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FOOD PRICE INVESTIGATION

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

FOOD PRICE INVESTIGATION

JUNE 27, 28; JULY 11, 12, 16, 17, AND 19, 1973

SERIAL NO. 15

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Printed for the use of the Committee on the Judiciary

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FOOD PRICE INVESTIGATION

WEDNESDAY, JUNE 27, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. [chairman] presiding.

Present: Representatives Rodino, Flowers, Seiberling, Jordan, Mezvinsky, Hutchinson, and McClory.

Also present: Jerome M. Zeifman, counsel; James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order.

The Monopolies and Commercial Law Subcommittee today begins its hearing to investigate competition and enforcement of the antitrust laws in the food industry.

An ample supply of food is critical to the Nation's health and welfare. No other subject is more important.

The alarming and unprecedented increases in food prices this year have raised widespread concern that the country is failing in this vital area. It now appears that the long-term downward trend in the proportion of family income spent on food has been reversed.

As the Supreme Court declared in an antitrust case involving the food industry, the "antitrust laws are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms."

Vigorous enforcement of the antitrust laws is one way to obtain at least some relief from high food prices. When competition is not permitted to work with full force, the prices consumers face in the marketplace are higher than they otherwise would be. Of course, bad weather, increases in the money supply, devaluation of the dollar and other factors over which we have little control are contributing to rising food prices.

Nevertheless, consumers spent some $120 billion last year on food. If more vigorous enforcement of the antiturst laws could reduce this vast sum by even a small proportion, the benefit to the country would be enormous.

Developments in the food industry in a number of areas suggests that the national policy of competition expressed in the antitrust laws is being jeopardized. It is important, therefore, that the light of pub-

lic inquiry be brought to bear on these so that Congress and the public will have the information needed to formulate reasonable public policy on this subject.

Our inquiry is even more important today in view of the nationwide freeze on retail prices ordered by the President. Price controls and Government regulation can freeze industry practices and high prices that are the product of anticompetitive conduct and market structure.

The lesson of a number of antitrust cases brought by the Government for the past half-century shows that we must guard against the anticompetitive effects of such controls.

In the food industry the Federal Government exercises extensive control over price and supply at key points in agricultural production and seems to present special problems in this regard. We intend to inquire into the structure of the food industry to determine what areas raise competitive problems, but in doing this we must remember, as the Supreme Court has noted, that:

> The test of a competitive market is not only whether small competitors flourish, but also whether consumers are well served * * *.
>
> In an oligopolistic market, small companies may be perfectly content to follow the high prices set by the dominating firms, yet the market may be profoundly anticompetitive.

For these reasons, it is highly appropriate that we begin these hearings with the testimony of the Assistant Attorney General for Antitrust, Mr. Thomas E. Kauper of the Department of Justice, who has a special responsibility in the enforcement of the antitrust laws, since only the Department of Justice can bring criminal prosecutions for violations of the antitrust laws.

The subcommittee is very interested to learn what plans the Department of Justice has formulated in the antitrust area in view of skyrocketing food prices and the recent imposition of price controls.

It is also the duty of this subcommittee to oversee the enforcement of the antitrust laws. We must have the knowledge to insure that the operations of the Department of Justice in this area are carried out with the vigor that Congress intended when it enacted those laws. In a very real sense, knowledge is power.

Too often in the past, the Congress, by failing to keep itself informed, has become powerless to act wisely, and powerless to keep the people informed. Lack of information particularly is hazardous in the area of enforcement of the antitrust laws.

The knowledge and experience of the antitrust enforcers must be generally and continuously available to the legislative branch if we are to formulate wise public policy, and so the need for these hearings.

I recognize Mr Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

As this subcommittee opens its hearings on rising food prices, the importance of the Nation's antitrust laws cannot be overemphasized. Although only statutory, they accord the individual protection against big government, much as does the Bill of Rights, for in the absence of competition economic power is not dispersed and must, in turn, be regulated by government. Moreover, where there is competition, the chances of the business sector gaining inordinate political power are diminished. Thus the antitrust laws promote the ideals of individual liberty and limited but responsive government.

Thus, in my opinion, they are the cornerstone of American political life. However, the case for antitrust laws is generally made in economic terms, for where there is competition the businessman has a chance to enter the market and make a profit, the prices of goods will decrease, and the consumer will be confronted with an increase in the number of available products from which to choose.

I would like to observe at this point, Mr. Chairman, that in looking over our entire economy it is hard for me to find a more competitive sector than that involving the production, handling, and distribution of food.

Now, of course, there are times when we want large enterprises that can persist through economic adversity. There are times when we perhaps may prefer higher prices to lower ones, depending on the general state of the economy. I can recall some years ago, Mr. Chairman, when in the depths of the Depression the policies of the government were designed to increase the prices of goods. Now, our purpose is quite different and our policies ought to be different. And there are times when we do not need more products, but rather the assurance that the current ones will work as promised.

We all know that food prices are rising. We do not need a set of hearings to document that, nor do we need such hearings to determine that there are factors unrelated to antitrust that have forced prices upward. Our quest will be to determine whether there may be some antitrust violations or anticompetitive practices sanctioned by law in part responsible for price increases.

Whenever we discuss prices we call into play a host of economic and social considerations. Perhaps the best example is the subject of this hearing. Undoubtedly, consumers would prefer to pay low prices for farm products. Nevertheless, the prices of basic commodities and certain nonbasic commodities have for decades been artificially increased through Government programs. The arguments against the lower prices of the free market have ranged from national defense to land use planning, and they are not to be readily discounted. For in such cases social considerations were thought to be paramount.

It is not surprising that agricultural cooperatives have been exempted from the antitrust laws. That exemption remains debatable, and I understand that the question may be raised in these hearings as to whether agricultural cooperatives should continue to be exempt from the antitrust laws.

I note these considerations neither to approve nor disapprove rising prices, but rather to guard against the simple notion that anything that lowers prices is good. Congress has rejected this notion before, particularly with regard to farm products, fair-traded products, and the cost of labor. In short, we must always view prices in the totality of their economic and social consequences, and then decide.

Thank you.

Chairman RODINO. Thank you very much.

Our first witness this morning is the Honorable Thomas E. Kauper, Assistant Attorney General of the Antitrust Division of the Department of Justice.

Mr. Kauper, I understand that you are accompanied by Keith Clearwaters, Special Assistant to the Assistant Attorney General, and Mr. George Hay, Special Assistant to the Assistant Attorney General.

TESTIMONY OF HON. THOMAS E. KAUPER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY KEITH I. CLEARWATERS, SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL; AND GEORGE A. HAY, SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL

Mr. KAUPER. That is right, Mr. Chairman.

Chairman RODINO. Mr. Kauper, I know you have presented your prepared statement to the committee, and I would hope in the interest of trying to expedite the proceedings that your prepared statement, may be summarized within one-half hour, so that the members have an opportunity to question you.

If that is difficult to comply with, why, we will see whether or not we cannot afford you some more time, but we would hope you might be able to do that within that time.

Mr. KAUPER. I am pleased to be here today to discuss the views of the Department of Justice concerning anticompetitive practices and concentration in the food industry.

In this era of rising prices in general, vigorous antitrust enforcement becomes all the more important to the consumer. Anticompetitive practices, such as price fixing, clearly have a price impact and must be eliminated. Enforcement policy must continue to be aimed at such practices.

In a number of industries, antitrust exemptions preclude full antitrust enforcement. A given exemption may be wise as a policy matter. Others may not. Exemptions may have been granted on the basis of facts which no longer exist. To the extent that antitrust exemptions exist in a particular industry, we urge that Congress periodically reexamine the underlying basis for those exemptions. We should ascertain whether the economic conditions and industry structure which led Congress to provide antitrust immunity have so changed that the law should be changed. Such antitrust exemptions exist in the food industry, and there is a possibility that much of Federal regulation which affects food prices may run directly counter to the interests of the consumer.

I think it might be helpful as a starting point to describe the legal tools the Justice Department has at present to combat monopolistic practices and concentration in the food industry. I will refer to a few examples of our enforcement effort as I go along.

I.

The production of food at the farmer's level is governed by a rather complex set of exemptions from the antitrust laws, a fact which circumscribes our enforcement authority to a significant degree. But as a general rule, once the food leaves the hands of the farmer and enters the distribution chain—processing, handling, and retail operations—the antitrust laws fully apply as they would in any other unregulated industry. Not surprisingly, most of our activity in the past has been

concentrated in this area of distribution. But there are a few exceptions which I will also discuss at a later point.

In the unregulated area of the food industry, there are basically three kinds of antitrust tools to deal with monopolistic practices and eliminate undue concentration.

First, section 1 of the Sherman Act provides that it is per se unlawful for competitors to combine to engage in price fixing, market allocation, and boycotts. Over the years we have brought a good number of cases in the wholesale and retail food industry involving charges of these kinds of conduct.

In recent years, for example, the Department has obtained indictments against major producers of bakery products in the Philadelphia, New York, and Baltimore areas. In 1968, we brought suit against seven bread bakers in the Philadelphia area, charging that through a combination and conspiracy the defendants had raised and maintained prices of bread at artificial and noncompetitive levels.[1] The indictment also charged that the consumer had been deprived of free and open competition in bread in the Philadelphia market. The defendants entered pleas of nolo contendere and fines totaling $52,500 were imposed against the corporate and individual defendants.

The case in New York commenced with an indictment in 1972 against four major baking companies on price-fixing charges.[2] The indictment charged that the defendants had conspired in the period between 1966 and 1969 to fix prices of bread and bread-type rolls in the New York metropolitan area. The indictment also charged that the effect of the conspiracy had been to fix and maintain the price of bread in the New York region at artificial, noncompetitive levels, and that the consumer had been deprived of free and open competition in the New York market. In 1972 the defendants entered pleas of nolo contendere and fines totaling $175,000.

We also brought criminal cases against wholesale bakers in Baltimore and along the Eastern Shore in Delaware, Maryland, and Virginia charging price fixing of bread prices.[3] After pleas of nolo contendere the defendants were fined an aggregate of $89,000.

These price-fixing conspiracies, of course, have considerable impact on the prices consumers pay for food. The sales of the conspirators in Philadelphia, Baltimore, New York, and the Eastern Shore totaled $132 million annually in just those markets alone.

We have also had several price-fixing cases in another food product of extreme importance to the consumer—milk. For example, in 1971, we obtained indictments against four milk-processing firms, complaining that they had conspired to fix prices on dairy products in Washington State and Alaska.[4] Fines were imposed totaling $150,000 in 1972 and a parallel civil case included a consent judgment barring the firms from conspiring to fix wholesale prices or allocate customers.

In a somewhat different area, the Department in April of this year filed a civil antitrust case charging the National Broiler Marketing Association with fixing the price of chickens in violation of section 1 of the Sherman Act.[5] The complaint alleged that the members of the

---

[1] *United States* v. *General Host Corporation*, Crim. No. 23200 (E.D. Pa. 1968).
[2] *United States* v. *American Bakeries Company*, 72 Cr. 1010 (S.D. N.Y. 1972).
[3] *United States* v. *The E. H. Koester Bakery Co.*, Crim. No. 71–0315–HM (D.Md. 1971); *United States* v. *Sweetheart Bakers, Inc.*, Crim. No. 71–0316–HM (D.Md. 1971).
[4] *United States* v. *Arden-Mayfair, Inc.*, Crim. No. 47–71D2 (W.D. Wash. 1971).
[5] *United States* v. *National Broiler Marketing Association*, Civ. 18173 (N.D. Ga. 1973).

association and others had entered into a conspiracy to fix prices of broiler chickens at artificially high levels. The suit charged, among other things, that the defendant had agreed to exchange pricing information, to establish and disseminate broiler prices, to withhold broiler parts from the market in order to increase their price and to reduce the number of broilers available for marketing. In 1971 sales by members of the National Broiler Marketing Association amounted to more than $600 million, representing about 50 percent of the amount of broiler chickens sold annually in the United States. That case is still pending.

As a second tool of antitrust enforcement in the food industry, section 7 of the Clayton Act allows us to challenge mergers which may tend to substantially lessen competition in any line of commerce, in any section of the country. This law gives the Department and the Federal Trade Commission the power to stop undue concentration in the food industry to the extent that such concentration is effectuated through mergers and acquisitions. Of course, with a significantly reduced number of firms in any market, competition is generally softened and prices increase with market dominance.

As a recent example of a merger case brought in the food industry, in 1972 we challenged the acquisition of Great Western Foods Co., by the Federal Co.[1] Our suit alleged that the acquisition eliminated competition between Great Western and Federal in the production and sales of wheat flour, baker flour, and family flour in the Southeastern United States. That case is still pending.

In 1969, the Department challenged the merger of Iowa Beef Packers, one of the Nation's largest meatpackers, and Blue Ribbon Beef Packers Inc., with sales of more than $70 million.[2] The complaint alleged that the merger would eliminate competition in the purchase of fed cattle and might foster mergers by other meatpackers which would cause a further lessening of competition and a tendency toward monopoly. In 1970, a consent judgment was filed requiring Iowa Beef to divest itself of all the assets of Blue Ribbon. Iowa Beef has petitioned the court for a modification of that judgment, relieving it of the obligation to divest; we are opposing that petition.

Section 2 of the Sherman Act, which condemns monopolization or the attempt to monopolize, provides a third antitrust tool. Section 2 has not been extensively employed in the food industry for the reason that conditions which are necessary to bring the act to bear—monopoly power, and an abuse of that power—have not been prevalent in the industry. Both the retail and the wholesale markets in the food industry are generally served by a number of competitors none of which has sufficient market power to come within section 2 of the Sherman Act.

There is, however, one exception to this statement. Large cooperatives, the formation of which is generally immunized from the antitrust laws by the Capper-Volstead Act,[3] may and do possess such power in particular markets and may run afoul of section 2 of the Sherman Act if they abuse that power. The Supreme Court has said that the Capper-Volstead Act does not provide for unlimited antitrust

[1] *United States* v. *The Federal Co.*, Civ. 72–382 (W.D. Tenn. 1972).
[2] *United States* v. *Iowa Beef Packers, Inc.*, Civ 69–C–300S–W (N.D. Ia. 1969).
[3] 7 U.S.C. 291, 292.

immunity. In discussing the legislative history of the act, the Court declared:

> This indicates a purpose to make it possible for farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce, and otherwise carry on like a business corporation without thereby violating the antitrust laws. It does not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers, processors or dealers intent on carrying on their own businesses in their own legitimate way. Maryland and Virginia Milk Producers Association, Inc. v. United States, 362 U.S. 458 (1960), 466–467.

Thus, for example, a cooperative may not use predatory practices to force competing producers or producer cooperatives to join its organization or to drive them out of the market. Nor may a cooperative use such tactics to force milk buyers not to deal with the Cooperative's competitors.

The Department is presently engaged in litigation with two of the Nation's largest dairy cooperatives over alleged attempts by those cooperatives to extend unlawfully their control over the milk supplies in the areas in which they operate.

On February 1, 1972, the Department brought suit against Associated Milk Producers, Inc. in the western district of Texas, charging that this milk cooperative—the largest in the Nation—had violated sections 1 and 2 of the Sherman Act through a combination and conspiracy to monopolize the production and sale of milk in a 14-State area in the Midwest.[1] The Department charged among other things that AMPI had eliminated buyers for nonmembers' milk by coercing milk processors to buy milk only from AMPI. This coercion, we alleged, was accomplished by AMPI's refusal to deliver milk to a processing plant if the plant continued to buy any milk from competitors of AMPI, and the imposition of a higher charge to deliver raw milk to processors who do not buy all their milk from AMPI. Also, the complaint alleged that AMPI depressed the price competing producers of AMPI could receive for their milk under the applicable Federal milk marketing order in various geographic areas, by loading the pool, while insulating AMPI members from economic loss; that AMPI agreed that some processors would not sell or deliver milk acquired from AMPI to other processors except as directed by AMPI; that AMPI agreed that haulers who haul milk produced by members of AMPI will not haul milk produced by competitors of AMPI; and that AMPI compelled producers-members of AMPI to sign membership agreements which unreasonably restrained the right of said members to withdraw from AMPI and market milk in competition with AMPI.

On March 29, 1973, the Department brought suit against the Nation's third largest cooperative—Dairymen, Inc.—alleging among other things that the defendant had violated section 2 of the Sherman Act by attempting to monopolize trade in milk in an 11-State area.[2] The complaint charges, among other things, that Dairymen, Inc. had effectuated its attempt to monopolize by manipulating the supply of milk through flooding the market in order to depress the price competing producers of defendant receive for their milk; by restrict-

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[1] *United States* v. *Associated Milk Producers, Inc.*, Civ. SA72 CA49 (W.D. Texas 1972).
[2] *United States* v. *Dairymen, Inc.*, Civ. 7635–B (W.D. Ky 1973).

ing independent milk haulers from transporting the milk of independent producers; by coercing and attempting to coerce producers to become and remain members under threat of loss of market; and by entering into membership agreements which unreasonably restrict the right of members to withdraw and market their milk in competition with defendant.

These cases illustrate, I believe, the tools we have under existing law to deal with anticompetitive practices and structures in the food industry as well as the ways in which we have been using these tools. We now have other investigations in the works and in the months to come I would expect more antitrust cases will be filed in the food industry. Certainly this area of the economy has been given a high enforcement priority by the Department. We have been expending and will continue to expend a substantial degree of our resources to insure that prices the consumer pays for food are not increased by an unlawful conspiracy or monopoly.

II

However, as I have indicated, it must be recognized that the mandate which Congress has given us is circumscribed by specific grants of antitrust immunity, as well as by regulatory statutes in agriculture and other industries which may affect food prices.

Agricultural cooperatives have long enjoyed antitrust immunity for their formation and for activities which would otherwise be deemed to be *per se* unlawful as price fixing under the antitrust laws. In 1914, Congress enacted section 6 of the Clayton Act, which provides that:

"nothing contained in the antitrust laws shall be construed to forbid the existence and operation of . . . agricultural . . . organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organization from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

The effect of this section was to allow farmers to act together in co-operative associations without associations as such being held or construed to be illegal combinations in restraint of trade. However, this section does not indicate a congressional purpose to render agricultural co-operatives wholly immune from antitrust laws.[1]

As complementary legislation which broadened the Clayton Act exemption, Congress enacted the Capper-Volstead Act in 1922.[2] Capper-Volstead allows "persons engaged in the production of agricultural products as farmers" to act together in associations in processing, in preparing for market, handling, and marketing their commodities.

The antitrust exemption conferred by these statutes is not absolute and certain activities of the cooperative may either destroy the exemption or go beyond the shelter it provides. Immunities of this sort are to be strictly construed.

Nevertheless, it is clear that collective price fixing among farmer-producers in co-ops is immunized. I believe, without prejudging the question, that this is an appropriate time for Congress to reevaluate the need for and scope of this immunity.

[1] *Maryland and Virginia Milk Producers Association* v. *United States*, 362 U.S. 458.
[2] 42 Stat. 388, 7 U.S.C. 291.

Although Capper-Volstead gives the Secretary of Agriculture the power to find that a cooperative monopolizes or restrains trade "to such an extent that the price of any agricultural product is unduly enhanced," and to seek injunctions against the cooperative, no such action has been taken by the Secretary in the 50 years the statute has been on the books.

Of course, this may mean simply that cooperatives have not engaged in conduct which may "unduly enhance" prices. We do not have the pricing information available to us which would establish or rebut such a contention. Information possessed by the Department of Agriculture and other agencies concerning individual firms is unavailable to us by statute, as are census reports.

To some degree, then, we are required to deal with general economic principles, and ask that those who have relevant data come forward to address the concerns we present.

Capper-Volstead was enacted in response to a situation in which a large number of small family farms were believed to be the captives of a single large processor. The co-op was envisioned as a countervailing balance. Through the co-op, small farmers could get a fair price for their commodities and not be subject to the absolute power of a single buyer.

It was originally envisioned that these co-ops would not produce serious anticompetitive effects. With many small growers as members, all selling to the co-op without limitation, it was believed that the co-op would not be able to raise the price for its product above the competitive level without creating a substantial excess of supply over demand. This excess, it was believed, would soon force the price back to a competitive level.

As Senator Capper argued in congressional debate on the Capper-Volstead Act:

> Some economists have maintained that this might permit a possibility of abuse and permit a monopoly. But a farmer's monopoly is impossible. If the cooperative marketing association makes its price too high, the result is inevitable self-destruction by overproduction in the following years. No other industry except agriculture has this automatic safeguard. With corporation activities the group producers, such as the United States Steel Corp., can reduce the quantity of steel rails it will produce at any given time or completely close down its mills and reduce the supply. Therefore the possibility of abuse by monopoly and by monopoly prices exist with ordinary industries but are safeguarded automatically in agricultural organizations.

These arguments may of course still be valid more than 50 years later. But I think that we have to recognize that conditions have changed in farming and that in certain areas of agriculture fairly large single cooperatives have evolved. Certainly in milk, and perhaps in other agricultural products as well, co-ops have expanded to a point where they cover a multistate area and affect the prices paid by not just one processor but by many. The argument that a single cooperative cannot raise its prices to monopoly levels was based in part on the argument that if prices to a single processor became too high, that processor could not compete in the marketplace with other processors who were dealing with other cooperatives at lower prices. Ultimately the co-op which tried to exact a monopoly price would be forced either to reduce its prices or sell no product. A "super co-op" may, however, be able to raise prices to all processors, who in turn have no alternative but to pass on higher prices to consumers.

Another facet to Senator Capper's argument was premised on the fact that at the time the Capper-Volstead Act was being considered by Congress the farming industry was composed of many small units, each unit acting in its own best interest. If the cooperative were able to exact a monopoly price in a particular season, each small, independent family farm would engage in greater production in the next season. The cooperative would be flooded with additional production, and this would force the price down. In 1973, however, several areas of farming would appear to be increasingly represented by large corporations, capable of engaging in long-range planning with a significant degree of control over output. The poultry industry is well along in this development, with beef and pork following a modest distance behind.

These changes, particularly in today's context of rising food prices, suggest the need for congressional reevaluation of antitrust immunity for cooperatives to determine, among other things, the degree to which the activities of cooperatives enhance food prices, to determine whether some size limitation should apply to cooperatives so that they do not dominate national or regional food markets, and to determine the effect of vertical integration by members of cooperatives into processing, as well as the size and functions of individual members. In line with these recommendations, I would note that the Attorney General's National Committee to Study the Antitrust Laws, issued in 1955, contains a recommendation by some members of that committee that cooperatives and "their impact upon processors and distributors and consumers, as well as their erosion of antitrust policy in wide areas, warrant close reexamination." The need for reexamination, in our view, has not diminished.

