OF PROCESS.—Complaints, orders,  
13 and other processes of the Secretary under this sec-  
14 tion may be served in the same manner as provided  
15 in section 5 of the Federal Trade Commission Act  
16 (15 U.S.C. 45).

17 (c) CONCLUSIVENESS OF ORDER; APPEAL AND RE-  
18 VIEW.—

19 (1) FILING OF PETITION; BOND.—An order  
20 made under subsection (b) shall be final and conclu-  
21 sive unless within 30 days after service the dealer,  
22 processor, commission merchant, or broker, appeals  
23 to the court of appeals for the circuit in which he  
24 has his principal place of business, by filing with the  
25 clerk of such court a written petition praying that

1 the Secretary's order be set aside or modified in the  
2 manner stated in the petition, together with a bond  
3 in such sum as the court may determine, conditioned  
4 that such dealer, processor, commission merchant, or  
5 broker, will pay the costs of the proceedings if the  
6 court so directs.



1 from violating the provisions of such order or such  
2 order as modified.

3 (8) FINALITY.—The court of appeals shall have  
4 jurisdiction, which upon the filing of the record with  
5 it shall be exclusive, to review, and to affirm, set  
6 aside, or modify, such orders of the Secretary, and  
7 the decree of such court shall be final except that it  
8 shall be subject to review by the Supreme Court of  
9 the United States upon certiorari, as provided in  
10 section 1254 of title 28, United States Code, if such  
11 writ is duly applied for within 60 days after entry  
12 of the decree. The issue of such writ shall not oper-  
13 ate as a stay of the decree of the court of appeals,  
14 insofar as such decree operates as an injunction un-  
15 less so ordered by the Supreme Court.

16 (d) PUNISHMENT FOR VIOLATION OF ORDER.—Any  
17 dealer, processor, commission merchant, or broker, or any  
18 officer, director, agent, or employee of a dealer, processor,  
19 commission merchant, or broker, who fails to obey any  
20 order of the Secretary issued under the provisions of sub-  
21 section (b), or such order as modified—

22 (1) after the expiration of the time allowed for  
23 filing a petition in the court of appeals to set aside  
24 or modify such order, if no such petition has been  
25 filed within such time;

9 shall on conviction be fined not less than \$500 nor more  
10 than \$10,000, or imprisoned for not less than 6 months  
11 nor more than 5 years, or both. Each day during which  
12 such failure continues shall be deemed a separate offense.

## 13 SEC. 6. REPORT ON CORPORATE STRUCTURE.

14 A dealer, processor, commission merchant, or broker  
15 with annual sales in excess of \$100,000,000 shall annually  
16 file with the Secretary a report which describes, with re-  
17 spect to both domestic and foreign activities, the strategic  
18 alliances, ownership in other agribusiness firms or agri-  
19 business-related firms, joint ventures, subsidiaries, and  
20 brand names, interlocking boards of directors with other  
21 corporations, representatives, and agents that lobby Con-  
22 gress on behalf of such dealer, processor, commission mer-  
23 chant, or broker, as determined by the Secretary.

1   **SEC. 7. PROHIBITION ON CONFIDENTIALITY CLAUSES IN**  
2                   **LIVESTOCK AND POULTRY PRODUCTION**  
3                   **CONTRACTS.**

4       Confidentiality clauses barring a party to a contract  
5   from sharing terms of such contract for the purposes of  
6   obtaining legal or financial advice, are prohibited in live-  
7   stock production contracts and grain production contracts  
8   (except to the extent a legitimate trade secret (as applied  
9   in the Freedom of Information Act, 5 U.S.C. 552 et seq.)  
10   is being protected).

11   **SEC. 8. PROTECTIONS FOR CONTRACT POULTRY GROWERS.**

12       (a) **REMOVAL OF POULTRY SLAUGHTER REQUIRE-  
13   MENT FROM DEFINITIONS.**—Section 2(a) of the Packers  
14   and Stockyards Act, 1921 (7 U.S.C. 182) is amended—  
15               (1) by striking paragraph (8) and inserting the  
16   following new paragraph:

17               “(8) the term ‘poultry grower’ means any per-  
18   son engaged in the business of raising or caring for  
19   live poultry under a poultry growing arrangement,  
20   whether the poultry is owned by such person or by  
21   another person;”;

22               (2) in paragraph (9), by striking “and cares for  
23   live poultry for delivery, in accord with another’s in-  
24   structions, for slaughter” and inserting “or cares for  
25   live poultry in accord with another person’s instruc-  
26   tions”; and

4 (b) ADMINISTRATIVE ENFORCEMENT AUTHORITY  
5 OVER LIVE POULTRY DEALERS.—Sections 203, 204, and  
6 205 of such Act (7 U.S.C. 193, 194, 195) are amended  
7 by inserting “or live poultry dealer” after “packer” each  
8 place it appears.

