

United States Senate

WASHINGTON, DC 20510

May 13, 2022

The Honorable Thomas J. Vilsack
Secretary
United States Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Dear Secretary Vilsack:

We write to you in regards to the current state of the infant formula industry amidst a nationwide shortage that is jeopardizing the ability of families to adequately and safely feed their infants while also putting those that rely on specialty formula at great risk. As we work towards mitigating the immediate impacts of the current crisis, we respectfully request that the United States Department of Agriculture (USDA) take action within your authority to address extremely high levels of corporate concentration in the infant formula marketplace.

The infant formula industry has reached an alarming level of corporate concentration with four companies—Abbott Nutrition, Mead Johnson, Gerber, and Perrigo—controlling nearly 90% of the infant formula market. Abbott Nutrition, the manufacturer of products currently under recall, alone controls around 40% of the infant formula market. This level of concentration has created a fragile system unable to adequately respond to shocks in the supply chain. Unfortunately, this puts our most vulnerable populations at risk, and disproportionately impacts low-income families who rely on programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Currently, an estimated 50-66% of all infant formula sold in the United States is purchased through WIC. In the three decades since WIC adopted the sole-source contracting model, just three companies—Abbott Nutrition, Mead Johnson, and Gerber—have been awarded contracts. Moreover, when a company is awarded a WIC contract in a given state, they also benefit from a significant spillover effect in non-WIC purchases as retailers provide increased shelf space to the WIC contracted brand. For example, in 2007, California switched its contract from Abbott Nutrition to Mead Johnson. This change resulted in Abbott Nutrition's market share in California falling from 90 percent to five percent while Mead Johnson's market share rose from five percent to 95 percent. For contracts currently in effect, Abbott Nutrition is the sole-source WIC provider in 23 States and the District of Columbia while Gerber serves nine States and Mead Johnson serves 18 States.

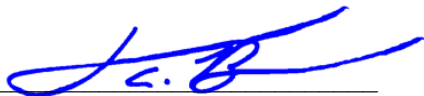
We support USDA's goal of stretching WIC resources as far as possible, and it is clear that the sole-source contract model has allowed for cost containment and the ability to serve more WIC participants. However, this crisis has shined an important light on the fact that systemic

resilience must be a factor in program decision-making going forward. To be clear, we do not believe the WIC program is responsible for the current shortages felt across the nation, but we are concerned that the sole-source contract model may be contributing to concentration in the market. Under normal circumstances, this does not pose any immediate threats to the ability of families to provide nutrition to their babies and infants, but in the midst of a shock to the supply chain, it is clear that the current level of concentration has created a fragile system unable to meet the needs of vulnerable consumers. This may merit exploring new ways to bolster competition in the market and ensure formula access for WIC participants, including the possibility of multi-source contracts.

The extremely high levels of concentration in the infant formula market creates a serious risk to infant health if there is any disruption to a major manufacturer's supply. Therefore, this issue merits immediate antitrust review. While federal contracting may have played a role in the consolidation of the infant formula market, corporate food giants shoulder the majority of the responsibility of hyper consolidation across the food system. This is yet another example of how alarming levels of consolidation hurts American families and can no longer be ignored.

Thank you for your immediate attention to this matter. We look forward to working alongside those in the administration to strengthen our food system.

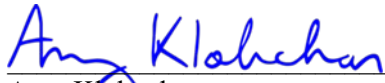
Sincerely,



Cory A. Booker
United States Senator



Tammy Duckworth
United States Senator



Amy Klobuchar
United States Senator



Kirsten Gillibrand
United States Senator



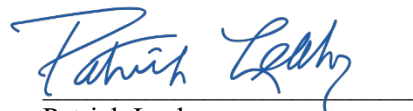
Tina Smith
United States Senator



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator



Patrick Leahy
United States Senator

Cc:

The Honorable Lina M. Khan
Chair
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