The price of raw food products may also be affected by regulatory authority conferred by Congress on the Secretary of Agriculture under the Agriculture Adjustment Act.[1] The act, which was passed in the midst of the Depression, recites that disruption of the orderly exchange of commodities in interstate commerce impairs purchasing power of farmers, destroys the value of agricultural assets, and burdens and obstructs the normal channels of interstate commerce. It provides that the Secretary of Agriculture shall create orderly marketing conditions for agriculture commodities so as to establish parity prices to the farmer, while authorizing no action which would maintain prices above those parity prices.

As a general rule, the act permits, on a broad category of products, marketing agreements between the Secretary of Agriculture and producers, processors, co-ops and others engaged in the handling of these commodities. It provides that these agreements should be exempt from the antitrust laws.

If processors representing 50 percent of the volume covered within a designated marketing area enter into a marketing arrangement or if two-thirds of the producers approve, the Secretary may impose on all in the designated market a marketing order which contains one or more of the following items: limitations on production of any commodity or of any grade, size, or quality thereof; allocation of amounts which each processor may purchase from producers; allocation of the amount of each commodity or grade thereof which producers may sell, and the

[1] 7 U.S.C. 601 et seq.

like. In short, the Secretary, for the purpose of maintaining parity prices, is given wide-ranging authority to alter free market mechanisms and limit competitive interplay by orders reflecting marketing agreements among competing food producers and handlers.

Where either price or quantity are controlled directly, the possibility of anticompetitive harm to the consumer is clear. Other methods of control—such as quality restrictions—may also adversely affect the consumer by limiting his choice and indirectly dictating the price of the food available to him, by keeping "seconds" off the market.

Again, we do not possess sufficient data at this time to assess with any confidence the impact of marketing orders on consumers. We nonetheless believe that at a time of increasing food prices Congress should reexamine depression legislation which has as its principal and stated purpose the objectives of maintaining higher than competitive prices.

Aside from outright quota limitations, the use of marketing orders to control the size, weight, or other characteristics of agricultural commodities at least provides the opportunity for conduct which may have a detrimental impact on the consumer. Under competitive conditions the consumer is able to choose among levels of quality in the marketplace. He makes his decisions in the light of numerous traditional factors, as well as the added dimension of different prices for different levels of quality. Those consumers who will be directly affected by these orders are those who are willing to give up some of these characteristics in exchange for lower prices.

Thus, consumers are normally benefited by a full range of size, type, and color available to them in the marketplace, among which they would choose their produce in accordance with their incomes, intents or usage, and other factors. In many instances, quality is not affected by size, color, or surface bruises.

If the aim of these regulations is to provide a means of inspection, and quality control, the question arises whether the advantages of market orders vis-a-vis the private market system are sufficient to compensate for the potential serious detrimental effects on consumers or whether an alternative scheme such as grading could provide quality control without a limitation on the opportunity for choice. In any case, we suggest that the producing interests should not dominate the formulation of the marketing order.

While, as I have stated, we have inadequate information at this time as to the extent these powers have been used to the consumer's detriment, the potential for abuse of "quality" controls in marketing orders suggests the need for careful reexamination by commodity to determine the "tradeoff" between the need for control against the potential for actual abuse. The control of volume by market orders would seem to be even more questionable.

Other forms of Government regulation also tend in our view to reduce competition, raise prices, and ultimately inflate the consumer's food bill. We believe Federal transportation regulation is a prime example. Under existing statutes as administered by the Interstate Commerce Commission, freight rates are fixed by private cartels which enjoy antitrust immunity, entry of new carriers is restricted to protect the interests of carriers in the market, and innovation in services is discouraged. As a result, the Nation's resources are seriously misallocated. Last year we strongly supported a bill introduced at the request of DOT which would have modernized regulation in this area and

would have introduced increased competition to the ultimate benefit of the consumer. The bill did not get out of congressional committees.

To the extent that food prices reflect needlessly high freight rates imposed by anticompetitive regulation, the regulation should be changed. It has been changed in certain raw agricultural commodities; it is still with us for the transport of the majority of foods that are processed.

The results of deregulation in the agricultural area are encouraging, although studies are somewhat dated and sparse. Fresh-dressed poultry was exempted from ICC regulation in 1953 and frozen poultry in 1956. In the face of a rising general level of regulated truck and rail rates on all commodities, truck rates on these commodities dropped an average of 33 percent for fresh and 36 percent for frozen poultry, according to a Department of Agriculture study.[1] Another study on deregulated frozen fruits and vegetables also showed lower rates.[2]

We believe food prices would be lowered if transportation for other processed food were deregulated. We urge that this step be considered.

I have commented only on those particular aspects of legislative and regulatory policy which may stifle the operation of free competition which would otherwise provide maximum benefit to the consumer. There are, of course, the more direct aspects of farm policy which by paying farmers in one way or another to restrict the quantities produced and marketed or by keeping off the American market low cost supplies of food products from foreign nations, have an immediate and substantial impact on the prices paid by the American consumer.

To the extent that our policy toward the agricultural sector needs to be reexamined, it is likely that these latter areas offer significant potential for reducing food prices. But from the standpoint of competition policy and within the scope of your hearings, I urge that your committee consider, at the very least, the areas I have discussed.

Thank you, Mr. Chairman.

Chairman RODINO. Thank you very much, Mr. Kauper.

The Chair would first like to announce that instead of conforming to the 5-minute rule for Members we are going to try to allow about 10 minutes for each Member and see whether we can't conform to that.

Mr. Kauper, we have had various estimates about the savings to the consumer that might result with more vigorous antitrust enforcement ranging from the FTC's low of $2 billion to a high of $20 billion per year by others.

Now, the question I would like to put to you, very generally, is what can you say to me as to whether the Department is taking the necessary steps to vigorously enforce the laws that are presently on the books in order to attempt at this time to effect any kind of savings to give the consumer at least some relief from skyrocketing prices?

Mr. KAUPER. Mr. Chairman, first of all I am not quite sure what that estimate is based upon. There are a wide variety of estimates and they include all sorts of things as to what kinds of conduct they are keyed to.

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[1] U.S. Department of Agriculture, "Interstate Trucking of Fresh and Frozen Poultry Under Agricultural Exemption", 1–3, 12–13, 20–21 (Marketing Research Report No. 224, March 1958).

[2] U.S. Department of Agriculture, "Interstate Trucking of Frozen Fruits and Vegetables Under Agricultural Exemption" (Marketing Research Report No. 316, March 1959).

Chairman RODINO. Well the FTC's study, Mr. Kauper, had a low estimate of $2 billion of savings which in itself is a very substantial one, even if we could realize that the consumer would be helped.

Mr. KAUPER. I think the only point I was trying to make Mr. Chairman, is when one talks about what could be called monopoly profit I think we have to recognize that not all monopoly profit is unlawful. That is the only point that I was trying to make.

Apart from that, it is certainly our intention to continue, as we have done in the past, to enforce as best we can the law as it appears to exist.

Now, as I indicated, and I think you have another letter from me which sets forth a number of cases which we have filed in the last several years, there has been a good deal of activity on the price fixing front, which is the most obvious form of anticompetitive behavior.

You will note, and indeed my statement notes, that a number of those cases are in two industries, bread and milk. These are industries in which there has been a continued practice with respect to price fixing, and those prices we monitor regularly, looking for discrepancies from one area to another which may give us an indication that price fixing is going on. Those are highly standardized commodities, both of them.

Differentiated products are more difficult. We also, of course, are continuing to monitor merger activity, although I think we have not seen within the food industry as such the same degree of merger activity that we have seen in a number of other industries.

Now, on a somewhat broader front, I think that the estimates which I have seen, and which perhaps include those to which you are referring, rest in part on certain assumptions about the behavior of concentrated industries; that is, that we have a number of concentrated industries and that there is an assumption that they have the ability to extract a certain amount of monopoly profit. I think in general, and I think Congressman Hutchinson referred to the fact, that we do not have the degree of concentration in most sectors of the food industry that we have in a number of others.

Now, I say that with a caveat because one cannot talk about something called the food industry. There are obviously submarkets within that which are the realistic economic markets, and there are some areas in which there is a fairly high degree of concentration. Most obvious, I suppose, the one that comes to everybody's mind is the dry cereal industry, and the Federal Trade Commission is proceeding right now with a case in that industry.

There are a number of difficulties with that sort of litigation. We do not have, as far as I am aware, any of the processed food industries in which we have anything really like a single firm monopoly. So I think, Mr. Chairman, in answer to your question, we are trying to focus in large part on anticompetitive practices, boycotts, price fixing, various kinds of exclusive arrangements, territorial arrangements and so on which are the most common vehicle, I think, in this industry for extraction of above competitive price other than various forms of regulations which do also exist.

Chairman RODINO. Mr. Kauper, in the course of your statement you make some strong suggestions on the need for Congress to reexamine the background of some of the legislation that provides some of the exemptions. And calling attention to the fact that perhaps in the exercise of this regulation that there has developed some activities that

might be at first competitive markets, and in your statement you specifically invite reexamination of the basis for the Capper-Volstead, and yet I note that in your reply letter of June 9 to ours of May, in which we asked certain questions and asked the Department to provide certain information, you did not mention this very significant observation that you make here.

I would like to know what happened in the interim between your reply letter and the start of these hearings today, because it could make what I consider to be at least at this time an important reassessment of the legislation. Is this the first time that you have drawn Congress' attention to this point? And I mean Congress' attention because I am aware of the fact that a study was developed in 1955, and it was not a unanimous report, I believe, of a commission.

But, I do not know whether or not this was ever significantly and meaningfully called to the attention of Congress, and I would address this question to you.

Mr. KAUPER. I think, Mr. Chairman, in the first place with respect to your calling attention to the fact it was not in the letter, I do not know why it was not in the letter. We were trying to get the letter to you in advance, giving you the information on cases filed. I guess I assumed I was going to raise it here.

As you may know, 2 weeks ago I appeared before the Dairy Subcommittee of the House Agricultural Committee and I raised a number of questions about marketing orders, dairy co-ops and the Capper-Volstead Act at that time. So, this is, I think, not the first time that I have raised the question.

I do not know, Mr. Chairman, whether the Division in the past made such a suggestion or not. I would be rather surprised if it had not since this is a continuing problem to us.

So, I do not know whether that answers your question. It is certainly not any change of heart from my point of view.

Chairman RODINO. Well, I recognize that. But, I really wanted to call attention to the fact that you did make this observation, and it is very significant, I think.

And again, in my judgment, it points up the need for this close cooperation and this exchange of information which seems so vital in order to be able to develop the kind of legislation that is going to be protective of the public, both on the part of the Congress which needs to know, and on the need of the Justice Department and the executive branch of the Government to be able to collect this information.

I note that in some areas of your testimony you say how difficult it has been for you to acquire and to collect this information. Sometimes you make reference to the fact that because of statutory limitations, only certain information comes to your attention.

Whether or not there should be this imposition, or whether or not there should be a further responsibility to gather it up as an enforcing agency, I am not aware, but I hope that this kind of hearing develops this area in order to show the kind of need for information and the kind of alertness that I think is going to be protective of the public. And with that in mind, Mr. Kauper, you stated in your reply letter of June that the Secretary of Agriculture has never exercised his power to take action against farmer cooperative action, exempted from the antitrust laws under Capper-Volstead, when "the price of any agricultural product is unduly enhanced."

You also indicated that this exemption had a substantial effect on prices.

Actually, what steps have been taken to advise the Secretary of Agriculture and the Congress, other than what you have now stated in your prepared statement in this area, in which this price situation is most acute?

Mr. KAUPER. Well, I think our views are fairly well known to the Agriculture Department. Now, I cannot give you a running history as to what happened within a period of time less than about a year ago when I arrived. But, we have had discussions with them about a variety of things in the co-op matter.

I think they are well aware of our view that cooperatives have this effect.

Now, keep in mind that that particular statement refers to the authority of the Secretary of Agriculture under the Capper-Volstead Act, which authorizes him to issue a cease-and-desist order, and then ultimately to go to court. The Department of Justice has itself, of course, challenged co-ops on a number of occasions on grounds not wholly unlike that, although we feel—given statutory immunity—that we have to show the use of particularly abusive practices.

I think that is what Congress' charge to us is, and that is what we are bound to carry out.

If your question is, have we communicated to the Secretary that he should proceed, I guess I cannot give you a categorical yes to that, Mr. Chairman. I do not know of any instance where we have, at least not since I have been here.

Chairman RODINO. One last question, Mr. Kauper.

The Antitrust Division, I would assume, from all you have stated and from your replies to us, conceives that there is some inexcusable inertia in the administration of some of the policies of the Department of Agriculture which have contributed to some of the prices that have been unduly enhanced.

How many times would you say, or can you say, within the past 5 years has the Department of Justice requested, in fact, that the Secretary of Agriculture take action on these products where you believe, concluding from whatever you have before you, that the prices have been unduly enhanced?

Mr. KAUPER. Well, I think, Mr. Chairman, I am not sure precisely what the context is.

With respect to marketing orders, for examples, I can think of one or two occasions when some of our views have been communicated to the Secretary. I think in general, however, and I do not agree I think with your opening preface which was that there have been some kind of inexcusable neglect by the Agriculture Department, I do not believe that is so.

The Agriculture Department has a series of statutes to administer. They have been concerned, I believe, about the problems, for example, of the milk co-ops. They supported the testimony which we gave 2 weeks ago before the House Committee.

So, I do not think that that is an entirely accurate characterization. There are obviously real, or may have been I suspect in the past, a few disagreements over precisely what the statute mandates them to do. But, the statutes, after all, do indicate that the antitrust laws are not to be given full play in this area.

Now, the Agriculture Department administers that statute and is not therefore as the statute reads required to take that kind of fact or into account. If I were at the Agriculture Department I would find that a basically satisfactory explanation of the statute.

It seems to me that is in essence what the statute says. So, I think it would be a mistake to say that there has been some kind of neglect on the part of the Agriculture Department.

I just do not believe that that is, at least in my experience that has not been the case.

Chairman RODINO. Well, I said inertia rather than neglect, which could in effect cause them to bring about some of the results that we see. And I would like to just say this in conclusion, that you have not indicated to me whether or not, in view of something that should be engaging our attention, I think, whether or not your Department has intervened in hearings that have been held by the Department of Agriculture in these areas, in order to be informed, or whether you suggested or recommended that the Secretary hold specific hearings in these areas.

Mr. KAUPER. There has been one occasion that I am aware of since I have been here, Mr. Chairman, in which in connection with a particular marketing order we did initiate steps to take part in the proceedings. The matter came to our attention late and we asked for an extension of time in which to file comments with the Agriculture Department. That request was denied, Mr. Chairman.

Chairman RODINO. Thank you.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. Kauper, can you indicate for the record those particular sectors of the food industry where you believe that possible antitrust violations have been having an appreciable effect on the price structure?

Mr. KAUPER. Well, I think if you—if I might, let us move away from the question of the farm and the co-ops as such.

Mr. HUTCHINSON. Yes.

Mr. KAUPER. Certainly based on our experience over a considerable period of time, there has been considerable difficulty with price fixing on both milk and bread. Now, if your question is, is there price fixing out there still, is it presently having an effect, that is something I guess I cannot categorically answer. If we knew it were there we would sue.

On the other hand, given the fact that there is a history in this industry of a certain degree of price fixing it would not surprise me if it was there, and we are looking for it.

There have been occasional instances of price fixing in some other food industries, but I think not of the same kind and in the same regularized pattern. The easiest kind of product to fix the price on, after all, is a standardized product where there is not a great difference between what the various competitors sell. It is much easier to police and easier to agree.

I do not know that I could point to any other single sector in which price fixing is as prominent.

Now, it is also true that there may be some vertical arrangements in some other industries relating to various forms of retail arrangements. We saw, for example, in the *Topco* case that there may have been some and somewhat similar arrangements in other industries.

There is some question in my mind as to how much that relates to increases in price.

I might add, for the committee's benefit, that we know such arrangements are prevalent in the soft drink industry. In the soft drink industry the bottlers are seeking a legislative exemption to be permitted to continue with that sort of activity. We have opposed that bill, for what it is worth.

At any rate, that is one we know that the Federal Trade Commission is working with. The facts are before the Commission, and it is a matter of relative public record.

I would be hard pushed, I think, to point to other specific restraints that affect the market generally.

Now, there is, of course, another form of price fixing that also affects the consumer, but perhaps a little less directly, and that is a rather common problem in this country on a wide variety of products commonly known as bid rigging. We do have some experience which indicates that at least occasionally in the meat industry for example, there is rigging of bids to public institutions on rather standardized items, hot dogs, hamburgers, that sort of thing.

We try as best we can to monitor those situations. It is not uncommon, for example, for State purchasing agents to indicate to us their suspicion that there is bid rigging, and we may then examine into that situation by use of a grand jury or something of that sort. But, I think, to say there are particular sectors where we know there are specific anticompetitive practices is a rather difficult thing to do.

Anticompetitive practices appear in all sectors of the economy from time to time, and I do not think we can really single out one and say here is a peculiar villain in this regard.

Mr. HUTCHINSON. Well, I thank you, Mr. Kauper, for that response. I think it has been informative.

I know nothing at all about this, but I have heard from some of my colleagues in Congress that they have observed some small brewers are being put out of business by some large brewers. Do you consider beer a food or is that something else?

Mr. KAUPER. I guess I did not include it in that description because I am not sure it falls in that category. I guess to probably a number of people it probably is.

Mr. HUTCHINSON. What about soft drinks?

Mr. KAUPER. I think it is true, Congressman, we have received a number of complaints about pricing. You are talking I think primarily about the two major national brewers. An investigation of those charges involve allegations of price discrimination, and for that reason those investigations are being conducted by the Federal Trade Commission.

As you may know, over a long period of time the enforcement of the Robinson-Patman Act has been by informal agreement between the Department and the Federal Trade Commission.

Mr. HUTCHINSON. That raises my next question, Mr. Kauper. I am interested to know what kind of an operating arrangement exists between the Justice Department and the Federal Trade Commission with regard to antitrust enforcement.

Mr. KAUPER. Well, I think there are two somewhat different sorts of arrangements. There are certain areas in which it is more or less understood between us, and has been for some time, that certain kinds of

actions are brought either by them or by us. The Robinson-Patman Act is a good example. We do not bring Robinson-Patman actions in all complaints that seem to raise Robinson-Patman issues. If they are addressed to us, we refer them to the Federal Trade Commission.

Similarly, price fixing carries with it a criminal sanction, and is normally prosecuted by the Justice Department. The Federal Trade Commission, after all, has no authority to bring criminal proceedings.

We do, and price fixing cases are almost invariably brought as criminal actions.

In a wide variety of other areas, there is an informal liaison procedure; that is, when a matter comes to their attention or comes to our attention, or if we simply decide we want to start a particular investigation, a check is made with the Federal Trade Commission as to whether they are proceeding, and then a decision is arrived at as to which of the two of us will proceed.

Now, again, there are certain areas in which over a period of time, because of expertise or other reasons, it is more or less understood that the Federal Trade Commission will proceed or we will proceed. Matters involving the soft drink industry, for example, typically are handled by the Federal Trade Commission.

As you may know, they also have guidelines dealing with mergers in the retail food business, and most of those matters are handled by the Federal Trade Commission.

This is something which is always, I think, a bit of a mystery to people because it is a rather informal arrangement. It does not set down in an elaborate set of written procedures. It works very well, even though it is not so written down, and I do not think that there are any particular misunderstandings between us as to who is going to do what.

Mr. HUTCHINSON. It is a line of demarcation which is of long standing?

Mr. KAUPER. Yes; I think that is true.

Mr. HUTCHINSON. I thank you, Mr. Kauper, and I guess my time is up or I would question you further. But, I yield the floor now, Mr. Chairman.

Chairman RODINO. Thank you very much.

Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I am going to start off on a little bit different tack, if I might, with the witness. I am sort of a simple person, I guess, and I would suggest that perhaps we start with effect and see if we can trace it back and find out what the cause is.

Have you ever heard a saying, well, that's just chickenfeed? Now, down where I come from, we used to use that term talking about something of relative insignificance, saying, that's just chickenfeed. We do not do that any more. Just the other day I learned about a producer of broilers in Alabama who had destroyed thousands and thousands of baby chicks because that "just chickenfeed" was so expensive that it was going to cost him about a nickel or a dime a head or something like that to raise them up to merchantable size.

Now, it seems to me that one of the tremendous problems we have got in high food prices, is in the price of feed grains. I know on the consumer level, which oddly enough is the farmer primarily, the con-

sumer of feed grains primarily is the farmer who raises either chickens, or raises cattle and uses the feed grains naturally to fatten the beef or raise his chickens.

Now, going back up the line to the producer of the feed grain, and I just ask you if you have thought about it, and if you can enlighten me and the rest of the committee, as to any monopolistic practices in this industry that would indicate price fixing or anything of that nature?

Mr. KAUPER. I do not think we have. I am not aware of any such practices. I think you have put your finger on the problem, however, which I did not address in my statement because I was not altogether sure what the scope of this was.

But, in a way what you are suggesting, and I think quite accurately, is there is a certain arbitrariness about talking about restraints "in the food industry" because restraints which are not in the food industry itself may affect the food industry.

Now, you have used feed grains as an example. I suppose that one could say that is technically within the food industry.

But, we have, for example, been conducting investigations with respect to things like fertilizers, other things which the farmer himself has to purchase, and where there are restraints in those markets that in turn affect the price of what the farmer has to charge, and so on and so forth. So, there is a certain arbitrariness in suggesting that we isolate out for special treatment restraints in any particular sector or a restraint in one may affect a variety.

Now, on the feed grain question, I am not aware of any practices. I would welcome any information which you have which may be useful to us.

Mr. FLOWERS. Well, I am searching. All I know is that this year soybean meal, for instance, has gone several times over what it has ever brought.

Mr. HUTCHINSON. It is a question of supply and demand.

Mr. FLOWERS. I doubt, I would say to my colleague, that supply and demand could make that much of a difference. We have had shortages in the marketplace of things like that in the years gone by, and it has never created this kind of situation.

Perhaps again, I think one of your themes was that perhaps there has been too much Government regulation. Perhaps there has been too much Government tampering with supply and demand. The sale of grain to another nation perhaps when we did not anticipate a shortage here, and when we certainly did not anticipate the tremendous weather problems that we have had during the planting season this year.

If that is the case, Mr. Hutchinson, we are going to have a lot of soybeans knocking around next year that ought to be pretty cheap, I would say.

But, that was my question, and apparently you folks would like to know the answer too.

Again, looking at the effect and trying to trace back and find out what the cause is, I think that is one way of getting at the problem. The laws that are on the books could be argued by some that they are enforced too stringently, and by others that they are not enforced enough, I guess.

Mr. KAUPER. We get both arguments simultaneously all of the time.

Mr. FLOWERS. According to where you stand, or according to where you sit, I guess. I would be concerned a little bit about one aspect.

How many of the cases that your Department brings actually go to trial?

Mr. KAUPERS. Well, stated a different way the rather standard figure is that somewhere around 75 percent are settled.

Mr. FLOWERS. Most of them are settled?