9 (c) AUTHORITY TO REQUEST TEMPORARY INJUNC-  
10 TION OR RESTRAINING ORDER.—Section 408 of such Act  
11 (7 U.S.C. 229) is amended by striking “on account of  
12 poultry” and inserting “on account of poultry or poultry  
13 care”.

14 (d) VIOLATIONS BY LIVE POULTRY DEALERS.—Section 411 of such Act (7 U.S.C. 228b-2) is amended—  
15

16 (1) in subsection (a), by striking “any provision  
17 of section 207 or section 410 of”; and

1   **SEC. 9. AUTHORITY TO MAKE BUSINESS AND INDUSTRY**  
2                   **GUARANTEED LOANS FOR FARMER-OWNED**  
3                   **PROJECTS THAT ADD VALUE TO OR PROCESS**  
4                   **AGRICULTURAL PRODUCTS.**

5       Section 310B(a)(1) of the Consolidated Farm and  
6   Rural Development Act (7 U.S.C. 1932(a)(1)) is amended  
7   by inserting “(and in areas other than rural communities,  
8   in the case of insured loans, if a majority of the project  
9   involved is owned by individuals who reside and have farm-  
10   ing operations in rural communities, and the project adds  
11   value to or processes agricultural commodities)” after  
12   “rural communities”.

13   **SEC. 10. AUTHORIZATION FOR ADDITIONAL STAFF AND**  
14                   **FUNDING FOR AGRICULTURE COMPETITION**  
15                   **ENFORCEMENT.**

16       (a) ADDITIONAL STAFF.—The Secretary of Agri-  
17   culture shall hire sufficient staff, including antitrust and  
18   litigation attorneys, economists, and investigators, to ap-  
19   propriately carry out the agribusiness merger review and  
20   prohibition against unfair practices responsibilities, de-  
21   scribed in sections 4 and 5.

22       (b) AUTHORIZATION.—There are authorized to be ap-  
23   propriated such sums as are necessary to hire the staff  
24   referenced in subsection (a) to implement this Act.

1     **SEC. 11. AUTHORIZATION FOR ADDITIONAL STAFF AND**  
2                   **FUNDING FOR THE GRAIN INSPECTION,**  
3                   **PACKERS AND STOCKYARDS ADMINISTRA-**  
4                   **TION.**

5       There are authorized to be appropriated such sums  
6 as are necessary to enhance the capability of the Grain  
7 Inspection, Packers and Stockyards Administration to  
8 monitor, investigate, and pursue the competitive implica-  
9 tions of structural changes in the meat packing industry.  
10 Sums are specifically earmarked to hire litigating attor-  
11 neys to allow the Grain Inspection, Packers and Stock-  
12 yards Administration to more comprehensively and effec-  
13 tively pursue its enforcement activities.

14     **SEC. 12. ASSISTANT ATTORNEY GENERAL FOR AGRICUL-**  
15                   **TURAL ANTITRUST MATTERS.**

16       (a) **IN GENERAL.**—There shall be established within  
17 the Antitrust Division of the Department of Justice an  
18 Assistant Attorney General for Agricultural Antitrust  
19 Matters, who shall be responsible for oversight and coordi-  
20 nation of antitrust and related matters which affect agri-  
21 culture, directly or indirectly.

22       (b) **APPOINTMENT.**—The Assistant Attorney General  
23 for Agricultural Antitrust Matters shall be appointed by  
24 the President subject to the advice and consent of the Sen-  
25 ate.

1 **SEC. 13. INCREASE IN HART-SCOTT-RODINO FILING FEES.**

2 (a) IN GENERAL.—The filing fee the Federal Trade  
3 Commission assesses on a person acquiring voting securi-  
4 ties or assets who is required to file premerger notifica-  
5 tions under section 7A of the Clayton Act (15 U.S.C. 18a)  
6 for mergers and acquisitions satisfying the \$15,000,000  
7 size-of-transaction requirement is increased to \$100,000  
8 for those transactions valued at more than \$100,000,000.

9 (b) FEES EARMARKED.—The filing fee increase de-  
10 scribed in subsection (a) is partially earmarked to pay for  
11 the costs of staff increases at the Transportation, Energy  
12 and Agriculture section at the Department of Justice, as  
13 considered necessary by the Assistant Attorney General,  
14 to enhance their review of agriculture transactions.

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