Mr. KAUPER. That figure includes criminal cases where the judge takes a nolo contendere plea over our opposition, and it does not go to trial. And we frequently, of course, voice our objection to that, but I think that is about the historic figure. There may be some people on your staff who know the figure better than I.

Mr. FLOWERS. One of the things written into the antitrust law is the potential, at least, of civil action by a plaintiff complaining treble damages which would normally be begun, I would say, upon a well known trial. Usually they would go out after the publicity of the trial on the fact that someone was found guilty in a trial situation.

In the sense, the more trials you have, the more deterrent the law would be. Would you not agree with that, sir?

Mr. KAUPER. Well, I think that argument has been made. I am really not clear in my own mind whether that is true. There are obviously many deterrents one can talk about. One would be an increase in the Sherman Act penalties, which we have supported. There are a variety of other things which could be effected.

I think your assumption, which is that private suits tend to be filed as a result of a well-publicized trial, may have been accurate at one time. I am not so sure it is any more.

We have a highly specialized plaintiffs antitrust bar, and it is not at all uncommon for civil cases to be filed within several days after we file a complaint, and those matters are filed very closely, and I think in general the case may be filed.

Now, it is true, and I do not want to leave you with the wrong impression, that if a consent judgment is entered, the private plaintiff does not secure the benefit of the findings of fact and so on which he would otherwise secure if there was a trial, and if there is a finding that a violation has occurred.

So, there is obviously that difference. The same is true with respect to the nolo contendere plea. But, I think that this question of what deters is one that has been discussed a great many times.

Certainly, the treble damage action and the threat of it is a significant deterrent. No question about that.

There are, however, I think a variety of others. The question of settlement always raises, of course, another question—the use of our own resources. Trials, and discovery leading to trials, take a great deal of time and a great deal of effort, and a great deal of manpower, unnecessarily diverts resources from other investigations and so on.

Mr. FLOWERS. You would need additional personnel if you pursued more trials?

Mr. KAUPER. That is right. Trial process in an antitrust case, rightly or wrongly, is a very cumbersome business.

Mr. FLOWERS. What can you see of the large food chains or firms, and I will just use an example, the A. & P. in this area, Safeway,

Giant, do you see any problem at this time in their operations in this area?

Mr. KAUPER. Well, I think in most markets that I am aware of, there is not the degree of concentration in the retail market which would lead one to believe that the prices at the retail level are being unduly enhanced.

Indeed, as you may know, one of the complaints made against A. & P. is precisely the opposite, that when A. & P. went to its so-called WEO pricing, that it engaged in predatory pricing. That is a matter which, as I recall, the Federal Trade Commission has looked at. But, that is quite an opposite complaint from the other, and in a situation where as I recall A. & P.'s market share was declining rather rapidly.

So, I do not think one can characterize the retail market as such as peculiarly concentrated. And certainly we have seen no instances of price fixing among retail grocers.

You have to keep in mind that a retail grocery sells a great many products. It is very difficult to fix prices on all of those products, and if you did not fix the price on all of the products you sold, after all, and one of our experiences in price fixing is that among other things that there does not tend to be a great deal of honor among thieves They tend to cheat.

So, if you are going to be effective you have to be able really to fix the price on virtually everything you sell, because, you see, they can get around and sell something else.

Mr. FLOWERS. But in the Thursday afternoon paper they have the double page foldout on each one of the food chains and the identical items cost 19 cents, 29 cents or 89 cents or whatever. These are either extremely competitive or somebody in that marketing department has made a telephone call across town and said well, now, what are you going to charge for today, and let's get together on it.

Mr. KAUPER. We have no evidence that I am aware of that the latter is occurring. I think you have put your finger on a problem which is that everybody is selling basically the same product at virtually the identical price, which may indicate a very high degree of competition; namely, you cannot really sell it at a higher price if you wanted to.

Mr. FLOWERS. Thank you, sir. No further questions, Mr. Chairman.

Chairman RODINO. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

We are concerned here, of course, with the possible relationship of high food prices and the antitrust laws. But, it comes to my mind that perhaps the high food prices are not as high as other costs in the economy.

In other words, do you have any information that food prices have risen higher than wages or the cost of other consumer goods?

Mr. KAUPER. I do not think I could give you a simple answer to that. That is the sort of very generalized economic analysis that I suppose the Council of Economic Advisers can answer better than I.

Mr. MCCLORY. Well, has it not come to your attention that food prices have risen higher, for instance, since 1965 than other prices, to the point where you are compelled to see whether or not there is some scheme or device that has been developed by producers, manufacturers, or retailers?

Mr. KAUPER. Well, I guess my impression, and I could not point you to a specific report that would lead me to this conclusion, is that food prices in general have tended to rise somewhat higher, at a somewhat more rapid rate than other prices.

Now, that may be a very false comparison from an economic point of view, because each food product is in a sense its own market, and what you would really have to do would be to compare that with other submarkets.

I think in general my impression is that in 1972 that food prices did in fact go up if you take them as a single entity, did, in fact, rise somewhat higher than other prices.

Mr. MCCLORY. You are talking about last year, last month, or what?

If you are talking about the last 10 or 15 or 20 years, I think your impression is wrong.

Mr. KAUPER. No. I said in 1972 and into this year.

I did not mean to say over a long period of time. Indeed, it may be to the contrary over a long period of time.

Mr. MCCLORY. Now, there is a case before the Federal Trade Commission with regard to dry cereals. I think you made some reference to it. Do you have an opinion as to how the dry cereal manufacturers might be affected by the antitrust laws, or do you have any recommendations to this committee with respect to what is alleged to be a shared monopoly which has developed, not necessarily by design, but is there nonetheless?

Is there anything that you feel the committee should do about that, or the Congress should do about it?

Mr. KAUPER. I think, Congressman, the Federal Trade Commission has a major proceeding at the moment involving the dry cereal manufacturers.

I am frankly a little reluctant to comment on that because I find that things that I say about particular industries tend to get quoted and relied upon in other places, and I do not think it would be appropriate for me to be in a position of attempting to give my views as to what the Federal Trade Commission now has in hearing procedure.

Mr. MCCLORY. Is the Justice Department actively involved in that proceeding?

Mr. KAUPER. No, we are not. That is a Federal Trade Commission proceeding, and I would think from both their point of view and ours that they would be the appropriate ones to respond to your question about that.

Mr. MCCLORY. You made reference to the poultry industry, and I am concerned as my colleague Mr. Flowers is about a producer who would deliberately and freely destroy, as I understand it, 60,000 baby chicks to avoid incurring a supposed loss.

You made reference to the poultry industry, and the livestock industry, and to the milk industry as being involved in these cooperatives that are exempted under the Capper-Volstead Act. Are there any other industries that have come to your attention where a large percentage of the production is controlled by——

Mr. KAUPER. Cooperatives?

Mr. MCCLORY. No, no. Controlled by a few large corporations or enterprises?

Mr. KAUPER. No; I do not think I could point to any particular submarket of agricultural products where you have really very large control by corporate enterprises.

There are some markets where there are cooperatives which have quite a high percentage of production, but I would not put that in the same category as what I think you are talking about, which is a large corporation, for example, which may not even be involved generally in the agricultural business.

Mr. MCCLORY. Well, there has been concern recently with the cost of lettuce. I have heard that a very high percentage of the lettuce production is controlled by a few corporations.

Do you know anything about that?

Mr. KAUPER. Well, I can't give you an exact market share, but, if you are taking the total market for lettuce, I think you would find that the percentage is not what we would regard as anything like a concentrated market in the hands of a corporation.

Now, I do not know what the role of cooperatives in the lettuce industry as such is. But I am not aware of the fact that there is a major co-op which controls the bulk of our lettuce production.

Mr. MCCLORY. You make quite a point of not having sufficient information upon which to proceed under the existing laws. Are you now volunteering that you really do not have sources of information sufficient to proceed?

Mr. KAUPER. Well, let me comment on that. Keep in mind, we should keep in mind that part of that statement which talked about this sort of data was in the section evaluating such things as the role of cooperatives; that is, in arriving at various policy judgments.

Obviously in terms of whether antitrust violations exist, we have the normal tools which are available to us.

I think there is, however, also something of a misapprehension as to what authority we have in obtaining information. Unlike the Federal Trade Commission, we do not have authority to seek production of material to provide and put together economic reports, analyses of that sort.

We are basically a law enforcement agency, and apart from what we can obtain through public or quasi-public sources, we have two primary means of obtaining information.

One is through the issuance of civil investigative demands, where there must be some probability of violation before we can issue the demand, or through the use of a grand jury.

Those are our two methods of compelling testimony and production of documents or data, and we are, therefore, to a considerable degree in formulating general policy, confined to facts made available by those who do gather such data.

Mr. MCCLORY. Are you requesting from the Appropriations Committee additional funds for the establishment of an active investigative agency which would go beyond just perusing the existing public literature in an effort to uncover in the area of food production and processing and so on various elements that may be contributing to the high cost of food and which are possibly violative of existing antitrust laws?

Mr. KAUPER. Well, what we are trying to do at the moment, Mr. Chairman, in fact it is in the process at the moment, is to bolster

primarily our economic unit which is in part where the sort of thing you are talking about would be done. We have a number of new economists coming in, and there is some restructuring of that operation going on. Food prices will be part of what they are worrying about, clearly.

Now, I am not going to say that that is going to be the only thing they are going to be concerned about. There are a great many problems in the economy. Food is one of them, but we cannot ignore all of the others at the same time.

Nor do I want to leave you with the impression that in trying to decide enforcement policy we simply peruse public sources. I have indicated we have two mandatory ways of getting material. Obviously we can try to obtain material from a wide variety of other governmental agencies.

We have complainants which provide us with materials voluntarily. There are other ways of doing it, but in terms of the broad economic study, we do not have the authority to go out and compel people to give us annual reports, for example.

But I think in general, in terms of prosecution of cases, we are able to get the information we need.

Mr. McCLORY. Mr. Chairman, I think it would be most helpful to the committee, since this is directly involved in our present oversight hearings, for you to elaborate in some detail, if you can, on this expanded agency in the Department that is being developed.

Chairman RODINO. I think that is a good suggestion, and pursuant to that I would like to direct Mr. Kauper's attention to the fact, and I would like to know whether or not he is aware of it, that the June issue of the News, U.S. Department of Agriculture, which is issued by the Economic Research Section of the USDA, pointed out in a rather meaningful and significant manner that the imposition on June 13 of the price ceilings on all retail and wholesale prices means that retail food prices for 1973 will probably average about 12 percent above last year and that the first 4 months of 1973 were characterized by the most drastic rise in food prices in more than 20 years, and that the average food price increase increased an average of over 2 percent per month.

I would assume that the Department is aware of this, and this is information, since it is public information, which comes to the attention of the Department?

Mr. KAUPER. Oh, yes, and it is on that kind of basis that I indicated a moment ago that my information was that food prices were rising at a higher rate. Sure, that kind of information is available to us all the time, Mr. Chairman.

Chairman RODINO. When you talk now about expanding the Department to bring in economists to be able to be helpful here, is this what is contemplated at this time in view of the fact that this is an area of concern where economists might be helpful as well?

Mr. KAUPER. Well, I think——

Chairman RODINO. In making value judgments for the Department?

Mr. KAUPER. Let me, if I might, indicate that we have had an economic section for some time. My concern has been to upgrade its operation, to have it more involved in questions of planning, allocation of our resources, and what we should be doing as a matter of policy.

That is what this is designed to do. I do not want to leave the impression that it is peculiarly aimed at the food prices as such, because it is not.

Obviously, questions of the best use of our resources involve a number of industries and a number of policy judgments, so that it is aimed at doing that.

Now, we, of course, obtain general economic sorts of publications put out by the Department of Agriculture as well as in many other departments, State agencies and so on. But, that does not answer the question to us as to whether and to what extent we should devote antitrust resources, and that is in part what we are hoping to do.

Mr. McCLORY. Mr. Chairman, I have just one more question if I may, and I do not want a long answer.

If you can answer this just "Yes" or "No," it would satisfy me. I just want to know whether in your opinion the proposed reorganization plans of the executive branch of Government, as proposed by the President, would contribute to a more efficient operation of the Department of Justice in this area in which we are inquiring?

Mr. KAUPER. I suppose to a degree; yes.

Mr. McCLORY. Thank you.

Chairman RODINO. Mr. Kauper, I wonder if you can give me an answer to this that might at least cause me to, in my mind, conclude that you form an opinion when you get some of this information.

Framing the question in this way, with a 1-year rise of 16 percent in retail food prices, would that mean the presence of price competition or suggest undue market power? Is there anything in such a situation that would cause you to make a conclusion one way or the other?

Mr. KAUPER. On that data alone?

Chairman RODINO. Right.

Mr. KAUPER. I would say there is not.

Chairman RODINO. Would it engage your attention to look into the matter to try to determine whether or not?

Mr. KAUPER. Oh, yes. I think it would do that. But I think it does not in and of itself afford a basis for concluding that there are antitrust problems in those industries, which among other things presumably would, if you are talking of a rapid rise, would have all of a sudden come into being.

Chairman RODINO. Well, does this kind of situation trigger information gathering or investigation?

Mr. KAUPER. Well, I think yes. I think any situation where prices are behaving in a somewhat extraordinary way, or where there are shortages, it is the sort of thing that we are going to look at. But, I think that, as I understand your question, as to whether or not that figure alone indicated the presence of this kind of practice, I think the answer to that is no.

Chairman RODINO. Mr. Seiberling.

Mr. SEIBERLING. Well, thank you, Mr. Chairman.

Just following on the chairman's question, if that happened in the tire industry, what conclusions would you tentatively draw?

Mr. KAUPER. You mean if the price suddenly rose 16 percent?

Mr. SEIBERLING. Yes.

Mr. KAUPER. Well, I suppose with a handful of manufacturers it might suggest some sort of anticompetitive practice.

Mr. SEIBERLING. So, you are making a distinction on the basis of the different structure of the food industry from that of industries where oligopoly is involved?

Mr. KAUPER. I think it would be a little harder to assume the price so suddenly increased by that amount in a particular industry that was highly concentrated, but you must keep in mind that even there it is possible that this would be the result of something which investigation would show, for example, was a very substantial wage increase, a shortage of some supply, it could be a variety of things, so that I think that that price movement in itself, may, depending on how it is done, the timing of it for example, may give us an indication that there is a problem here.

On the other hand, there may be a perfectly practical explanation, but I think probably we would take a good, hard look at it.

Mr. SEIBERLING. From past experience, I would say you undoubtedly would.

Let me commend you for a very well balanced and a very excellent statement, which I thought was quite thorough and really gave the committee some insight.

I would like to address myself to the situation which may exist whenever we have a condition as we do today of Government intervention in the pricing structure of the country in terms of price controls. And, of course, to some extent in the food industry with the growers where there has been permanent intervention, and I would like to go back a little bit in time. It is my understanding that there were a large number of trade associations that were prosecuted in the 1920's for cartel-like activities. That began in the price negotiations between the Government and these groups in World War I, and long after wartime conditions dissipated they continued their pricing influencing activities.

Is that in accordance with your understanding?

Mr. KAUPER. I think that there is a large degree of truth to that. I certainly think historically if you take that period that there is some indication that when controls went off, or the negotiation arrangement stopped, that the practices continued. This is why there is always great concern, it seems to me, about the continuation of an anticompetitive effect after you lift restraints, Government imposed restraints.

Mr. SEIBERLING. Well, then, the NRA was torpedoed, and my recollection is that a similar situation existed after the end of the industry groups visited under NRA?

Mr. KAUPER. That is correct.

Mr. SEIBERLING. Is it also correct that the famous electrical equipment industry cases that were prosecuted in the 1960's got their start in industry meetings held in World War II under the auspices of OPA advising, which was supposed to implement government price controls?

Mr. KAUPER. I believe that is true, Congressman.

Mr. SEIBERLING. And similarly, during the Korean war is it correct that among the actions that were taken to prevent cartels, the Justice Department provided guidelines for the committee programs that were formulated under the Defense Production Act of 1950 which would tend to try to minimize this kind of development?

Mr. KAUPER. I think that is also correct.

Mr. SEIBERLING. All right.

Well, now, that gets us up a little bit closer to the present.

Let us start with the initiation of phase I in August of 1971. Could you tell us what liaison the Justice Department and your division, particularly, sat up with the Price Commission or what advice you provided the Price Commission or the Cost of Living Council about procedures to insure continuing competition?

Mr. KAUPER. Congressman, I am going to have a little trouble answering that because most of that development was before I arrived at the Justice Department.

Mr. SEIBERLING. I know.

Mr. KAUPER. My impression is that we have counseled the Price Commission, urged them not to handle matters jointly with members in the industry.

For example, we have received from time to time, as I recall, information from the Price Commission about particular behavior which seems to have caught their attention. But I am not aware of much more than that at this point.

Now, we, of course, now are into another kind of situation, and I think you are quite right in pointing to the sort of risks that are involved, and the risks you have pointed to, it seems to me, primarily are the risks which arise when you permit collaboration whether with or without governmental involvement. But, your particular situation says we are to get together, so this is what you are to do, or you tell us what you would like to do and then we will tell you in response what you can do.

There are obviously some other risks as well which are, if you do have oligopolistic industries, that prices are pegged, and maybe are used as benchmarks for prices. And it may not be collusive, but it may give you that degree of inflexibility. So clearly there are problems.

There is no question about that. Whether those problems will continue on beyond the termination of controls I think is something that we really just do not know yet. Your recitation of the historic facts clearly suggests the danger, no question about it. I have commented on that before.

Mr. SEIBERLING. Yes.

Well, when I was in private practice, I sat in myself on these industry advisory committee meetings, and I shocked the Government representatives who were present by refusing to let my clients participate in certain discussions which the Government itself wanted to do. And they said, well, this comes under an Executive order, and I said, well, I do not care about the Executive order. There is no statutory exemption as far as I am concerned from the antitrust laws, and I broke up the meetings.

And there was no Justice Department person present, I might say, although there was counsel for the particular Government department there. And it seems to me that this was a very grievous omission.

Did you want me to yield to you?

Ms. JORDAN. If you are through.

Mr. SEIBERLING. Well, I am not quite through.

Well, I would like to ask you one thing now, getting to the food section.

I notice, and maybe I am charging into some areas that you were going to talk about, but I was trying to find out what the Department of Justice does to participate in hearings establishing a marketing order or procedures held by the Department of Agriculture, and I wondered to what extent you do?

Mr. KAUPER. Well, I think what we have done, and here again I am not sure what historical pattern we are in, we have to some degree tried to develop with the Department of Agriculture the kind of procedures that ought to be employed in terms of hearings, that sort of thing, what the interest of the nonmembers of co-ops, for example, should be. How they should be protected and so on.

My impression is that we have some discussions at the moment with them, at the moment on one marketing order, some of which—and there is also a delicate question in these matters as to how far they are a concern of the Antitrust Division and how far they are not. One of our concerns has also been with the imposition of controls upon people who are not consenting parties, and if you were to examine my testimony before the Dairy Subcommittee of the Agriculture Committee you would find that that is one of our primary concerns in dealing with the general farm bill and the provisions dealing with dairy co-ops which are in the provisions amending, or which would have amended, the marketing order provisions of the statute.

And it was a blend of the two things. It was a blend of the marketing order procedures and recognition of co-ops in a way which we felt was going to impinge upon the rights, among other things, of those who were not members of co-ops. This has been one of our major concerns. The Agriculture Department, I think, is aware of it, and I think is not insensitive to it at all.

Chairman RODINO. The time of the gentleman has expired, and since we are going to be going to the floor I will recognize Ms. Jordan.

Ms. JORDAN. Thank you, Mr. Chairman.

I want to follow up on what you were just stating about milk prices. Last fall the dairy cooperatives obtained a higher marketing order or support price from the Department of Agriculture. Now, that amounted to an additional $500 million a year in terms of cost to the consumer and contributed to inflation. My question is whether that price increase was the result of competitive market forces?

Mr. KAUPER. Well, I think that I am not—let me preface this by saying I am not one of the world's greatest experts on milk marketing orders, which as I am sure you are aware are very complicated things.

I do not know whether that specific increase was a result of some kind of anticompetitive activity by the producers.

Now, I do not think, however, that was quite what your question was. I think what you are really asking is, does the milk marketing order necessarily reflect competitive conditions?

Ms. JORDAN. Yes, sir.

Mr. KAUPER. I think almost by hypothesis it probably does not. That is, the milk marketing order, while it is based in general upon supply and demand through a rather cumbersome set of formulas, involves some factors which are clearly designed to set a controlled price. It is almost impossible, it seems to me, to assume that that is the same price that would result if there was a free competition in the market.

Ms. JORDAN. I think you are right, Mr. Kauper.

Going to the enforcement policy, practices, and procedures of your Division, and in the civil and antitrust matters relating to the food industry specifically, how many such cases have you filed in, say, the last 4 years?

Mr. KAUPER. I do not know that I have a count. We have supplied, listing those cases in a letter to the chairman. I could go through them and count them. I assume that the letter is available to the members of the committee.

Ms. JORDAN. The letter is available.

I did not understand that those cases related specifically to the food industry.

Mr. KAUPER. No, but there is included in the letter, there is included a listing of each case. Those are the cases we believe, and there is obviously some disagreement I suppose as to what is the food industry, but we believe were directly in the food industry.

Ms. JORDAN. Now, as to the cases that you did bring, which are directly related to the food industry? Did they result in judgments—litigated judgments—being handed down?

Mr. KAUPER. Some of them have gone the full route to trial, and some of them were settled by consent decree, and some where referred—they are criminal cases in which, for example, there were substantial fines imposed.

Now, a number of those referred to, of course, are still in litigation. We have three co-op cases that at least involve co-op issues: The AMPI, Dairymen's, and National Broilers cases involved co-op issues.

Those are quite recent cases. Two of them were filed within the past about 4 months.

Ms. JORDAN. All right.

Mr. Kauper, I am hurrying on because I see that the time is running on.

Mr. KAUPER. Yes.

Ms. JORDAN. In those two cases, how did they come to your attention? I mean, how did they come to the attention of the Antitrust Division of the Department of Justice and how did you proceed to the point of litigation with them?

Mr. KAUPER. I think in the case of the Dairymen's co-op, this was a result in part of complaints we received.

Ms. JORDAN. From whom?

Mr. KAUPER. Well, a number of complaints came from independent dairymen who felt they were being oppressed in one way or another. Complaints were received from some smaller processors. On top of that, we have had an involvement in the milk situation in a large part of the price fixing at retail and wholesale levels which almost necessarily involved a considerable familiarity with the co-op kind of operation.

After all, that is a major part of what goes into what the wholesaler, processor had.

The National Broilers case, I am not quite sure how that came to our attention. I do not know that I can give you an answer.

Ms. JORDAN. The reason I asked the question is that when people have complaints about the price of food, rising costs, and when they want to know whether there is any violation of antitrust laws, how do they get in touch with the Department of Justice, with the enforce-

ment arm of the executive branch, so that some action, remedial action, can be taken on their behalf?

Mr. KAUPER. I think the easiest way is to write me a letter.

Ms. JORDAN. And you would respond?

Mr. KAUPER. Yes, we would.

Ms. JORDAN. Do I infer from your statement here today, Mr. Kauper, that you see some relationship, either direct or indirect, between the antitrust exemptions for agriculture and the cost of food?

Mr. KAUPER. Oh, I think clearly there is a connection, yes.

Ms. JORDAN. And is that a connection that your Department would be interested in exploring any further? You say that the Congress ought to reevaluate these exemptions. Would you think that your Department would have no role to make in terms of recommendations to this committee, or to any committee of the Congress, or is that something that you could explore and make a determination and a finding on?

Mr. KAUPER. No. I think my feeling on that is that one of the great roles which the Congress can play is in terms of gathering information, and you have much more ability to do that than we. I think that if information is gathered by this committee we would be more than happy to evaluate what we see the situation as being, and try to provide some assistance to the committee.

Ms. JORDAN. I have one final question, Mr. Kauper, and it is about a statement in your letter to the chairman which indicated that you could not respond to his questions concerning records of investigation for a given period from 1968 to 1973. You said, "our system of record-keeping makes it much easier to respond for the period January 1, 1963 through April 1970." Would you explain that to me?

Mr. KAUPER. That is one of the areas where my impression is we are still gathering the information, trying to put it together for you on the other period. The earlier information we were able to obtain from a computer, and this goes particularly as I recall to the question of investigations as opposed to field cases.

The computer operation was discontinued and we are, therefore, tabulating that information by hand. And I might add that we are going back to the computer. But, that is the reason for that rather peculiar gap in there simply in terms of our own ability rather quickly to give information of that sort to you.

Ms. JORDAN. Yes.

Thank you, Mr. Chairman.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. Kauper, I was interested in your statement where you indicated you are going to have a high enforcement priority by the Department concerning the area of foods.

Do you have any guidelines that help you to determine priority industries for examination?

Mr. KAUPER. I cannot say we have any written guidelines, no.

Mr. MEZVINSKY. How much of your $12.5 million appropriation goes to the food industry investigation?

Mr. KAUPER. Well, I think I do not know that I have a figure that I can give you on that. As far as I know we do not break things down quite that way.

What that says, in essence, is that because of the nature of the problem, more resources are being put into it than have been in the past.

Now, when you are asking what percentage——

Mr. MEZVINSKY. So you have no guideline budget or otherwise?

Mr. KAUPER. No specific breakdown.

Mr. MEZVINSKY. You have no guidelines concerning what you do, concerning the priorities of certain industries? In other words, do you plan your enforcement program around the most inflated segments of the economy? The most inflated segments now happen to be food and oil.

Do you plan your antitrust activity accordingly?

Mr. KAUPER. Yes; we plan, and I might add that we do not plan as well as we should, and I am the first to say that. And I have said it a number of times, Congressman.

This is one of the reasons we hope to get some additional economists help in terms of planning. There is no question that the Division has been in large part a responding kind of organization. We are trying to make some changes in that, and I recognize the degree of criticism which is contained in the question. I am sure I would not disagree with it.

Mr. MEZVINSKY. Now, let us get back to agriculture. I am interested in whom you talk to at the Agriculture Department.

Specifically, with whom do you communicate concerning particular matters of the food industry and what action should be taken or should not be taken?

Mr. KAUPER. Well, I do not know that I have directly communicated with anybody recently. One of the things you have to keep in mind, Congressman, is that on particular matters, particular cases, we do not make any attempt to communicate with other departments. There is always a feeling that it is inappropriate, and, I think, quite correctly so.

In terms of general materials from Agriculture, what they are doing, what problems they perceive, I know we have had communications with the Agricultural Research Bureau, for example, and their economic staff which has been helpful to us on a number of occasions. And I hope that some of it has flowed back in the other direction.

Mr. MEZVINSKY. Now, in view of the comments made by Mr. Flowers concerning grain, I want to target in on that issue.

We have had a wheat deal that went to Russia, which I understand your Department is investigating. I also understand that two major grain companies, Continental and Cargill, together handle about 50 percent of the world's grain.

A recent study done by Dr. Ray Goldberg, of Harvard, points out that some six exporters handle about 90 percent of the U.S. wheat exports. A Purdue University report concluded that there was market domination of both pork, grain elevators, and storage capacity by major grain companies. What is being done in view of this matter? Is Justice following up reports that the grain companies have cornered the soybean market and may be responsible for the unusually high price of soybeans that finally led the Commodity Exchange to close the market last week?

What has been done in this area?

Mr. KAUPER. Well, we have had some case activity. There is a case referred to, by the way, in the material we provided the committee in connection with grain elevators. When you talk about export trade you are into an area which is somewhat more difficult, because the application of our laws to the export trade is somewhat different than it is domestically.

Now, the soybean situation is one that, as I recall, is in the Department. I am not frankly sure whether it has come to the Antitrust Division or whether we are talking about a criminal case which would not be a matter for the Antitrust Division.

Keep in mind that matters related, for example, to the Commodity Exchange Act and a number of other things are criminal kinds of violations of other statutes. We do not enforce that statute within the Department.

Mr. MEZVINSKY. What about the control of the marketplace and the whole issue of speculation on the Commodity Exchange? There is a general feeling among the countryside that the Commodity Exchange is controlled by a few grain companies at the top, and we do not have any meaningful form of regulation.

Is that the case, and what is being done?

Mr. KAUPER. I think to the extent you are saying the Commodity Exchange, and I am not sure that is what you are talking about or not——

Mr. MEZVINSKY. The Board of Trade, and the Kansas City cases, the Chicago cases.

Mr. KAUPER. Those, of course, are supervised directly by the CEA in the Agriculture Department.

There are statutes which are applicable to conduct on those exchanges which, as I recall, are criminal statutes.

Now, whether they have referred that matter to the Criminal Division, I simply do not know.

Mr. MEZVINSKY. I just want to mention two other points, and then I will have some technical questions which I will submit later and you can answer for the record.

First of all, the Chairman pointed out that the FTC reports over $2 billion annual overcharge in food products broken down by industries that is a matter of public record now.

Do you have that report, and if you do, would you make it available to this committee and to the members of this committee?

Mr. KAUPER. Has the Federal Trade Commission not made it available to you?

Mr. MEZVINSKY. I am asking you whether you will.

Mr. KAUPER. I do not know what the rules are with respect to that, Congressman. I would suggest that the Federal Trade Commission would be the appropriate one to make it available.

Mr. MEZVINSKY Well, they will be on tap tomorrow so we will see what happens there. We may want to pursue that.

And the last item is that there is a matter of business review letters. Are you familiar with that?

Mr. KAUPER. Yes. Yes.

Mr. MEZVINSKY. Do you not think that this is the kind of document that ought to be a matter of public record, that this subcommittee has

the business of understanding what is being done and of determining whether or not any particular form of legislation may be needed?

Mr. KAUPER. Yes, I do.

Mr. MEZVINSKY. And I understand that business review letters are not now a matter of public record?

Mr. KAUPER. That is correct.

Mr. MEZVINSKY. Would you recommend that they should be?

Mr. KAUPER. We have regulations, proposed regulations which are now being considered, on exactly that issue which includes both the letters and the supporting data. There has been no final judgment made on it, but it is a matter we have under review, and we have got a collection of drafts at the moment.

But, you are quite right, in the past they have not been a matter of public record.

Mr. MEZVINSKY. I will submit the rest of my questions for the record.

Mr. SEIBERLING. Mr. Chairman, could I submit my questions and let Mr. Kauper supply the answers, and just get them on the record now?

Chairman RODINO. Yes.

Mr. SEIBERLING. I just have two questions.

Chairman RODINO. Without objection.

Mr. SEIBERLING. One of them is, What are the procedures for collecting the pricing data in the food industry in order to make value judgments as to the market behavior, and for utilizing the Internal Revenue Service compliance personnel and the Cost of Living Council as a source of information for data for antitrust analysis or pricing behavior or patterns?

And the other question is that I was a little shocked to read in your answer to the chairman's letter that your system of recordkeeping did not enable you to supply information about the investigations for the period from April 1970 to the present. And you say that when you have compiled it you will supply it. And I am simply wondering when that is likely to be.

Mr. KAUPER. I will have to check on it. Your shock at that, Congressman, was no greater than mine, and that is why, in essence, we are trying to go back to a computerized operation. But, we will have it to you as rapidly as we can.

Mr. SEIBERLING. Thank you very much for a very excellent statement.

Chairman RODINO. Mr. Kauper, the committee will undoubtedly, submit further questions which we would hope that the Attorney General of the Department would respond to so that we may complete this hearing. Could we expect also that you would make available to us the business review letters that were sent to you?

Mr. KAUPER. Let me consider that request, Mr. Chairman. We may be able to do that.

Chairman RODINO. All right.

Mr. KAUPER. On Mr. Seiberling's question, will it be all right if we answer that question after we see the transcript? We did not get it down, and either way, or if you would like to address a letter?

Mr. SEIBERLING. I just wondered when you may be getting the transcript.

Mr. KAUPER. Well, you asked a question about the Cost of Living Council.

Mr. SEIBERLING. Well, I can submit the question.

Chairman RODINO. The question will be submitted so that you may then reply to it.

Well, thank you very much, Mr. Kauper.

[The information referred to is in app. 1, at p. 391.]

Chairman RODINO. Tomorrow the committee will hear from the Chairman of the Federal Trade Commission and at this point the hearing is adjourned.

[Whereupon, at 12:05 p.m. the hearing was recessed, to reconvene on Thursday, June 28, at 10 a.m.]

FOOD PRICE INVESTIGATION

THURSDAY, JUNE 28, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter Rodino, Jr. [chairman of the subcommittee] presiding.

Present: Representatives Rodino, Brooks, Flowers, Seiberling, Jordan, Mezvinsky, Hutchinson, McClory, and Dennis.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order.

This morning we are pleased to have as our first and only witness the Chairman of the Federal Trade Commission, the Honorable Lewis A. Engman, who is accompanied by Mr. James Halverson, Director of the Bureau of Competition and Dr. Michael Mann, Director of the Bureau of Economics.

Mr. Engman, if you wish, you may have Mr. Halverson and Dr. Mann seated alongside of you there, because I understand that this morning, while you will make a preliminary statement and merely answer some questions directed to policy, that there may be other areas that the committee might like to address itself to and inquire about some matters which Mr. Halverson's prepared statement touches on.

I would like to state to the Commission Chairman before we do proceed that certainly there is no intention at this time on the part of this committee or this chairman to do other than to seek information that will put in focus the problem that we are confronted with, and that is whether or not various agencies of Government are living up to their responsibilities in protecting the consumer in the area of particular jurisdictions, and I do understand, Mr. Engman, that there have been some misunderstandings between you and your staff, and my staff, as to what we were inquiring into.

Very frankly, I must state very publicly that while I appreciate the position you are in as a new Chairman of that Commission, having been its Chairman for 4 months, that nonetheless there has not been the kind of cooperation that I would expect, or that any responsible public official would expect from an agency of Government that is entrusted with a very, very important responsibility in protecting the public, and especially in this case since I think the Federal Trade Commission has tremendous areas of responsibility at a time when prices are rising at such a rate, and the consumer is concerned whether or not the Government is living up to its responsibility. I think it is our duty to inquire

in order to get information and see whether or not as a result of that information we can develop either corrective measures or put the problem in focus and have a complete understanding as to why these things are happening from here on in.

I am sure the committee will appreciate the fact that while we had expected that the chairman would come with a prepared statement, this misunderstanding has resulted, and this not being the case at this time, then we are just going to confine ourselves to having you make whatever kind of introductory statement you may wish to make, and address to you questions which are are in the broad policy area as to the Commission.

I assure you that there is not going to be any intention on the part of this committee in any way to try to compromise the position you are in as the chief responsible adjudicating officer in matters that may be before you.

TESTIMONY OF HON. LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JAMES T. HALVERSON, DIRECTOR, BUREAU OF COMPETITION; AND H. MICHAEL MANN, DIRECTOR, BUREAU OF ECONOMICS

Mr. ENGMAN. Thank you, Mr. Chairman.

I am very pleased to be down here this morning before this subcommittee. As you indicated, this is my first appearance before this subcommittee as the Chairman of the Federal Trade Commission, and I am also aware, Mr. Chairman, of the fact that you also occupy a new position as chairman of the full Committee on the Judiciary.

With the permission of the subcommittee, I will ask at a later time for Mr. Halverson, who is Director of the Bureau of Competition and who is in charge of the relevant programs, and Dr. Mann, who is the Director of our Bureau of Economics, to come to the table.

I want to indicate first that I fully appreciate that the whole problem of food prices is obviously a very important issue which this country is facing today. We encourage the efforts of this committee to explore the problems and causes of those problems.

And I want to assure you that this is also of great concern to us.

You made some comments, Mr. Chairman, about the cooperation or possible lack of cooperation on the part of the staff of the Federal Trade Commission. I want to assure you publicly and on the record that to the extent that there has been any lack of cooperation, Mr. Chairman, it was entirely unintentional.

The Commission itself does feel this is an important committee, dealing with an important problem, and we intend to cooperate with you in every possible respect. To the extent that there is in any event a lack of cooperation which is perceived by your staff or any members of this committee, I would invite you or any of the members to call me personally and advise me of this so that we can rectify the situation.

I also want to apologize for the fact that apparently a prepared statement was expected from me. I was unaware of that fact until last night. I think we can let the problem rest at this point without getting into further reasons for why this misunderstanding occurred. As I have stated, I am nevertheless most happy to testify this morning.

We are concerned about food prices because the Federal Trade Commission obviously has significant enforcement authority with respect to the antitrust laws and is responsible for seeing that anticompetitive conditions do not exist in the food distribution industry or other segments of the food industry. This responsibility is a crucial one in the present situation because these anticompetitive conditions would, under normal circumstances, contribute to higher prices than otherwise would be the case.

We thus affirm our belief that preserving and promoting as much competition as possible will contribute to lower prices to the consumer. In the past, prior to the time that I assumed the chairmanship, the Federal Trade Commission has played a very active role in encouraging such competition. We have previously submitted to this committee detailed information describing the Commission's most recent activities in this area, particularly over the last 5 years.

The information submitted included a compilation of the complaints which have been issued by the Commission against food industry respondents; it also contained a description of the two broad programs established by the Commission which are of an ongoing nature. Those are designed to monitor, and where appropriate, challenge mergers or acquisitions in the food distribution industry and in the grocery products manufacturing industry.

Now, in addition to these formal programs, we are constantly conducting a substantial number of investigations on an individual, nonpublic basis regarding anticompetitive practices in different sectors of this industry.

At the present time—and I will not address myself to too many specifics because of my role as an adjudicator, although Dr. Mann and Mr. Halverson will be able to address themselves to the specifics of these cases—we have actual cases pending before the Commission, either at the hearing examiner level or on appeal before the entire Commission, concerning six types of food-related companies: the beer industry, the dairy products industry, the food retailing industry, the products manufacturing industry, the soft drink industry, and the wine industry. These are in addition to the broad, overall, ongoing surveillance that we are maintaining under the two programs which I mentioned earlier.

To give the committee an idea of the emphasis that the Commission places on problems of food distribution and prices, I would like to point out that approximately 20 percent of all the resources which the Commission has committed to the task of maintaining competition are devoted to our food industry area. And we estimate that based on our present level of activity, and on the nature of actions which are pending, well over 40,000 man-hours will be devoted to this matter in the fiscal year 1974.

I could go on at length to review the items which we have submitted to the committee—the list of advisory opinions and the like—but I think that perhaps it would be more productive if I respond to any generalized questions you might have. I would suggest, if it is acceptable to the committee, that I answer those questions before Mr. Halverson and Dr. Mann give their more detailed prepared testimony. While I will, of course, abide by the wishes of the chairman, this

procedure would be convenient in that it would permit me to leave at the end of my own contribution to these hearings.

Mr. McCLORY. Would the chairman yield?

Chairman RODINO. I yield to the gentleman.

Mr. McCLORY. For a question.

As I understand it, the committee sent to you, Mr. Engman, a letter dated May 18 in which a request was made for certain information on six enumerated items. And it is my understanding that we do not have any statement before the committee today responsive to this letter.

Is that correct? [See app. 2, at p. 408.]

Mr. ENGMAN. That is not correct, Congressman McClory. This was forwarded to you.

I do not know the date of it, but a packet of material——

Mr. McCLORY. I have the packet of material which recites there is one document dated January 3, 1967; one for March 1973; one May 1968; and some additional printed material which seems to have been in existence prior to the time of this letter.

What I am wondering is, was there any statement specifically prepared for this committee meeting, not prepared for other uses at some earlier date, responsive to these inquiries?

Mr. ENGMAN. Yes; there was. Certain of the exhibits attached to the material which you are referring to, Congressman, were prepared specifically in response to Chairman Rodino's request.

Other issues raised by the committee's questions were encompassed in documents which had previously been in existence, and these were forwarded to you.

Mr. McCLORY. Mr. Chairman, I do not think I have the material that was furnished for this meeting. I understand that it is in existence, but that it has not been presented to the committee.

Chairman RODINO. May I advise you, Mr. McClory, that there has been distribution made of these matters, whatever matters have been presented to us.

Mr. McCLORY. There is a statement from Mr. Halverson, is that right?

Mr. ENGMAN. There is also a four-page letter directed to Chairman Rodino, from the Secretary of the Commission attaching several exhibits on legal-sized paper. I believe they are A through G.

Mr. McCLORY. Well, Mr. Chairman, I do not believe that I have the kind of informative material that generally is provided at a hearing of this type. Perhaps there has been an oversight.

Chairman RODINO. Let us proceed, then.

I am sure that there has been distribution of whatever material was presented to us by the Commission.

Mr. Engman, this is a question that merely addresses itself to the very same problem that is before us at the present time, that on May 18 this committee did address correspondence to you making inquiries specifically in certain areas. And I note that there was a communication with accompanying material which apparently is an attempt merely to copy and reproduce material which had been before the Commission, and what we have here really, as a fresh or at least up-to-date response to some of the questions is only in one specific area. The other is merely an effort to compile the data that has been in the Commission, I guess for some time, and just forwarding it to the

committee, which frankly disappoints us in the sense that this is hardly making us aware of what the Commission has as an up-to-date piece of information which might make it possible for us to conduct a very enlightened hearing. And frankly, I do not see how this subcommittee can form reasoned judgments on the food industry without this type of up-to-date information.

Mr. ENGMAN. We obviously have had a breakdown in communications here, Mr. Chairman. The letter which was sent to you and to the committee in reply to your request contained, it is true, some three documents which were reprints of the stated policies and merger guidelines which the Commission follows in certain areas. But, for example, exhibit G, is a memorandum which was prepared specifically in response to your request, and in which there are replies to questions 3, 4, and 5 presented by your letter.

Now, those questions were specific responses to your specific questions and were prepared for this committee alone, and no one else, and have not otherwise been published. Similarly, the list of cases which we have brought within the last 5 years was compiled in specific response to the questions contained in your letter. I apologize for the misunderstanding, but we attempted to supply to the best of our ability, with current information, the data which was requested.

Chairman RODINO. Well, let me go on from there because I frankly feel that the publications that were supplied were hardly responsive to the questions that we were most concerned with, the questions on market structure, market performance and price increases in the food industry. And although there were some other very, very short and explanatory notes, just making reference to the publications that were attached as part of the information that we have requested, very frankly this is in my judgment hardly the kind of information that we would expect that the FTC, with its vast personnel, with the expertise it is supposed to have for extensive analytical ability, to be able to at least prepare this kind of information and get it to us.

Mr. ENGMAN. Mr. Chairman, I have to state for the record that exhibit G is an 11-page response to one of your questions relating to market structure which was prepared by the Bureau of Economics, and includes as an attachment several pages of statistics. To the extent that you believe these answers are insufficient in any respect, I would welcome your questions, and we will prepare answers to try to satisfy you. But, these were an effort to provide specific answers to you, and in all candor, were not designed as a rehash of previously published material.

Chairman RODINO. I am just advised, Mr. Chairman, I am not entirely correct. But, the exhibit G that you made reference to reached us only last night.

Mr. ENGMAN. If that is so, you have a very valid point, Mr. Chairman, and if we are responsible I apologize to the committee for that delay.

Chairman RODINO. Mr. Engman, we have received reports of an unreleased Federal Trade Commission study of monopoly overcharges in American industry, and the study apparently refers to an estimated $2.6 billion that might have been saved and was spent unnecessarily by the American consumer in the food area because of unnecessary concentration in areas of the food industry.

In my letter of inquiry to the Federal Trade Commission I specifically requested a copy of this study, but there was not a single mention of this study in your reply, and only yesterday the Assistant Attorney General of the Antitrust Division testified here indicating they had gotten this material, and now I would like to get a copy of this material even though it has not been supplied up until now.

I understand that it may include more than one estimate of so-called monopoly overcharges, and I think that this is an area of interest to us.

Mr. ENGMAN. Mr. Chairman, we will see that a copy of that report is delivered to this committee. I do believe that there is reference to this report, which is a Bureau of Economics report, in the material which we did submit to you, and any detailed questions which you might have about that report should be addressed to Dr. Mann.

Chairman RODINO. Well, thank you.

Mr. Engman, in the first 4 months of 1973 the most rapid rise in retail food prices in more than 20 years occurred with the all food price index increasing, I believe, at an average rate of over 2 percent per month at this time, and with the imposition of price ceilings on June 13, the Department of Agriculture has estimated that retail food prices for 1973 will probably average about 12 percent above the 1972 prices.

In other words, but for the ceiling, 1973 food prices would have been at least 16 percent above 1972 food prices. We would like to know your comments as to the causes of such an astronomical jump in that particular industry and what, if anything, the FTC has done or is planning to do concerning investigations of this pricing situation?

Mr. ENGMAN. Mr. Chairman, one obvious factor which has contributed to the current surge in prices is the increases which the producer of the food, the farmer himself has been receiving.

Personally, I do not believe that the question of the amount of money that individual farmers should receive for their products should be primarily the Commission's concern. There may be evidence to the effect that individual farmers have been underpaid for their labors and their efforts in this regard, but that is one segment which may have been a factor in the most recent increase.

Now, beyond that, as I indicated in my initial remarks, the Commission has had reason to believe—I want to choose my words very carefully here—reason to believe that there may be anticompetitive conditions existing in certain segments of the food distribution industry.

As a result of this belief there are, as I indicated, several cases which are pending. I have already described the range of areas which those cases cover. I do not want to prejudge those cases which at some point I may be called upon to adjudicate according to the evidence presented to the Commission.

However, the mere fact that the Commission is devoting 20 percent, or one-fifth, of all the resources it has in the area of competition to investigation and litigation concerning the food industry, indicates that we do feel there is reason to believe that there are anticompetitive conditions which should be corrected. These investigations and cases are designed toward that end.

Now, in terms of specifics, I would prefer to defer to Mr. Halverson, who is responsible for bringing our complaints in the antitrust area.

Chairman RODINO. Well, we will hear from Mr. Halverson, Mr. Engman. I have just a couple of more questions relating to overall policy, if you will bear with me. Yesterday the Assistant Attorney General for Antitrust made reference to a longstanding informal agreement with the Commission concerning the allocation of responsibilities for enforcement of the antitrust laws.

What are the terms of this agreement with respect to the food industry and have the Commission and the Antitrust Division ever discussed the propriety or the need for seeking any formalized approval of this informal agreement by, for example, submitting it to this committee for its comments? I feel that this is important for us to know since we would like to know what areas we are to explore, and, if there is a lack of vigilance, or a lack of vigor, who is entrusted with these respective responsibilities?

Mr. ENGMAN. At the final level, Mr. Chairman, the Assistant Attorney General, Mr. Kauper, and I, to the extent there is difficulty in the liaison relationship, resolve the matters ourselves. I must say that we have not had any difficulty.

The only written document relating to this liaison of which I am aware is a published document which was issued many years ago and which provides that each agency will seek clearance from the other before initiating any action or investigation. We have a very informal but very close and good working relationship with the Department of Justice.

We have not felt any need for a more formal definition of that relationship. To the extent that the resources of one of the agencies are particularly taxed by some major investigative effort, or by other undertakings, the discretion of the other agency to take action in a particular area increases, somewhat. Both the Commission and the Department are currently conducting investigations into the food industry, and until now, at least on the basis of my personal knowledge, we have not experienced any problems. But we do not have a written set of guidelines as to who takes on what segment of the industry.

Chairman RODINO. Well, Mr. Engman, recognizing that this committee has a responsibility to oversee these activities, especially in this area of enforcement, and it is one that is important, how can we be assured that this agreement between your Commission and the Assistant Attorney General, is not leading to inefficient enforcement in some areas, and duplication of enforcement efforts in other areas?

Mr. ENGMAN. I think that you have to continue to request the Assistant Attorney General and myself and our people to come before this committee so that you can ask us questions as to how capably we are performing our tasks.

Chairman RODINO. Well, do you not think that we would have to know whom to direct our questions to in order to know just who is doing what and who is minding what store?

Mr. ENGMAN. In general there is a range of antitrust statutes, as you are well aware, and as a rule the Commission handles the enforcement of Robinson-Patman Act actions. But the Commission and the Justice Department each has a range of available statutory bases which can be used and theories which can be pursued. Sometimes in the course of an investigation it may develop that a certain theory may not quite fit under a particular statute. For example, it may become clear that

a case under the developing should be brought "unfairness" concept expressed in section 5 of the Federal Trade Commission Act. When this is determined there is simply an exchange of information. I imagine it is true that there may be some risk that problems might develop between the two agencies or that inefficient enforcement might result, but I have not seen evidence that these problems are real. However, I realize that my experience is still somewhat limited.

Chairman RODINO. Mr. Engman, my recollection is that yesterday Assistant Attorney General Kauper referred to this or described this as a longstanding agreement.

Mr. ENGMAN. It has been in existence for many, many years, and my predecessor, Mr. Kirkpatrick, and his predecessor, Mr. Weinberger had the same kind of relationship and liaison with the Antitrust Division through people within our agency.

Chairman RODINO. So, this is not one just between you and Mr. Kauper?

Mr. ENGMAN. No, Mr. Chairman.

Chairman RODINO. Well, I am going to defer to the other members and then come back for some questions.

Mr. FLOWERS. Mr. Chairman, I have no questions at this time.

I have been reading what we have here before us, and I would like to defer until a later time.

Chairman RODINO. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I would like to pursue this line of questioning with regards to the division of labor between the Antitrust Division of the Justice Department and the FTC.

I must say that there must be some, line of division. You say it is a very informal arrangement, not in writing. If your agency fashions a complaint against some business enterprise but thereafter concludes that it is not likely to prevail, what do you do? Will you go over to the Justice Department and ask them to present their theory, and if you can conclude among yourselves that they have got a better theory than you have, then will Justice pursue it? Is that what you do? I am thinking about the hapless citizen of the United States who does not know which agency is going to pounce upon him.

Mr. ENGMAN. Things do not progress that far before the Commission and the Antitrust Division come to an understanding, Mr. Hutchinson.

Let us suppose, as an example, that there is a proposed merger between two companies, and that this merger is an action which might be a violation of some of the antitrust laws.

Generally, there is a decision made immediately on the basis of expertise or past experience in dealing with that particular set of companies, or that industry. But, there will be communication from day one.

Often, we have investigations in which both the Commission and the Departments of Justice are interested in. In such cases there is an exchange, not necessarily of detailed investigative material, but of information as to the broad directions these investigations are taking and whether it makes sense for us to devote further resources in this kind of area.

Now, I say that as a general background in preface to further remarks, so that also we have more or less of an understanding, the Justice Department does, and we obviously have section 5 of the Federal Trade Commission Act.

The two agencies we have joint jurisdiction when dealing with an action under section 7 of the Clayton Act. Robinson-Patman Act matters are enforced by the Federal Trade Commission. By and large, Sherman Act matters are enforced by the Department of Justice.

So, we have that kind of a breakdown. But, in terms of the practicalities of the day-to-day operations, and we had a situation just this week, and I do not want to mention the name of the industry, the investigation, but where we are not that far gone. I mean, we are just—there is concern that there may be a problem, and there has already developed some communication and in fact one of the agencies will be pulling back so there will not be a waste of resources.

Mr. HUTCHINSON. Well, as a practical matter, at least in recent years during which the Government has been challenging mergers, if a merger is being contemplated, do those businesses make application for, or petition for, or ask for some kind of a clearance from either you or from the Justice Department? Is that what they do?

Mr. ENGMAN. They may in some instances, Mr. Hutchinson. To the extent that we, for example, may have had outstanding a consent order or an order issued against a particular company in the past for some other violation, a term of that order very often is that any acquisition in this given industry within the next 10 years must be precleared with the Federal Trade Commission.

Now, in that situation, of course, the company must make application to the Commission, present its evidence as to why it feels this merger is a good merger, and then we make a decision.

Similarly, the Justice Department occasionally will get a request. I do not want to get into Mr. Kauper's area, but they may get a request for an advisory opinion or an informal judgment on a particular matter. There are many matters, however, which may arise for the first time when we read in the Wall Street Journal, that a particular company is intending to put out a tender offer for another company. Our staff then examines the facts and, if it looks like it is something that ought to be explored, then we would tend to have fairly early communication with the other agency.

Mr. HUTCHINSON. If Mr. Kauper's division would hand down an advisory opinion with regard to a prospective merger, does that mean that your agency would respect that opinion?

Mr. ENGMAN. We would, unless there were some unusual circumstances, such as the existence of a specific statute which only the Commission authorized to enforce. But by and large we do not get into the kind of situation in which Justice says something is all right and the Commission says the opposite. In fact, I am not aware of any situation where we have had that problem. It may be that some have existed, but I personally am not aware of it.

Mr. HUTCHINSON. I suppose that the question may be very apparent. Would we not have a more efficient operation from the standpoint not only of the Government but from the standpoint also of, as I say, the poor, harassed citizen, if there were not two agencies vying for jurisdiction in this field and if somehow or other the jurisdiction were granted to one agency?

Mr. ENGMAN. There have been arguments that have been raised to that effect in the past, Congressman, and there is some logic to the point of view, that if we are to have antitrust enforcement it should be lodged in one agency.

On the other hand, other people who have expertise in the field have indicated that there may be something to gain from having two agencies, perhaps with two slightly different approaches to the matter. In addition there were, I believe, the Ash Council recommendations raising on issues relating to the appropriate role of the Federal Trade Commission as a regulatory agency, and whether or not it should be a trade court, so to speak, without antitrust enforcement responsibility.

And, in fact, there was a determination made that there was a proper role, a separate role, for the FTC in the antitrust enforcement field as well.

I remind the committee that under the Federal Trade Commission Act and its concepts of unfair practices, the prohibition of which obviously may have an impact on competitive practices, there is something that the Congress has given solely to us and we, therefore, may tend in some instances to have a little different slant on things than the Justice Department. We tend to be more interested in investigating some matters than others.

Mr. HUTCHINSON. I have only one further question, Mr. Chairman.

I understand that there is a theory of liability called shared monopoly, and I have been informed that your agency and the Justice Department may have different approaches; you may support it and they may not or vice versa.

Is that right?

Mr. ENGMAN. The so-called shared monopoly theory, to the extent that those are appropriate words, generally relates, as I understand it, to oligopolistic situations——

Mr. HUTCHINSON. That one might find in the food industry, I think.

Mr. ENGMAN. There have been articles which have been written, and studies which have been made by various economists and others, which argue that the very existence of these situations is in and of itself a violation of current antitrust laws; that is, the fact of a shared monopoly indicates the existence of some illegality under sections 1 and 2 of the Sherman Act as if the situation involved pure monopoly.

The Commission itself has never endorsed or rejected that theory. There are some cases pending before the Commission which some commentators would argue might test certain aspects of that theory. But, as of this point in time there has been no determination by the Commission that this theory is valid or not valid, in whole or in part.

Mr. HUTCHINSON. I thank you very much.

Mr. FLOWERS. Mr. Chairman, could I be recognized now?

Chairman RODINO. Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I believe yesterday we explored with the Assistant Attorney General some aspects of the implication of the phase I controls back in 1971, and the fact that at least over the last number of years it seems that when we have price controls superimposed upon the free market by the Government, that it seems to become necessary that antitrust prosecutions follow more so than in other periods.

My question is this, what liaison or what stepped-up activity between your office and the new Price Control Commission occurred in or after the institution of phase I controls in August of 1971?

Mr. ENGMAN. I cannot answer that question specifically, Congressman Flowers. I do not know the specific steps that were taken prior

to the time I came to the Commission. Perhaps Mr. Halverson might be able to comment on that later.

The relationship obviously is a significant one, and it is important whenever the economy is under a controlled kind of situation that the antitrust agencies take particular care in assessing whether there are violations. And I for one believe there should be a particularly close monitoring of the price information which is submitted during such periods, because it may be useful as evidence as to whether violations are occurring in one form or another.

But, I do agree that there is a possible relationship between economic controls and antitrust violations, and I just am sorry that I cannot respond as to what specifically happened in 1971.

Mr. FLOWERS. Well, I take it from your testimony, you would agree that when you have these artificial Government controls influencing free market conditions, then it becomes more necessary, more important that we look continually into price-fixing problems that might be arising?

Mr. ENGMAN. I could not agree more with that statement, Congressman Flowers.

Mr. FLOWERS. Then we have a series of questions in the record to the Assistant Attorney General which I think evidenced the committee's concern or primary concern with recent market behavior, of course, in performance as evidenced by recent pricing, and I would inquire as to the FTC's procedures for collecting pricing data in the food industry in order to make value judgments at your level, and as to FTC utilizing the Internal Revenue Service or compliance personnel or Cost of Living Council as a source of information or data for these antitrust analyses?

Mr. ENGMAN. As I indicated, we have several ongoing investigations, and some of those investigations have resulted in cases. There is a monitoring of this industry. We have these two broad programs concerning the food distribution industry and the grocery products manufacturing industry, and some of this information was submitted to the committee.

But, I am not able to answer in any greater detail than to talk about the broad scope of our activities in this area, and I would suggest that perhaps Mr. Halverson or Dr. Mann could give you more specific answers with respect to these investigations.

Mr. FLOWERS. Well, specifically, because of the role that has been assigned the IRS in seeking compliance with the executive price controls that have been set out, what liaison does your office have with the IRS?

Mr. ENGMAN. I am not aware that we have any special liaison at this time with IRS as a result of the President's economic program.

Mr. FLOWERS. I believe that is all the questions I have at this point, Mr. Chairman.

Thank you.

Chairman RODINO. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I have been reading and my staff has examined the literature that was supplied to the committee. It is interesting and has historical interest. It seems to elaborate on policies and practices followed by the Federal Trade Commission, particularly in the 1950's and 1960's.

The principal thrust of this hearing, as I interpret it, is to try to discover what, if anything, the policies and practices of the Federal agencies under the general oversight authority of this committee are and which they are adopting or which they follow at the present time in view of the sharp rise in food prices which have occurred primarily within the last year. And I must frankly state that I do not see, in anything that I have looked at, any new policies, any new investigations, any new opportunities seized upon by the Federal Trade Commission to try to determine what, if any, policies or practices might be useful in this connection.

I was just wondering, for instance, if any studies have been made to determine whether or not the sharp rises occurring have been more among the large monopolistic type food processors, distributors, and retailers in contrast to the independent groups?

What, if anything, is occurring with respect to some of the groups that are exempted from the Clayton Act and the Sherman Antitrust Act?

Do you have some new program that you are pursuing at the present time, and if you do, what has it shown? And if you don't have one, why?

Mr. ENGMAN. First of all, Congressman, I want to reiterate the point that I made in my opening remarks, and I am not sure you were at the very beginning. We are now devoting about 20 percent of all our resources allocated to the total area of antitrust enforcement to this very important concern, the food market. And the information you were sent does, it is true, include two statements of merger enforcement guidelines which we have published and which give guidance to the industry as to what we find acceptable and not acceptable. We have made some changes in those from time to time.

One of those statements is dated 1967. I do not know what the date of the other is, but those guidelines are still in effect. The Commission staff still uses them in formulating its recommendations as to what should be the Commission's cause of action.

I do not want to state specifically that there is a concentration problem or an anticompetitive situation in one or another particular segment of the food industry. I must remind the committee that I am sitting here wearing two hats. First, I am the Chairman of the Commission, and as a result obviously have some responsibility for the activities of the staff.

On the other side of the coin, however, I am in the position of a judge. I have a judicial responsibility. And as I have mentioned there are several cases relating to the food industry which are pending before the Commission. I do not want to place myself in a position which may lead me to be accused by one of the parties to those actions of having prejudged the case.

That is why I suggested to the committee and its chairman that Mr. Halverson, who is not in the position of having to play a judicial role, be present to make a more detailed statement.

Having said that, however, I would direct your attention, Mr. McClory, to the actual complaints which have been filed. You say that the materials prepared by the Commission contain no evidence of current activity. I would respectfully point out that exhibit A, which is a five-page document, lists complaints which have been filed in the

last 5 years. On the last page of that list you will see that there have been several complaints filed and consent orders obtained in 1973, as well as during the latter part of 1972 during the very time that some of these food matters were developing.

Earlier I indicated that we also currently have certain relevant investigations pending. This fact was submitted to the committee in a cover letter which I understand you may not have received. At any rate, the cover letter which the Secretary submitted to the committee listed the following segments of the food industry as under investigation: the dairy products industry, food retailing, grocery products, soft drinks, and beer and wine. As you can see, these investigations cover very broad areas.

Beyond that I would prefer not to be more specific because of my judicial hat.

Mr. McCLORY. Well, I judge from your response that you are devoting more staff to existing or pre-existing policies or practices at the Commission. There is not anything innovative that has developed in 1973, for instance, although I judge that there may be?

Mr. ENGMAN. There are those——

Mr. McCLORY. You expressed yourself with regard to action taken with respect to bottlers of soft drinks. That seems to be something new.

Mr. ENGMAN. Mr. Chairman, I have to be very careful in what I say here, but there are those who would say that the complaint which the Commission filed against the ready-to-eat cereals manufacturers is very innovative. In fact, there are some who allege that it is totally without basis in the antitrust laws.

The one criticism I have not heard about our investigations is that they are not innovative.

The criticism has come from the people on the other side. But, frankly, I cannot comment as to whether these criticisms are or are not valid at this point.

Mr. McCLORY. Well, with respect to that subject in which I am interested, is that action generated because of the sharp increase in prices of the dry cereals, or is it generated primarily because of an apparent monopoly in the area?

Mr. ENGMAN. There are allegations in that case which relate to price. The cast is one which has not yet been heard by the Commission, and I may have to sit in judgment on that case.

I would suggest that you may want to address more specific questions about the validity of the allegations in that case to Mr. Halverson, who is responsible for prosecuting that case before the Commission.

But, there are allegations in that case, and I just use that as an example of innovation, which do relate to the effect on price.

Mr. McCLORY. All right, then, I do understand that you have stepped up activities, you have devoted more staff, more attention, more resources to existing policy, and then beyond that you have a new thrust which relates to the dry cereal industry.

That is really it, is it not?

Mr. ENGMAN. Well, I cannot be put in the position, as much as I would like to be fully responsive to you——

Mr. McCLORY. Is there anything else in the last 6 months that you would like to draw my attention to in which the FTC has been engaged with respect specifically to the subject of the accelerated increase in food costs?

Mr. ENGMAN. I am going to ask that you please direct that question to Mr. Halverson, if you do not mind.

We are walking very close to a line which poses the question of the appropriateness of further response on my part.

Mr. McCLORY. Does that impinge on your judicial role?

Chairman RODINO. Would the member desist, at least at this time, in view of the fact that the Chairman is making a bona fide effort to try to be responsive. In order that the rest of the hour may be constructively spent in getting at the heart of some of the questions that I think ought to be directed to you, Mr. Engman, would you please have Mr. Halverson and Mr. Mann take the stand or accompany you at the table so that we may direct some questions to them?

I appreciate the fact that you have come here, Mr. Engman, and I really regret that there is this inability to be able to get to the heart of some of the matters that we think are important to this committee to know about. And I recognize again the difficulty you are laboring under in the areas that you specifically would have to refrain from commenting on.

I assure you that the committee has no intention of trying in any way to compromise that situation, but we do feel that it is necessary for us to get on with some of the questions which we think will address themselves specifically to the area that we are trying to get at.

Mr. ENGMAN. We certainly want to be responsive, Mr. Chairman, and I want to reiterate that to the extent that there is any information which you desire from us, we will gladly provide it.

Now, it may be that I may not be the appropriate one in all instances to provide that information as one of the Commissioners, but it will be provided to you, and to the extent there is any difficulty, and I am aware of that difficulty, it will be resolved, because we are here to help you in your very important responsibility of dealing with the problems in this crucial area, and they are very crucial ones.

Mr. McCLORY. I just want to explain to the chairman that I gather you want to go on, and I want to indicate that I am not trying to elicit any information or testimony which would be inappropriate. I feel that what I was inquiring about was entirely consistent with the thrust of this hearing, and I have not suggested that anything that would be inappropriate should be addressed or inquired into, or that the witness should be required to answer it.

So, thank you, Mr. Chairman.

Mr. ENGMAN. If there are no other questions of a general nature, Mr. Chairman, I would appreciate being excused. But, if the committee would prefer to have me remain here I will do so, of course.

Mr. DENNIS. Mr. Chairman, I would like to ask a few questions of a very general nature.

Chairman RODINO. Would the gentleman defer to Mr. Seiberling?

Mr. DENNIS. Yes; I defer, of course, to Mr. Seiberling.

Mr. SEIBERLING. I would just like to ask one question of a general nature.

Since you are here before us and we have some sort of oversight responsibility, I would like to take advantage of your presence here to nail down one thing. I think that the great contribution that the FTC has made and is making to trade regulations in this country is that they have the ability to do the kind of economic studies and surveys that really make for massive understanding and that enable many other agencies of Government to effectively enforce the antitrust laws and related laws, and that really is the big thing.

Now, I read in the paper yesterday that there was some idea that the FTC was going into covert investigation, and that this was a suggestion you made, and that it was vetoed. Is that idea dead now, or is that still going to be a possibility?

Mr. ENGMAN. I am not aware of a report on that yesterday, Congressman.

I welcome the chance to discuss that point.

Mr. SEIBERLING. Well, it was in the Washington Post.

Mr. ENGMAN. The fact is that there was a recommendation made by our General Counsel's office setting forth certain guidelines to be used with respect to investigations.

Those guidelines included some use of, in one instance where necessary, and following approval by the Attorney General of the United States, the use of such devices as concealed tape recorders, in investigatory processes if there were abnormal situations.

The five members of the Commission, on my motion but unanimously rejected these proposed guidelines and returned them to the General Counsel's office. I think I can speak for each member of the Commission in saying without any reservation that the Commission does not wish to have its staff conduct investigations using these surreptitious means.

But, it was a recommendation from the staff which came to the Commission.

Mr. SEIBERLING. Well, I might say I am gratified to hear that, and I hope that that continues to be the policy of the Commission, because it seems to me that the Commission has adequate powers to get all the information it really needs to do its job at present.

Thank you.

Chairman RODINO. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

First of all, Mr. Engman, educate me a little bit. What is the shared monopoly theory?

Mr. ENGMAN. I think Dr. Mann can give you a better idea of that than I can.

But the theory in essence, as I understand it, is that, in an industry where there are oligopolistic situations——

Mr. DENNIS. Tell me what that means.

Mr. ENGMAN. A small number of firms, say three firms.

Let us take the automobile industry where there are three major firms and a fourth smaller one. Such an industry, in which there are not many suppliers, is an oligopolistic industry. In effect, the shared monopoly theory is that under those conditions, the conduct and the structure of the industry itself produces or can produce the same results as if you have a single monopolistic company.

In effect it is not a single monopoly but a shared monopoly as the usage has developed and this term is applied by some to those indus-

tries where there are only a very few manufacturers, and where there consequently may not be completely competitive conditions in terms of pricing and the like.

Mr. DENNIS. All right.

I think I understand that concept generally, and I appreciate your educating me.

Now, there was a suggestion here by Mr. Hutchinson——

Mr. ENGMAN. I am sure the economists would have blanched by my pedestrian discussion of it.

Mr. DENNIS. That is all right. I am not an economist, and that will do for a start.

There was a suggestion when Mr. Hutchinson was questioning you that there might be a conflict of opinion between your Commission and the Justice Department on that theory. How does each one look at it?

Mr. ENGMAN. Perhaps I did not answer that as directly as I should have. I think that both points of view regarding the shared monopoly theory are represented on the staff of the Federal Trade Commission, and I dare say there are people on the staff of the Justice Department who are on both sides of that question.

My understanding of the present posture of the Antitrust Division is that Mr. Kauper has some doubts about the theory.

The Commission has not taken a position on that theory. When I speak of the Commission I am speaking of the five members of the Commission who have the responsibility for making decisions.

Now, there are some cases pending before the Commission which may test certain aspects of that theory on the basis of evidence. And as I have indicated, I believe this question came up during my confirmation hearing in the Senate, that I have an open mind on the theory, but I do not at this point want to express a detailed opinion about the theory prior to the time that we are faced with those particular matters which will be coming before us.

So, from the point of view of the final decisionmakers of the two agencies there is no real difference of opinion at this point in time between the Antitrust Division of the Justice Department and the Federal Trade Commission. It may be that a difference will develop in the future as a result of one or more cases now pending.

Mr. DENNIS. All right. I will shift to another subject quickly.

Is one of the actions your Commission has been taking in litigation which is pending, as I understand it, to break up the customary franchise distribution system in the soft drink business?

Mr. ENGMAN. The Commission took action with respect to the soft drink industry, and the legislation which is moving through Congress now would, in effect, negate the action taken by the Commission.

Mr. DENNIS. That is correct.

Mr. ENGMAN. That is correct.

Mr. DENNIS. So, I assume you oppose that legslation?

Mr. ENGMAN. These are matters which were initiated prior to my assuming the chairmanship, but this legislation is opposed by the Commission.

Mr. DENNIS. I do not claim any particular knowledge of the field, but I will tell you that a small businessman in my area, who is in the Coca-Cola bottling business, for instance, tells that your action if not reversed, will simply drive him completely out of business and put

bottling in the hands of the big chains. That is what he says, which I would think would not be what you would want to do.

Mr. ENGMAN. That is not a result, to the extent that it would be anticompetitive, which the Commission would want.

Mr. DENNIS. And, of course, small bottlers have been conducting their business this way, and they have been doing it for about 50 years or more.

What led to this move against them? I mean, these people are businessmen in these communities, and I can assure you that they are very much concerned that they are going to be out of work. They think they are being picked upon by their Government.

Mr. ENGMAN. We are aware of the fact that there are many independent bottlers who are concerned about this. I am aware of it. We have correspondence and the like.

I would prefer to defer to Mr. Halverson on the rationale of the Commission's action in that area. I am aware of the fact that there is legislation pending in Congress which looks as if it may very well overturn that decision.

Mr. DENNIS Well, I think that is possible too.

Now, let me ask you one very general question and then I will desist.

What is your general view with reference to what extent high food prices are the result of any antitrust violation rather than being the result of natural market conditions, such as demand, weather, affluence, and so on?

Mr. ENGMAN. At least some of the cause for increasing food prices is changed in supply and demand, unfortunate weather conditions, and the like.

I do not want to state that these are the only causes. I do state, and I use this language carefully now, that the Commission has indicated that it has reason to believe that there are anticompetitive situations which do exist in the food industry which have warranted the filing of complaints or initiation of investigations.

Now, the Commission itself, having not met, made a decision in these matters, has not made a judgment that these anticompetitive situations actually exist. The staff may contend before us that they do exist, but the Commission itself has not said that they do or do not exist with respect to these pending cases.

But, we at least have sufficient reason to believe that they may exist so that we have authorized an expenditure of our resources for these investigations and cases. In any event, that certainly is not the total answer. There obviously are factors of weather and supply and demand. The fact that perhaps prices at the farm level have been unduly repressed in some years and are perhaps now seeking a level that they have not reached in the past is also a contributing factor.

I do not think there is just one simple answer.

Mr. DENNIS. Well, I am glad you recognize that, and I am gratified to hear that.

Mr. ENGMAN. I am well aware of that, and I come from a district in Michigan not too far from Congressman Hutchinson's district, where I have often heard the same point of view expressed by many people in whom I have great confidence.

Mr. MEZVINSKY. Can I get a general question in?

Chairman RODINO. We would like to get Mr. Halverson.

Ms. JORDAN. I will yield to Mr. Mezvinsky.

Mr. MEZVINSKY. I just want to get to one question, that the chairman raised, Mr. Engman, and that is the FTC's study of the 100 industries with over $2 billion overcharge. And I am glad that you are going to give that to the committee.

I also understand that you have planned a study to go into 300 manufacturing as well as nonmanufacturing industries. What are your plans to continue that, if you can answer that generally, and if not, Mr. Halverson can.

Then I would like to know how you intend to implement the overcharges that come out of that FTC study and if those are something that are beyond your jurisdiction I will defer the answer to Mr. Halverson.

Mr. ENGMAN. I think Dr. Mann can give you a more complete answer.

Let me make one thing very clear for the record here. With respect to the first report which has been discussed and which Chairman Rodino mentioned, it should be remembered that this is a report which has not been adopted by the Commission.

It is a staff report and there is some disagreement on the staff apparently, and I do not know the status of that. But, I have stated my policy as Chairman of this Commission which is that, whenever the appropriate body of Congress wants staff material, we will provide that material as long as its precise status is recognized and the question of whether or not it has been approved or not approved by the Commission is understood.

Now, with respect to these other matters, I believe you are referring to a program which we have with respect to data collection. We are using this program in an attempt to get authority for line-of-business reporting and other matters, but on the specifics of that program I will defer to Dr. Mann, who is responsible for it.

Mr. MEZVINSKY. Mr. Chairman, I will defer until later for Mr. Halverson and Mr. Mann.

Chairman RODINO. Thank you very much, Mr. Engman.

I note that you have requested that you be permitted to go, and we have kept you for some time. But, we will address these other questions to you, and should the committee desire or feel that it is important in the interest of conducting this kind of inquiry, we will be calling upon you again.

Mr. ENGMAN. I would welcome the opportunity to come back, Mr. Chairman once again.

And I want to assure you once again that to the extent there has been any feeling of lack of cooperation this is counter to our policy. We look forward to working with the chairman and this committee.

Chairman RODINO. Thank you.

Mr. SEIBERLING. Mr. Chairman, may I just ask a quick question which relates to the next two witnesses.

Chairman RODINO. Why don't we get the next two witnesses on.

Mr. SEIBERLING. This is one I think that we need to get to now.

Chairman RODINO. Why don't we permit Mr. Engman to go? I have stated that he might go, and I think that we can address our questions, and frankly get through in the next 45 minutes by directing these questions to these witnesses.

Mr. SEIBERLING. I just wanted to ask if the other two witnesses would be free to speak——

Chairman RODINO. You need not ask this witness, Mr. Engman. The other two witnesses are going to be here and we will direct questions to them.

Mr. SEIBERLING. Is there any inhibition as to matters of policy?

Mr. ENGMAN. May I just state, so that we have no problem here, that in my reply to the invitation to testify, I suggested to the chairman that Mr. Halverson would be able to answer in detail the questions that I know you have.

He is a member of the staff, as is Dr. Mann. They both direct their respective Bureaus, and they are responsible for brining before the Commission the argument on new cases.

So, they have none of the inhibitions that I do. They may have others, but nothing that I am aware of that affects this committee.

Thank you, Mr. Chairman.

Chairman RODINO. Thank you, Mr. Engman.

Mr. Halverson and Dr. Mann.

Mr. Seiberling, since you were beginning and given only a little opportunity, you may commence.

Mr. SEIBERLING. Thank you.

I will defer, Mr. Chairman. I just wanted to get that one question out.

Are we going to go on?

Chairman RODINO. You go right ahead.

Mr. HALVERSON. Mr. Chairman, maybe I could help by introducing us.

I am James T. Halverson, Director of the Bureau of Competition at the Federal Trade Commission. That is the antitrust enforcement arm of the Federal Trade Commission.

And seated next to me is Dr. H. Michael Mann, Director of the Bureau of Economics of the Federal Trade Commission, and we work closely together.

I do have a prepared statement. Would you like for me to read part of that into the record?

Chairman RODINO. I would prefer since we have the statement, Mr. Halverson, that you take 5 minutes and make just a preliminary statement, and then we will go on from there. We will insert the complete statement in the record. [See p. 71.]

Mr. HALVERSON. All right, if you intend to put the statement into the record, I think there are a number of questions which you have raised which we might better use the time answering.

And there is no need for me to read something which you have already read.

Chairman RODINO. Thank you very much.

Mr. Seiberling.

Mr. SEIBERLING. Thank you. I will just address my questions to both of you and you can decide who is in the best position to answer.

Yesterday, Assistant Attorney General Kauper made this statement; he said—

> Although Capper-Volstead gives the Secretary of Agriculture the power to find that a cooperative monopolizes or restrains trade "to such an extent that the

price of any agricultural product is unduly enhanced," and to seek injunctions against the cooperative, no such action has been taken by the Secretary in the 50 years the statute has been on the books.

Of course, this may mean simply that cooperatives have not engaged in conduct which may "unduly enhance" prices. We do not have the pricing information available to us which would establish or rebut such a contention. Information possessed by the Department of Agriculture and other agencies concerning individual firms is unavailable to us by statute, as are census reports.

Now, my first question is, Can the FTC get such information and look into this question and advise the Department of Agriculture, and if so, do they?

Mr. HALVERSON. Well, I will defer to Dr. Mann on the specific data question, and I believe he has a quite thorough idea of what we can and cannot get in that area.

Mr. MANN. Congressman, in order to get data from another Government agency, the Department of Agriculture or Bureau of Census, we have to make an official request to that agency for the data and the purpose for which it is to be used.

We have found in our experience that the speed or interest by which another agency will respond to our request depends on what priority they may give the Federal Trade Commission with respect to all of the other duties which they have.

We have found, for instance, and I was not here at the time, but during the period when the National Food Marketing Commission, in which the Bureau of Economics heavily provided input to many of the studies that were done, that the cooperation of these other Federal agencies was considerably enhanced because that Commission had a congressional mandate to do a particular undertaking.

We have found without such congressional help that it is very difficult frequently to get information of the kind about which you are speaking, and we do not receive such information on any regular basis.

Mr. SEIBERLING. And you do not have such a congressional mandate in this case?

Mr. MANN. That is correct.

Mr. HALVERSON. In fact, from an enforcement standpoint, the mandate would be the other way, to the Secretary of Agriculture who has the initiative.

Mr. SEIBERLING. Well, do you feel that it might be helpful in doing your job if we would require the Department of Agriculture to make that information available to you so that you might intelligently advise them because really, their mission is not to assure competition.

Their mission is, if anything, in the other direction.

Mr. MANN. Certainly. Let me speak to the point you are raising more generally, Congressman, because I think it goes to some of the questions that have occurred this morning.

The Bureau of Economics, which is the major repository of economic statistical surveys in the Commission, does not make except with respect to one program, the quarterly financial report, systematic data collection efforts.

That is the concern that was expressed this morning, that much of the data contained in exhibit G goes back to the mid-1960's and that is reflective of the fact that the kind of data collected on concentration and some other economic variables are either collected by other Federal agencies or not collected by anyone on a systematic basis.

Now, the difficulty with respect to the Bureau of Economics collecting any information, statistical surveys, goes to the question of the 6B power of the Federal Trade Commission Act. That is the section which gives the Federal Trade Commission the authority to seek general economic information of a kind which is to study particular industries or the economy in general.

However, under the Federal Reports Act of 1942, any 6B questionnaire which goes to more than 10 firms has to be reviewed by OMB. That review includes advisory input from the Business Advisory Council on Federal reports.

Assuming that we get through this, and we have now two major surveys under review by OMB which I think are responsive to the kind of a concern to which Chairman Engman referred, once those are cleared by OMB and sent to the business firms, if we fail to get compliance the enforcement of the 6B depends upon the Department of Justice.

That means that there are two executive agencies between the Federal Trade Commission and the collection of basic economic and statistical information.

Furthermore, if one goes into the courts, it is often a lengthy process and it has never, to my knowledge, been tested whether some of the economic information we would collect, which is particularly relevant and important to understanding pricing behavior and trend in competition in the American economy, would be interpreted by the courts as trade secrets and, therefore, exempt from public disclosure under section 6F of the Federal Trade Commission Act.

At a minimum, I would respectfully suggest that I think Congress might want to review whether it is necessary for OMB to review and for the Department of Justice to enforce 6B questionnaires that are seeking general economic statistical information.

As a specific example, Congress frequently urges the Bureau of Economics to do a particular study and likes to get the results as quickly as possible. That was reflected, for instance, in the nine-firm conglomerate study which was released in January of 1973. One of those respondents, Litton Industries, failed to comply with our 6B, and only was asked to comply with our 6B 3 years after that investigation began by an appellate court in the State of California. At that time our report was nearly completed and, therefore, we gave up asking for everything that we had originally sought on the 6B; and that questionnaire did not have to go through OMB because it was less than 10 firms.

What I am suggesting, and if I am sounding frustrated or there is a tone of frustration in my voice, it is because I have come to the conclusion that the 6B power of the Federal Trade Commission has the characteristics of a paper tiger with respect to the collection of statistical and economic information.

I am appalled by the kind of responsibilities this agency has with respect to the kind of data base with which it has to work, for me as an economist and for the Bureau of Economics.

Chairman RODINO. Would the gentleman yield?

Mr. SEIBERLING. Yes.

Chairman RODINO. I really want to applaud Dr. Mann for making that kind of a statement and making it clear that this exists. When things are called to our attention in this manner by individuals who

are concerned and who have the information and the expertise to be able to come to conclusions like this, and bring it to our attention, so if there is anything at all that corrective legislation may be able to accomplish in order to be able to correct it, why then we hope that we may be able to do it, because it seems to me that otherwise neither of us are serving any purpose in saying we are protecting the public.

Mr. MANN. I should quickly add, I think it is clear from what I have just said that I am under no wraps, but that was a personal statement, my personal view, and it has not been reviewed or cleared by the Commission.

Chairman RODINO. I appreciate it.

Mr. HALVERSON. And I, of course, operate under the same rules, that I speak my own views and not the Commission views since we are at the staff level.

Let me say, Mr. Chairman, though, that in respect to the right to go to court to enforce our own 6B questionnaires without going through the Department of Justice, and the right for my Bureau to go into court directly without going through the Department of Justice to enforce our own subpenas, that power was included in H.R. 20 which I understood is now H.R. 7917, and we would urge that that power be given to us both by the House and the Senate this year.

It is one of the things that Chairman Engman has testified on earlier. I have testified on this before, and we think it would be a very important power.

Chairman RODINO. Well, thank you.

Mr. SEIBERLING. Thank you. I wanted to add my commendation to the chairman's for the excellent statement on the nature of this problem.

I am not going to ask you whether you think you could get OMB approval through to get information from Litton at the present time.

Now, I would like to go on to another statement by Mr. Kauper and it relates to the same question. He was now talking about the impact of the marketing orders issued by the Agriculture Department on consumers. These are marketing orders that control the amount of products that can be sold by certain segments of the food producing industry, and farmers and farm cooperatives, and so forth.

He said they did not possess data on the impact of the marketing orders on consumers, and he said:

> We nonetheless believe that at a time of increasing food prices Congress should re-examine depression legislation which has as its principal and stated purpose the objectives of maintaining higher than competitive prices.

Again, we cannot even examine this intelligently without getting the information as to the impact. Can the FTC get that information, or is this the same problem as the one I just asked about earlier?

Mr. HALVERSON. Again, I will defer to Dr. Mann in a minute.

But, I believe he is referring to exempting legislation, is he not, with respect to certain marketing orders in certain areas. And if there is, in fact, exempting legislation in existence right now, that would mean that we are powerless to take antitrust action where there is an existing exemption.

Perhaps he was recommending, and I am not sure what he was saying, that the Congress remove that exempting legislation so that we could make an investigation.

Mr. SEIBERLING. His exact language was that "Congress should re-examine depression legislation which has as its principal and stated purpose the objectives of maintaining higher than competitive prices."

Mr. HALVERSON. I believe he is speaking of legislation which exempts marketing orders from antitrust prosecution.

Mr. SEIBERLING. Right. That is exactly what he is talking about. But, he said they did not have any data with which to evaluate the impact of the marketing orders.

Mr. HALVERSON. Again, since we are the antitrust enforcement agency, and I will let Dr. Mann speak to this, as to our investigational powers in the economic area, if the Bureau of Competition were to go after data we would be met with a claim of exemption. In other words, if the Bureau of Competition were to subpena data with respect to an investigation in this area we would find ourselves met with the claim by the responding companies that this area of activities is specifically exempted by legislation.

Now, Dr. Mann may speak to it as a general matter, but I think that is the antitrust enforcement problem that we have right now.

Mr. SEIBERLING. Well, does not the Department of Agriculture have to get some information in order to determine whether it is going to approve a particular marketing order, and if so, can you get that information at least?

Mr. MANN. I cannot answer your question intelligently, Congressman. I really do not know the facts with respect to the Department of Agriculture's collection of information pertaining to marketing orders. If they do collect such information, again I would expect that we would probably have difficulty obtaining that information.

And I am not a lawyer, but the possibility is that the same issue, the jurisdictional issue, would be raised that the Federal Trade Commission should not be doing an economic study in an area in which it has no jurisdiction with respect to any public policy action which it might take.

Mr. SEIBERLING. Thank you. I have no further questions.

Chairman RODINO. Ms. Jordan.

Ms. JORDAN. In the testimony yesterday we understood that the Antitrust Division of Justice will expand its economic unit in order to be better equipped for having information regarding economic factors which affect prices, and that there may be some anticompetitive component to what occurs.

Now, I am concerned about overlap. Is there any way that your economic unit of FTC and the economic unit of Justice can cooperate to try to get the full picture before us as to activity in the food industry and others that you would go into?

Mr. HALVERSON. Well, let me say first, and I reiterate what the Chairman said, that we have had a very close and cooperative working relationship with the Antitrust Division of the Department of Justice.

My experience is that this is longstanding, and I think it dates back to 1948 liaison arrangement, which is a public arrangement, is a written arrangement by which we clear investigations in cases in advance with each other, and usually that is according to whether or not we have prior expertise in a particular area. We also have our informal arrangements by which we exchange information with each other

which we think will be helpful to aid one agency or another in its antitrust enforcement responsibilities.

Those have been very effective. They have been very cooperative and they have been, I think, very helpful to both agencies in their antitrust prosecution responsibilities.

I would say too, that whenever one of the agencies feels that it has a lack of data, or a lack of understanding, it feels very free to send its personnel over to the other agency to get as much information as it can about that particular subject area. And that includes, as I understand, the economics area as well as the antitrust prosecution area.

Ms. JORDAN. Did the President, before making his economic speech a week or so ago, consult with the Commission about getting information on industries which have raised prices inordinately over the past several months and a possible relationship between price increases by various industries and anticompetitive factors?

Mr. HALVERSON. Not to my knowledge. I do not believe the President consulted with us.

Ms. JORDAN. Do you feel that this type of survey should have been made throughout the country as prices increased, and as percentages have been increased in various industries?

Do you not think that that is an area of legitimate inquiry?

Mr. HALVERSON. I think that we welcome any additional inquiry which will bring more data to bear on that question. We want the data, though, to be as reliable as possible, and for that reason Dr. Mann has spoken about this reporting suggestion that he has recently submitted to OMB for clearance, which would require companies to report data on a line of business basis.

You know, there are a number of conglomerates and multidivisional companies that aggregate data so that you do not really know what the data is for each line of business.

We are trying to get a clearance so that we can get specific, hard data through 6B questionnaires through the large industries in the country with respect to lines of business. Now, this is the kind of hard data you need to make the kind of decisions you are talking about.

Ms. JORDAN. There is some kind of data coming in as a result of the President's request. Would you have a look at that, or would it go to OMB?

Mr. MANN. The Cost of Living Council will be receiving data with respect to the program. And as I understand the promulgation of the rules and the Federal Register, these data will be confidential, and not available to anyone other than the Cost of Living Council.

Ms. JORDAN. But, if you feel these data show some violation of the antitrust laws, the Cost of Living Council and OMB would be powerless to act in terms of the enforcement of the anticompetitive laws we have, is that not correct?

Mr. MANN. Certainly. Yes.

Ms. JORDAN. Have you done anything different in terms of your investigation into price fixing as a result of the inordinate increases in prices that we are now experiencing?

Have you intensified your investigations, are you doing more, have you hired more people and gotten people into the field?

Mr. HALVERSON. Well, we have intensified our effort in the food industry. We, as a result of several complaints, for instance, about the A. & P. WEO program, have done an investigation in that area.

You must remember that to some extent we are limited again by the Packers and Stockyards Act to the extent we can get into the meat area without prior determinations by the Secretary of Agriculture. So, there are, again, jurisdictional limitations here that I think ought to be addressed by Congress as to certain exemptions which have carved out areas of limitation on antitrust enforcement, and which need reevaluation in light of the problems that are now going on.

And, again, I could give you a list of the cases, for instance, that we have pending right now in investigations. We have investigations in the dairy industry, in the beer industry, in the bread industry. We have, as I say, an investigation of the A. & P. WEO program.

Well, that gives you some broad background, and I can get into some specific cases if you want me to.

Ms. JORDAN. I do not think we are going to have time for that at this time. I would love to have you get into some of them at another time.

Just one further question, now. You are concerned with anticompetitive activities which would be reflected in the prices which the consumer pays for products. Are there not factors which would reflect the price of a product to a consumer which may not become immediately available to you that would sort of indicate that there may be some sort of informal agreement between people at some level of industry, but that even though the price which the consumer pays appears to reflect that everything is okay, there is something that you cannot see underneath which would indicate that it is not really OK?

Mr. HALVERSON. I think that the potential for that happening is really very much present and, in fact, a lot of our investigations are started on the basis of complaints by somebody along the distribution line, that something is going on that we ought to take a look at that is not immediately obvious on the surface. And that is how our investigations get started, and you are absolutely right.

We respond to those complaints, and we do take a look, and that is how several of our cases often get started.

Ms. JORDAN. Thank you, Mr. Chairman.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I first want to make a statement concerning your liaison which both members of the majority and minority have expressed.

I would hope that instead of having this informal arrangement that you would submit to the committee exactly how it is operating in writing so that we can have a feel as to what cases are being handled, the jurisdictions involved, why some food cases are handled by FTC, why some are handled by Justice.

I think that for purposes of antitrust enforcement, to have simply an informal arrangement of which we are told here today, is not nearly as beneficial to me as a member of this subcommittee, as well as the committee as a whole, as to have in writing the clearly defined jurisdiction of why certain expertise falls within Justice and why it falls within FTC.

So, I would request that, not only on my own behalf, but also on behalf of the committee, and hope you could supply that, Mr. Halverson and Mr. Mann.

[See app. 2, at p. 408.]

Can that be done?

Mr. HALVERSON. I would be happy to supplement my remarks here with a written response in that area. But, let me just say that you realize that there are different statutes administered by the different agencies. I mean, the Federal Trade Commission, on the whole, does not administer sections 1 and 2 of the Sherman Act. On the other side of the coin, the Antitrust Division of the Department of Justice does not administer section 5 of the Federal Trade Commission Act nor does it administer the Robinson-Patman Act.

So, that creates some constraints.

Mr. MEZVINSKY. I think that is fine.

Mr. HALVERSON. In the area of price fixing, for instance, I will give you an example. Since the Department of Justice Antitrust Division has criminal penalty power, if there is a hard-core price-fixing conspiracy we will defer to them because we want them to be able to use their criminal power.

I am talking now about price fixing between competitors. There are these sorts of limitations created by the statutory power of the agencies.

I do not want to get into more detail. We will give you a written response, but that is the sort of thing I am talking about.

Mr. MEZVINSKY. Now, I have recently received from the Assistant Attorney General Counsel of the U.S. Department of Agriculture an indication that over the past 5 years they have recommended only 13 cases for antitrust investigation, and only 1 case was recommended for prosecution, and that was to Justice.

Have you had any requests specifically to pursue any possible investigation or violations concerning the food industry from the Department of Agriculture?

Mr. HALVERSON. No, I am not aware of any.

Mr. MEZVINSKY. Now, I want to go into the line of business reports that you mentioned.

I gather really what you are saying for my benefit as I understand it, is that, if we looked, for example, at ITT, at their sales and profits for say, Wonder Bread or Hostess Twinkies, these would be reported to the FTC, for statistical purposes, under the product category of telephones, is that right, because that is precisely the case, is that right?

Mr. HALVERSON. That is precisely the case. Your example is one of those of the type that we are talking about.

A conglomerate, or a multidivisional company, can aggregate its data for all sorts of product lines and it makes it very difficult to sort it out.

Mr. MEZVINSKY. I understood you to say that you have to have clearance by OMB. Is it also the practice of OMB to have the Industry Advisory Council make recommendations about the forms so it goes to the industry to get clearance and then goes on to OMB to get clearance, and then it comes back to you?

Is that a practice that still exists?

Mr. HALVERSON. I can address this to Dr. Mann, too, but my understanding is the Industry Advisory Council of OMB is consulted by OMB whenever a questionnaire comes in for clearance.

Is that correct, Dr. Mann?

Dr. MANN. That is correct; the L.B. forms, as well as any other forms that are concerned with economic, statistical surveys; I emphasize that because if there is a survey that is being done for law enforcement purposes, where there is some presumption that there may be a law violation, OMB does not have full review authority with respect to that kind of questionnaire.

But, general economic, statistical surveys go through OMB review and then go to the Business Advisory Council which has an advisory capacity only. OMB simply receives the advice of this Council, but is not obligated to adopt its advice.

Mr. MEZVINSKY. Now, let us go into the report and the statistics on retailing, and I will conclude my questioning on this basis. I am disturbed by your schedule G where we find 1963 statistics and we hear from the Chairman that we are still compiling based on the census count of 1970.

It is a very slow, laborious process. You pretty much, Dr. Mann, voiced your consternation toward that.

It is my understanding that based on these figures the supermarket concentration in many metropolitan areas has pretty much exceeded 50 percent for four leading firms. Has that trend continued or accelerated since 1963?

Does the FTC have more recent figures than for 1963?

Dr. MANN. I would have to look into that sir, and I would like to submit something for the record.

My understanding is the National Food Commission, Commission on Food Marketing, recommended that the Department of Agriculture continue compilation of these kinds of data and make them available to the Federal Trade Commission. Whether we have received any recent data or not, I do not know, but I will inquire and submit it for the record to the committee.

Mr. MEZVINSKY. Is it not true that in the 1966 report it pointed out that in that one case National Tea Co., which is a major chain, enjoyed substantially greater profit margins in markets where it held the larger market share?

And if that is the case, does the FTC use that kind of information when it considers the data in the future?

Dr. MANN. As I recall, that is correct, that there was such a table with respect to National Tea, and yes, that kind of information is part of the important economic input that goes into decisions about litigative work at the Commission.

Mr. HALVERSON. Incidentally, the Bureau of Economics and the Bureau of Competition work very closely together, and my case evaluation committee in the Bureau of Competition includes a representative from the Bureau of Economics, and we have a very close working relationship.

Mr. MEZVINSKY. Now, my last question is, are you concerned about the influx of large corporations within the agri-business cycle, and I would only point out that we have examples where Tenneco acquired 160,000 acres when it bought the Kern County Land Co. in California.

Are you looking at those kinds of acquisition problems, are you looking at that kind of concentration, and if so, what is being done and how are you implementing it?

Mr. HALVERSON. The answer is "yes," and again this is done through evaluation of acquisitions at the time they take place. I will give you an example. We have a case against United Brands which was a $1.5 billion company, and that is on an acquisition basis, going into the small lettuce industry in California and acquiring several lettuce farms. And we thought that where the industry was as competitive as it is, with so many producers, to inject that deep pocket in that industry would be very anticompetitive, and my Bureau is prosecuting that case vigorously right now.

Mr. MEZVINSKY. Which I commend, because I have seen that case.

Is that the first case you have brought against producers?

Mr. HALVERSON. We brought another case where Purex went into the lettuce agricultural business, and then Purex got burned so badly that it pulled back out again, and so when it pulled back out again we dismissed the case.

Mr. MEZVINSKY. All right. I have some other technical questions, Mr. Chairman, which I will submit in writing and I will defer further questioning.

Chairman RODINO. Thank you very much.

Dr. Mann, I referred a while ago to the study which we know that the Federal Trade Commission has not released as yet, but it is a study of monopoly overcharges of American industries, and my impression is that there is a conclusion that perhaps $2.6 billion of the $121 billion spent by consumers for food is a result of unnecessary concentration in the area of the food industry.

Can you give us your opinion as to the validity of such an estimate if that is, in fact, the conclusion that has been reached?

Dr. MANN. The report, which is referred to in exhibit G, page 7, calls your attention to the fact that some of the figures in that report were leaked to the public and subsequently published in a journal called the Antitrust Law and Economics Review, Spring, 1972, which lists the 100 industries and constructs their own estimates from the data we had. Those figures, although in our report they have not been done in that way, draw such conclusions.

It was possible to draw such conclusions from this report. The purpose of this report, the purpose of this effort started 2 years ago when I began at the Commission, and its purpose was to attempt to direct the Commission's attention toward those industries or toward those areas in which it would appear that the most serious questions were raised with respect to the pricing behavior of the firms.

Economists have particular kinds of techniques to attempt to make estimates of the extent to which prices charged by business firms would depart from what we would expect to be the case if the industry were competitive or fully competitive in a price sense.

I initiated this pilot project, and focused on 100 industries, manufacturing industries at what is called the four digit level; that is, under the standard industrial classification system designation of industries. You will notice if you look at that published report, the particular 100 4-digit industries for which we made estimates.

Unfortunately, one of the key pieces of economic information which is necessary to make the kind of estimates which we made is profitability in the particular business in which we are interested. For instance, if we would like to estimate whether the pricing of refrigerators departs from the competitive level, we need to know how profitable firms are which are in the refrigerator business.

Unfortunately, there exist no public data on that since the firms, large and major firms in the refrigerator business, General Electric, General Motors, do not break out their data in that kind of detail. So, the line of business form is necessary.

We have essentially not gone on with this project. In fact, it has been abandoned.

My original dream, my original hope that we would, in fact, do a survey of the 400-odd manufacturing industries classified by the SIC, and then we would move on to mining and wholesale and retail trades, has now floundered essentially because there just exist no data of the kind, of that particular nature which is absolutely essential to make any kinds of sensible estimates about overcharges.

And even this 100 industry study, as you will probably see, is full of caveats with respect to the quality of the data which we have to work with. This problem gives enough imprecision to these estimates to make it difficult to make any ranking of these industries with respect to how much price departs from the competitive level. That is unfortunate, and it goes back to my earlier consternation. I think it is an appalling situation for an agency as the Federal Trade Commission, with the kind of responsibility it has for economic analysis, not to be able to judge where it might want to turn its major attention in terms of allocating its resources to where enforcement problems may exist.

But, that is a fact of life. We cannot do so because the data with which the Commission has to work is inadequate.

Chairman Rodino. Well, thank you.

Counsel has a question.

Mr. Falco. Yesterday the Assistant Attorney General for Antitrust particularly mentioned bread and milk as being prone to price fixing. In doing some research yesterday I notice that the Federal Trade Commission, upon request of the Secretary of Agriculture in 1966, conducted a study on the basis that there had been a sharp increase in the retail price of milk for that period of July to September of 1966 which had been 7.8 percent above the January of 1966 level.

The conclusions that the Commission reached were that there had been a radical change in the supply and demand conditions allowing a recovery in an area where farm prices had been depressed for over a decade, that milk processors not only passed the increases in ingredient costs but it added their own margins as well, also representing a recovery from depressed processor operating margins, and because of the practice of taking a fixed percentage margin, retailers tended to pyramid the price increases generated at the farm and processor levels.

In addition, the Commission announced that it was going to study several milk markets and deal with studying the level and depth of prices in some cities.

Has the Commission conducted the study that it was going to, and what conclusions did you reach, and did you institute follow up recommendations to Congress, and have you done anything in a situation that is even worse in 1973 than it was in 1966?

Dr. MANN. I will have to look into that, sir. To my knowledge we have not.

The Bureau of Economics has not taken on or continued any studies in those areas. Since that report and the indications about what we are going to do were well before I arrived, I would have to look into what we did, if anything, and whether we drew any conclusions.

I will submit whatever we have for the record.

Mr. FALCO. What does it tell you when retailers can pyramid price increases reflecting cost increases at lower levels of distribution and hence persistently retain a fixed percentage margin of profit that they themselves instituted?

Dr. MANN. It suggests that they have an amount of price discretion which is greater than we would expect to be the case if they felt more competitive pressure.

Mr. FALCO. I have one other question if I may, Mr. Chairman.

Would a 16 percent or a 12 percent increase in retail prices in 1 year mean anything to you as an economist, and does not price information of such proportion in and of itself have any meaning to economists, independent of any other economic factors that go into pricing as a measure of performance?

Dr. MANN. That fact alone only suggests to me as an economist that we are experiencing very severe inflation. Then the question becomes why, and that requires an analysis into demand changes, cost changes, maybe an increase in discretionary power over prices, other sorts of economic forces which may be influencing that price increase.

Chairman RODINO. Excuse me. Would you give the same answer if the price, or the rate of increase in the food industry, was three times what it was in other sectors?

Dr. MANN. Yes, in the sense that that fact only suggests to me that the food industry for some reason, its price increases are running ahead of other sectors, but it as a sector is experiencing severe price inflation, and without knowing I would like to know why.

But, that is all it connotes to me.

Chairman RODINO. Well, Dr. Mann, even though in 1972 the rate of increase might have been comparable in the food industry as in other sectors of the economy, and in 1973 it increased that much, would you still say the same thing?

Dr. MANN. Yes. Economic forces tend to operate quickly, and it is conceivable that the price increases are simply explained by rapid demand or rapid supply shifts which may explain this dramatic change.

You know, I am not saying that is the case, but all it connotes to me is that something is going on with respect to certain economic force that have rapidly changed. And I would have to look into what economic forces.

Chairman RODINO. Would not that in and of itself so engage your attention that there would be a greater responsibility to inquire even more deeply than one might under ordinary circumstances?

Dr. MANN. I would agree, yes, it is of concern. The difficulty is that the Commission has limited resources. Its resources in the Bureau now

are heavily committed to ongoing projects. In order for me to shift staff to try to do some crash project on understanding the inflationary process that is going on in the economy in the food sector, in particular, requires stopping other projects. That means I would have to indicate to the Commission what we are stopping and why.

Chairman RODINO. Well, has this been done?

Dr. MANN. This has not been done.

Chairman RODINO. Well, do you not think that under present circumstances, where there has been such a tremendous rise in prices in the food industry, that it would seem to at least engage the attention of the Commission in such a way as to say well, all of these things may have been going on up until now but we ought to take another kind of look at this thing and we ought to attempt to do something about it?

Now, I am not suggesting that you can, but it would seem to me that if there is such a wide gap, and if in 1972 there were comparable increases and then in 1973 why you begin to shift gears and see it all of a sudden go, just beyond all conceivable comparable increases, then it seems to me that something needs to be done.

Dr. MANN. Well, I would be happy to call the Commission's attention to this and suggest that we devote some resources to as quick an analysis as we can do, understanding the data limitations about which, to which I have spoken, to try to understand what is going on here and whether there is anything which the Commission might be able to do.

Chairman RODINO. Mr. Halverson, I understand that you wanted to respond to that?

Mr. HALVERSON. Yes. I just had a question because you commented on the dairy industry. I do not know whether you are familiar with our merger policy in the dairy industry, but we did have a number of orders in the 1960's which are now beginning to expire.

So, shortly the Commission will issue a set of dairy industry merger guidelines. By the way, we feel that those orders we had in the 1960's slowed down the dairy industry concentration significantly.

I am now talking about concentration of ownership of assets. And we think that the new guides will continue to hold the line in terms of concentration. I will not go into them in detail, but they are there.

Mr. FALCO. Is it not true that during 1967 and 1968, 31 milk cooperatives, 29,000 milk producers and 11.3 billion pounds of milk per year were combined into 3 large milk cooperatives, and that for the Nation as a whole, 45 cooperatives combined to form 8 cooperatives.

Do you know?

Mr. HALVERSON. I am not sure of your data, but we did in the 1960's have a number of orders against acquisitions—I am sorry, are you talking about cooperatives now?

Mr. FALCO. Yes.

Mr. HALVERSON. We have no jurisdiction. You congressmen have specifically exempted them from antitrust enforcement.

Mr. FALCO. Is that true under the exemption to the Capper-Volstead Act, and do you have any case authority for that?

Mr. HALVERSON. Well, we can submit a written answer to that, but my understanding is that we have no jurisdiction over merger of cooperatives, but we will check that out. [See app. 2, at p. 408.]

Mr. FALCO. Well, did not the *Borden Co.*, case in 1939 say the Department of Agriculture did not have primary jurisdiction under the Capper-Volstead Act?

Mr. HALVERSON. As I say, we will submit a written statement but our understanding has always been that we cannot stop a merger of two cooperatives.

Mr. FALCO. Well, I would welcome some of the research and your opinions on that. When you say the dairy industry, then your study will not include studies concerning the 12-year period ending in 1969 where 322 dairy cooperatives disappeared by merger, will it?

Mr. HALVERSON. Well, I am not talking about studies. I am talking about guides that we have in the industry designed to slow down the merger trends, but again, if cooperatives are specifically exempted from our antitrust enforcement, there is not a thing we can do.

Mr. FALCO. But, of course, you have not researched the legal precedent about the exemption?

Mr. HALVERSON. My staff tells me their understanding is they are specifically exempt.

Mr. FALCO. If there is some concern about that I would like, if you could, for you to address yourself particularly to the *Sunkist* case of 1962 and its applicability to section 7 of the Capper-Volstead Act.

Mr. SEIBERLING. Mr. Chairman, could I ask some questions?

Chairman RODINO. Just a minute.

Mr. Dennis has not had an opportunity yet.

Mr. DENNIS. Thank you, Mr. Chairman.

First, I would like to express my appreciation of what seems to me to be the very professional answers of Mr. Mann to these questions which seem to be designed to draw a great many conclusions and deductions from the mere fact of a price rise. I just say that by way of passing.

Now, while I have Mr. Halverson here, and because of the interest that has been expressed to me by a great many constituents, I would appreciate knowing what is the rationale for the action taken to break up the franchise holders in the soft drink industry?

A great many businessmen in my area are concerned about that, and I feel they are legitimate business people and have been that way for many years, and all of a sudden the Government is kicking them around in favor of the big chains. That is the way they put it, or seem to feel about it.

Now, what is the basis of your action?

Mr. HALVERSON. Well, Congressman, the actions were really not designed to break up anything. All they are designed to do is prohibit the manufacturer from restricting his distributors to specific geographic areas. These are the soft drink cases you are talking about?

Mr. DENNIS. Yes. Yes.

Mr. HALVERSON. And the rationale behind that is, if Coca-Cola for instance is able to tell its distributors that they cannot compete with each other in certain geographical areas, that prevents intrabrand competition. In other words, one Coke distributor as against another, and that is an unhealthy thing because that limits the amount of competition between Coke distributors. And we think more healthy competition between Coke distributors would lower the price to the consumer. That is the rationale behind it.

We realize that there still remains interbrand competition between Pepsi and Coke, between Seven-Up and Coke, but what these agreements do is in effect prevent competition for the selling of Coke in

geographic areas. They give a geographic, a specific geographic area to one distributor and one distributor only. They do not allow another distributor to come into that area to compete with him.

We believe in competition, and we believe competition will lower the price to the consumer by a significant amount if those geographic restraints are removed, and that is why the Bureau of Competition has taken a very strong position on this.

Mr. DENNIS. Of course, their contention, as put to me, is that the only way the independent can survive is with these arrangements, and that the only result is that people like Kroger who have everything on their shelves will run them out of business. Then the price is going to go up because there will not be anybody else left to compete with Kroger and so on.

Mr. HALVERSON. Well, now, I do not quite understand that because we are talking about the people who distribute to Kroger. We are talking about the distributors who distribute within a certain geographic area.

Mr. DENNIS. I am talking about the fellows who own local bottling companies and so on. They say they just cannot live with this, that Kroger and its trucks will go out for miles around to buy all of the brands. Local bottlers will lose the business, and they will go broke.

Mr. HALVERSON. I have heard, I have certainly heard that argument.

Mr. DENNIS. I admit that I am not well versed in it, but these are good people, you know, solid citizens of their local communities.

They feel like they are really being pressed to the wall by the U.S. Government after having enjoyed a business for many, many years.

Mr. HALVERSON. I have certainly heard that argument.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DENNIS. Surely.

Mr. SEIBERLING. I think I can clarify this a little by giving you the same example, because I have had the same complaint thrown to me by local bottlers. The gist of it is that if the bottler in Akron, let us say, of Coca-Cola does not have an exclusive market area in the Akron area, that a big bottler in Cleveland, who can service the entire Cleveland, Akron, Canton metropolitan area of 4 million people, simply will come in with a lower price than the local bottler can afford and knock him out and supply Kroger and all of these chains from the Cleveland market. And then when he is knocked out, then he is in a position to start raising the price again.

Mr. HALVERSON. Well, we did——

Mr. SEIBERLING. And that is the nature of it?

Mr. DENNIS. That is exactly right.

Mr. HALVERSON. Yes; I understand, and I have heard that argument and I understand that argument. We have done a lot of very careful looking into this area. We do not believe that a substantial number of the independents or the smaller ones would be eliminated.

We think that price competition would be enhanced. In fact, your very example would be a case where you, in fact, admit that the increased competition would lower prices to the consumer or to the people buying from the distributors because of the increased competition.

Now, if the effect were uniformly to drive the small distributor out, of course we would like not to have that effect. But, our study has shown, and at least the indications that we have are that we think

more viable competition would result without a substantial reducing of the number of competitive entities in the distribution area.

Mr. SEIBERLING. I am not saying that is my position, but that is the position that has been presented to me by the small bottlers.

Mr. HALVERSON. By the way, we have heard that position presented to us a number of times.

Mr. DENNIS. I would concur with my friend from Ohio in that that definitely is the position presented. They say that really the companies like Coca-Cola do not really care. These companies have agreements with them, and they are going to live up to them, but it would not hurt them, they say.

Coca-Cola can deal with Kroger and the man in Cleveland just as well, but the fellow who is not going to be around any more is your small local bottler. Now, maybe they are wrong and maybe it is not justifiable economically. But, we have had small bottlers around for a long time and it seems to me that you ought to give that a little consideration. These are American citizens you are talking about, and usually pretty good people.

Mr. HALVERSON. Again, we very carefully considered that, Congressman, before we brought these cases. Those arguments were made to us.

In your judgment the value of these cases would be to eliminate the geographic restrictions which would in the end lower prices to the consumer. We are worried about prices to the consumer in the food industry, and this is a huge area of consumption for the American consumer annually.

And our judgment is that the elimination of geographic areas would result in lower prices to the consumer for soft drinks.

Mr. DENNIS. I appreciate that, and I am sorry that I am not a little bit better versed in this to discuss it further with you. But I did not want the occasion to pass.

May I ask you just one thing more, for my own information? You have a statement here, and you cite a couple of Supreme Court cases, Von's Grocery and the FTC against Meyer, but you did not give us any citation. Could we have them?

Mr. HALVERSON. Yes. Sure.

We will certainly give those to you. I am sorry, the Von's Grocery decision is a leading merger case.

Mr. DENNIS. I am sure it is, and you know all about it. I do not, but I might educate myself.

Mr. HALVERSON. We will be happy to supply that, and in fact we will send a copy over.

Mr. DENNIS. Thank you very much.

Thank you, Mr. Chairman.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. Let Mr. Seiberling fire away.

Chairman RODINO. Mr. Seiberling.

Are there any further questions by the members? Otherwise counsel has some further questions.

Mr. SEIBERLING. I just have one further question.

The Packers and Stockyards Act puts the owner of a stockyard in a position to eliminate competition among dealers which use his facilities unless he is regulated.

Now, I understand the act gives the Secretary of Agriculture the power to adjudicate complaints, but it also provides that the FPC

can take action under certain circumstances, and I just wondered whether the FTC is doing anything within its power to try to see that competition is enforced in that sector of meat distribution?

Mr. HALVERSON. Let me say my understanding of that, Congressman, is that though we are required to wait for a preliminary determination by the Secretary of Agriculture, I believe that is right. Just a moment.

That is, at the packers level and stockyards level we have to defer to the Secretary of Agriculture first. After it gets out of that level, that act ceases to prohibit us from taking action.

In other words, when it gets into the chain of distribution, we can take action, and several of our cases, several of our merger guidelines are directed toward the prevention of lessening of competition of the broad food areas which would include the meat distribution area. Our merger guidelines, for instance, in grocery product extension mergers and in food distribution mergers were designed to prevent the increase of concentration in those areas, and of course that includes the distribution of meat products as well as others.

Mr. SEIBERLING. Well, in the chain of meat distribution are there other points besides the stockyard where it is possible that the people involved could get together and exercise some sort of power which could increase costs over what they ought to be in a free competitive situation?

Mr. HALVERSON. I think there is a potential at almost any level, and I am not saying that we have any evidence of that, but I am saying the potential is there at many levels, and we are constantly looking for that sort of thing. And as I say, quite often, as I answered earlier, quite often the reports of that sort of getting together come in secretly to us by one who knows that it is going on, and then we will conduct an investigation to see if, in fact, some of that is going on.

Mr. SEIBERLING. Mr. Kauper yesterday said that there is evidence of bid rigging and indirect price fixing in the meat industry.

Do you have evidence of that, or do you coordinate with the Justice Department in this sort of situation?

Mr. HALVERSON. If you are talking about—let me answer that directly first. I am not aware that we are conducting any investigation on bid rigging in the meat industry, or indirect price fixing. But, again, to the extent that there was a conspiracy to rig bids or fix prices, the criminal sanctions under section 1 of the Sherman Act are probably more appropriate and we would probably defer to Justice on that.

Mr. SEIBERLING. Thank you.

Chairman RODINO. Mr. McClory.

Mr. MCCLORY. Mr. Halverson, while our jurisdiction relates primarily to that of antitrust, our concern, of course, is the consumer. The consumer is affected by the recent high increase or substantial increase in food prices.

This has given great impetus to creating a new consumer protection agency. There are various bills that are pending here in the Congress, some of which may be acted upon. My own position is that we have enough agencies and departments of government to look after the welfare of the consumer if we were only to utilize what we have.

Since you are expressing personal opinions here today, you and Dr. Mann, I am wondering whether you feel that with some legislative revisions and some increased appropriations for a larger staff,

which you would indicate you would require for some of these activities, we would not have to set up a new agency or department?

Mr. HALVERSON. Well, I would agree. If that was a statement rather than a question, I would agree with your statement.

We feel that with a supplement to our existing resources that we could. We are a very, very thorough consumer protection agency.

As you know, we have the Unfair and Deceptive Acts or Practices part of section 5 which is used by the Bureau of Consumer Protection to prosecute all kinds of deceptive activities, including false advertising and other such activities.

You then have the Unfair Methods of Competition part of section 5 of the Federal Trade Commission Act which is used to prosecute all types of antitrust violations from mergers to price fixing, to vertical restraints. And we think we have the power.

The problem is the manpower, the budget and very importantly, the data that Dr. Mann has been talking about. And if we get those sorts of things, together with a reevaluation by Congress perhaps of some of the exemptions from the antitrust laws right now, we think we can do the job.

Mr. MCCLORY. Would you generally concur in that statement, Dr. Mann?

Dr. MANN. Yes, sir.

Mr. MCCLORY. Thank you. That is all I have, Mr. Chairman.

Mr. HUTCHINSON. Mr. Chairman, might I just inquire? Do we have some kind of a list—if not, could it be furnished indicating all of the exemptions from the antitrust laws?

Mr. HALVERSON. I was going to suggest, Congressman, in light of my discussions with counsel, I think that would be very helpful.

I think what we ought to do is supply the committee with a list of the antitrust exemptions and our interpretations thereof with respect to our authority. And I think that might be very helpful, if the Chairman would permit.

Chairman RODINO. That would be very useful and the committee would be glad to have this.

Mr. Seiberling.

Mr. SEIBERLING. Could I just ask to follow up the previous statement?

Chairman RODINO. Why don't we defer to Mr. Mezvinsky.

Mr. SEIBERLING. All right.

Mr. MEZVINSKY. I will be brief.

You know we have been here for a while. I am concerned regarding all of the testimony you have given about having the necessary data to do your job before you can institute any action.

Are you concerned that the Census Bureau may be the one that is the depository of this statistical information, and that the delays in obtaining this information will result in a lack of enforcement?

Dr. MANN. Yes.

Mr. MEZVINSKY. Now, what is being done about this possible problem other than just recognizing your concern?

Dr. MANN. Well—

Mr. MEZVINSKY. In view of the recent appointees that are under question, I might add, concerning whether or not the agency is operating in the best interests of the public or whether it is becoming a political front organization?

Dr. MANN. Well, that is not—I have no comment on that kind of issue.

The specific issue about which I am concerned is that there have been spokesmen on the Business Advisory Council who have recommended that if the Federal Trade Commission is going to get line of business data, that the quarterly financial report program, which will be receiving the line of business data, be transferred to the Bureau of the Census. This was an explicit statement of Mr. Hornbostel, executive vice president of the Financial Executive Institute, at an October 1972, meeting of the Business Advisory Council.

The reason for such a transfer, obviously, is that the data which the Bureau of the Census receives are protected by title 13 from, including from a court order, being available to anyone. In fact, the Federal Trade Commission may have the distinction that its economic staff cannot receive census agent status. That means status with respect to our economists going to the Bureau of the Census and looking at raw reports received by the census so that we can do our own analysis. All we do is ask the Bureau of the Census for tabulations of raw data, and our experience in the Bureau of the Census is, and in fact, my staff has just received a letter in which census has refused cooperation with respect to our corporate patterns report; refused a very fundamental piece of help we need from the Bureau of the Census.

The Federal Trade Commission does not get very high authority. Yes, I am very concerned about it. I am not concerned about particular personnel. I do not have any comment on that, but the Federal Trade Commission experience with the Bureau of the Census in the past has been dismal.

In title 13, if the quarterly financial report was moved to the Bureau of the Census, it would, in my view, be a major setback to the whole profit reporting program.

Mr. MEZVINSKY. Thank you.

Chairman RODINO. Well, thank you very much. There is a quorum call and we are going to be leaving.

The Chair would like to advise both Mr. Halverson and Dr. Mann, as we have already expressed to Chairman Engman, that we will be forwarding to the Commission certain specific questions which we would like to have responses to.

And with that, we are going to adjourn the hearing until the 11th of July, Wednesday, at 10 a.m.

Mr. HALVERSON. Thank you, Mr. Chairman.

Chairman RODINO. Thank you.

[The prepared statement of Mr. Halverson follows:]

STATEMENT OF JAMES T. HALVERSON, DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

Mr. Chairman, Members of the Subcommittee: I have been asked to appear here today to give my views with respect to antitrust enforcement in the food industry. The views I express are my own and have neither been reviewed nor approved by the Commission.

As the Chairman has stated, it goes without saying that an investigation of "The Food Industry" is a tremendous task, which is only slightly diminished by concentrating on the antitrust aspects of it. The initial problem is to define what is meant by "The Food Industry." Although it is concerned with products which eventually end up at the dinner table, the uniformity among products stops there. The diverse origins of various foodstuffs and the many routes which different commodities or processed foods may follow on their way to the market-

basket indicate that the study of the food industry is the study of many industries. It does not simplify the task to any great extent to define, within each industry, three usual tiers of sub-industries involving, first, agriculture, second, food processing, and third, wholesale and retail distribution. It may be helpful to mention, however, that a comprehensive overview of the industries, their structure and behavior, might best be obtained by study of the technical studies of the National Commission on Food Marketing, as well as the 1966 Report of that Commission entitled "Food From Farmer to Consumer."

Again, as the Chairman has stated the Commission has been very active within the broad parameters of the "Food Industry." That attention covers the full range of enforcement activities from formal guides, through individual investigations and litigation, to advisory opinions and extends to all aspects of the food production and distribution chain.

This Subcommittee has been supplied with information giving details of our enforcement efforts in the food industry over the past five years. I will touch only on the highlights. Perhaps the Commission's most significant on-going efforts have been its published enforcement policies on mergers and acquisitions in grocery products manufacturing and in the food distribution industry. In 1968, the Commission became concerned about increasing concentration of grocery products manufacturing and the growth of food conglomerates. Of particular concern were product extension acquisitions in which leading firms, through merger or acquisition, achieved a broad participation in many different aspects of grocery manufacturing. As the Commission said when it issued its Guide:

"When firms hold strong positions in many industries, particularly concentrated ones, this may affect the condition of entry and the type of conduct to be expected in particular product markets."

In view of the developments in the structure of the industry, the Commission concluded that "channeling the location of merger activity away from those acquiring companies which may adversely affect competition may create an environment conducive to growth and vitality among small and medium size grocery products manufacturing companies." As a consequence, the Commission announced its enforcement policy with respect to "Product Extension Mergers in Grocery Products Manufacturing," a copy of which has been supplied to this Subcommittee. In that statement, the business community is advised of the criteria which the Commission will use in challenging grocery product extension type mergers which raise significant questions of law and policy.

Previous to this announcement, the Commission had become similarly alarmed by the rapid concentration in both national and local food distribution. As a result of the FTC's experience over a number of years with mergers or acquisitions involving large supermarket chains, and in light of the Supreme Court's *Von's Grocery* Opinion, the Commission announced criteria by which it would select for intensive review mergers which were most likely to have anticompetitive consequences. To implement that policy, the Commission required that it be notified at least 60 days prior to any merger, acquisition or consolidation involving any food retailer or wholesaler with annual sales in excess of $100 million. These notices take the form of special reports which give the Commission sufficient information upon which it can base intelligent enforcement decisions.

This past year, the Commission conducted a review of the last five years of the food distribution reporting program. The analysis indicated that significant success had been achieved in reducing the level of mergers in the food distribution industry and particularly mergers involving industry leaders. The program is continuing and reporting forms have been authorized for an additional five years.

In addition to monitoring mergers and acquisitions in the food industry, the Commission also has outstanding a number of orders against major supermarket chains which require them to obtain Commission approval before acquiring additional stores. Our compliance staff in the Bureau of Competition handles such requests for clearance on an on-going basis.

These two merger guides focus on the processing and distribution aspects of the food industries. This emphasis is understandable in view of estimates that 68 percent of the consumer's food dollar is spent in food processing and distribution, as opposed to only 32 percent on agricultural commodities themselves. A further reason for enforcement emphasis on problems in processing and distribution results from the fact that agriculture itself comes closer to pure competition than most, if not any, other major industry. Most of agri-

culture is competitively structured with many different sellers, so that prices are likely to be sensitive to supply and demand and not readily susceptible to manipulation by a few industry leaders. Enforcement efforts have followed, however, when threats to the competitive structure in agriculture have been made. Thus, in 1969, a complaint was issued challenging the acquisition by United Brands of numerous lettuce farms in California and Arizona. It was alleged that the entry of a corporate giant into an industry marked by vigorous competition between relatively small farming entities would alter that industry substantially and lessen competition. The complaint and proposed relief have been upheld by an initial decision from an Administrative Law Judge, and the matter is now on appeal to the Commission.

Up to this point, I have been speaking primarily of the Commission's concern with the structure of the food industry and the important impact on competition which flows therefrom. Let me also point to the Commission's concern with the behavior of individual industry members, acting either alone or in concert, which can also adversely affect the vigor of competition.

I would point out that in the behavior area, what the Commission does, although focused on one particular fact situation, nevertheless may have broad application throughout the business community. Thus, a list of what the Commission has done in the food industry would be much larger than that already supplied to this Subcommittee if we had included not only those matters involving food but also those matters which would have application in the food industry.

Discriminatory practices in the food industry have drawn a considerable amount of our attention. Robinson-Patman investigations are not easy. Litigation is frequently prolonged and constitutes a great drain on our limited manpower resources. As a consequence, we choose our cases with care and with specific objectives in mind which justify the expenditures of effort which go into such cases. I should also point out that, in my opinion, Robinson-Patman remains a very important and essential tool with which anticompetitive and discriminatory activity by big firms can be checked.

One of the criticisms of the Robinson-Patman Act has been that parts of it are difficult for the businessman to understand; as a consequence, it is argued, he does not consult the Act for guidance in his business affairs. The Commission is trying to help. For instance, in response to the suggestion contained in the Supreme Court's opinion in *FTC* v. *Fred Meyer, Inc.*, the Commission created a guide on "Advertising Allowances and Other Merchandising Payments and Services." This guide explains Sections 2 (d) and (e) of the Robinson-Patman Act and gives the businessman clear advice on how to conduct his business in conformity with the mandates of the law. In addition, our staff continuously handles inquiries with regard to specific problems which may still arise under the Act.

An additional exploration into the business behavior area involves an allegation, now in litigation, that Robinson-Patman violations were involved in an agreement between A&P and Borden relating to the supply of milk to A&P stores. Perhaps the more interesting part of the complaint, however, alleges that the negotiations on the contract resulted in a course of conduct to be followed by the parties which had the effect of stabilizing and maintaining the price of milk in the market area involved. While this allegation of violation of Section 5 of the Federal Trade Commission Act also has yet to be proved, it stands as an example of staff's efforts to enforce the antitrust laws in a meaningful fashion.

The Commission's continuing attention to the food industry is demonstrated by other current litigation and investigations. In litigation are allegations of anticompetitive practices resulting from a shared monopoly in the ready-to-eat cereal industry, territorial allocations involving distribution of soft drinks, and anticompetitive acquisitions in the wine industry, the frozen fish industry, and the soft dring concentrate industry. In addition, hearings are currently under way involving the extension of an order obtained in 1962 against ITT-Contnetal prohibiting further acquisitions in the baking industry without Commission approval.

While pursuing these matters in litigation the Commission also has under way non-public investigations into leading firm behavior in the beer industry, pricing practices in the baking industry, and the cookie and cracker market, acquisitions by Nestle of major firms in the canned goods and frozen prepared foods industries, and acquisitions in the dairy industry. With regard to dairy acquisitions, the Commission will shortly release guides which indicate those acquisitions in the dairy industry which the Commission will seriously consider challenging. Operation of the guides will be similar to those involving the food distribution

industry. By issuing such guides, it is hoped that the trend toward concentration in the dairy industry which was stopped in the 1950's by the entry of Commission orders will not be renewed as the effective terms of those orders begin to expire.

Although the Commission's activities in food-related matters are extensive, its ability to enforce the antitrust laws at will throughout the industry is affected by legislation which creates limited exemptions for various segments of the food industry. Thus, the Capper-Volstead Act of 1922 permits farmers and other producers of food products to join together in cooperative associations for the marketing of their products. The Fishermen's Collective Marketing Act of 1934 establishes the same protection for fishermen with regard to the sale of fish and other aquatic products.

A third exemption, which was inadvertently omitted from the information submitted to Chairman Rodino, is found in the Packers and Stockyards Act of 1921. Although the exemption is limited, the Act does place primary responsibility over practices of packers, live poultry dealers or handlers, and stockyards in the Secretary of Agriculture. To avoid jurisdictional entanglements, therefore, the Commission's attention to matters at the primary level in meat and poultry has not been as extensive as it might otherwise have been.

Because the Bureau of Competition has already testified against passage of an antitrust exemption covering territorial allocations among soft drink bottlers, I will simply note that such legislation is now pending, and reiterate our opposition to it.

The phenomenal increase in the price of food over recent months has alarmed us all and, no doubt, was one of the factors which prompted this investigation. In the materials submitted to the Subcommittee in response to Chairman Rodino's request, the Commission's Bureau of Economics suggests that the cause of this situation can be traced to readily explainable factors now operating in the economy.

We are told that there has been a general increase in aggregate demand and prices have risen in response. The rise in food prices between 1967 and 1972 rose about 23.5 percent and the Consumer Price Index showed about the same increase at 25.3 percent. Thus, food price increases followed the economy in general until the end of 1972.

However, the first part of 1973 has witnessed dramatic price increases. A comparison with the Consumer Price Index between December 1972 and April 1973 shows a 2.6 percent rise for all items and an 8.3 percent rise for food, almost three times above the normal. The economists attribute this increase to price increases at the farm level. For instance, during the four month period December 1972 through March 1973, livestock prices rose 27 percent and poultry prices increased 64 percent. It is suggested that these increases may reflect the competitiveness of the food industry at the agricultural level with prices reacting to changing supply and demand.

Nothwithstanding these plausible explanations, I share your curiosity to know whether there are any artificial barriers to free competition in the food industry which have contributed to the present situation. Of course, we will continue to press our enforcement efforts in the food industry in an attempt to end anticompetitive conduct and situations where we find them. Also, we will follow your investigation with great interest. To the extent that this investigation highlights antitrust abuses in the food industry, it will have served our common purposes well. We are always anxious to know where our enforcement attention can be applied to best advantage, and we will look to the record created by this investigation to assist us in making such determinations.

Thank you Mr. Chairman.

[Whereupon, at 12:30 p.m., the hearing was recessed to reconvene Wednesday, July 11, at 10 a.m.]

FOOD PRICE INVESTIGATION

WEDNESDAY, JULY 11, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:17 a.m., pursuant to recess in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. [chairman] presiding.

Present: Representatives Rodino, Flowers, Jordan, Mezvinsky, McClory, and Dennis.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order.

Today we renew our inquiry into the factors contributing to the fantastic rise in food prices in 1973.

Just before the recess, we began our hearings with testimony from the Justice Department's Assistant Attorney General for Antitrust and the Chairman of the Federal Trade Commission, the Federal officials who have responsibility for enforcement of our antitrust laws.

It was clear from their testimony and responses to my committee's questioning that antitrust enforcement in the food industry has lacked vigilance. Both witnesses agreed with my contention that effective enforcement activities should have had some downward effect on food prices.

I brought to the attention of these officials the fact that the historic pattern in this century shows continuing price influencing activities by major segments of industry following times of economic controls, such as after World War I, the National Recovery Act, World War II, and the Korean war. Invariably, the record discloses, many antitrust actions took place after each of these periods of Government regulation and price control.

For example, the famous heavy electrical equipment antitrust conspiracies prosecuted in the 1960's got their start in the industry meetings held in connection with World War II activities designed to implement legitimate governmental price controls.

I was particularly appalled to learn that these agencies undertook no special antitrust operations, from the onset of phase I in August of 1971 to the present, despite the very dramatic and erratic increase in food prices. We know that in all sectors of our economy the rate of increase in prices continues to rise, but for food it has been three times the rate of increase for all other commodities.

Most recently, we have seen in the first 4 months of 1973 the most rapid rise in retail food prices in more than 20 years. With the

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imposition of price ceilings on June 13, the Agriculture Department estimates that retail food prices for 1973 will average about 12 percent above 1972 prices.

We know that but for the freeze, 1973 food prices would have been at least 16 percent above 1972.

During our recess a number of important and even startling events occurred. A number of food industry representatives have argued to the Cost of Living Council that food must be excepted from the price freeze so that prices can rise even further. In this area, the skyrocketing of prices has been blamed on shortages of soybeans. This was followed by the institution of export controls. The subsequent institution of export controls on 41 commodities available as substitutes for soybeans in itself demonstrated the basic falsity of the position taken by food industry representatives and the Cost of Living Council.

Even more remarkable has been the very recent thorough study of the GAO documenting the effect of the Russian wheat deal and the apathy and negligence of the USDA in connection with this transaction. Restitution has not been asked or sought of the profiteers. Rather, the American consumer is asked to foot this bill while industry seeks to pass on all rises in costs. This particular development makes even more dramatic the invitation made to this subcommittee both to reexamine the basis for the Capper-Volstead Act and the USDA's 50 years of inaction in taking measures when food prices have been unduly enhanced.

While all of this chaotic fingerpointing is occurring, no relief from food prices is foreseen or foreseeable. Both Federal antitrust enforcement agencies agreed that there is reason to believe that anticompetitive practices and structure exist in the food industry.

All of this serves to highlight the importance of the quotation from two Supreme Court cases that I made in my statement opening these hearings.

First—

[a]ntitrust laws * * * are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.

Second—

[t]he test of a competitive market is not only whether small competitors flourish but also whether consumers are well served. * * * Small companies may be perfectly content to follow the high prices set by the dominant firms, yet the market may be profoundly anticompetitive.

Consumers are not being well served by the food industry. In 1972 consumers spent $140 billion on food. It has been estimated that more vigorous enforcement of the antitrust laws alone would save consumers from $2.6 billion to nearly $20 billion.

Through industry representatives, consumer advocates, and distinguished economists during the remainder of these hearings, we fully expect to explore and develop what our hearings to date already have established: Food prices can be lowered, slowed, or depressed by identifiable and specific remedial action by the Government and by industry.

Competition in the sale of products is the best protection for the consumer from the power of big business. The antitrust laws are

the means Congress has established to ensure that competition is maintained as a limitation on prices and profits.

Our first witness this morning is Hon. Jerry Litton, Member of Congress.

Mr. McCLORY. Will the chairman yield?

Chairman RODINO. I yield to the gentleman.

Mr. McCLORY. I thank the chairman for yielding. I just want to make a brief statement on behalf of the minority expressing my complete support of our continuing these hearings with respect to possible antitrust violations which may be occurring and resulting in the higher food prices.

However, I think it is only fair to observe that the increase in food prices is reflecting a general increase in the prices of consumer goods. While food prices have risen rather sharply recently, over the period of the last 10 or 15 years food prices actually have increased at a lower rate than other consumer goods.

The chairman made reference to the fact that the freeze has helped to hold down rising prices. I am fearful that the freeze may have cut off part of the supply of consumer goods insofar as foodstuffs are concerned, particularly in the area of poultry, which has greatly concerned me in the last few days. Processors, distributors, and retailers cannot meet the high unregulated poultry prices as received from the producer or farmer.

So I think the business of controlling prices, unless it is done across the board and we have a completely regulated economy, is going to be counterproductive. It is going to adversely affect the interests of the consumer and I think we have to keep that well in mind.

We are in the process of acting on a farm bill in the House of Representatives right now which seems to have built in to it a number of anticompetitive elements that help to stabilize, but at the same time to fix at a fairly high rate some of the prices of foodstuffs. We are taking action to promote monopoly on the floor while at the same time we in this committee are interested in fostering as competitive a system as possible.

I am hopeful that we can be constructive in the course of these hearings by ameliorating the situation which exists, by providing more in the way of foodstuffs for the American consumer and the American family, and by promoting the best interests of our economy. I certainly want to participate actively to that end as a member of this committee.

Mr. DENNIS. Will the gentleman yield briefly to me?

Mr. McCLORY. Surely.

Mr. DENNIS. I would like to say also that I share the general view that we are well advised to investigate anticompetitive practices but I have not selected any villains myself. I think we are here to study this situation rather than to draw any conclusions at this point.

I would like to say on the matter of agricultural prices that the farmer is getting a decent return for the first time in 20 years, and that the people are still paying a smaller percentage of their income for food here than in any other country in the world. That doesn't mean that there is nothing wrong with current food prices, perhaps, but I think it is a factor worth keeping in mind.

I am certainly not about to make the American farmer the villain of the piece or any other person the villain of the piece at this point.

Second, controls are basically antithetical to a free economy. In my judgment, if they are any good at all, they are good for a short term only. I don't think you can control supply and demand or prices by governmental ukases. I think every time you apply controls in one place you throw the system out of kilter somewhere else.

Businessmen I have been talking to are in a serious squeeze during this freeze. A lot of them are going to have to shut their doors if we don't improve their situation.

So I don't want to give anyone the impression that I have come to any conclusions about what this subcommittee should or should not do because I definitely haven't. But I just wish to note a caveat in behalf of (a) the farmer, and (b) private enterprise, and state that I have not selected any villains at this point.

Chairman RODINO. Mr. Litton.

TESTIMONY OF HON. JERRY L. LITTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. LITTON. Thank you. I would like in the interest of time to read a couple of pages of my testimony and then cuff it the rest of the way. I will have copies available of my testimony for the record.

Chairman RODINO. We will insert your statement in the record. [See p. 86.]

Mr. LITTON. Thank you. I am very happy to testify before this subcommittee on the very important subject of food prices. I realize there are some perhaps members of this subcommittee, and apparently members of the whole citizenry that think there is some great conspiracy on the part of producers or others in the food industry which has caused food prices to increase during the past year and a half, and especially in the first quarter of this year.

First let me say that I have been a farmer all my life. I have been a Congressman 6 months. I would hope that I am looking at the picture from the side of the producers as well as from the side of the consumer, which makes up far more of my constituency now than the farmer. Less than 15 percent of my district is rural farm.

My academic background includes a degree in agricultural journalism and agricultural economics, so I have had a background in both understanding the economics of production as well as explaining it to other people.

I do not know if there are any monopolistic practices involved in some of the wholesale or retail aspects of food distribtuion. I know there is none in the production of more general farm crops due to the number of diverse producers involved. I am also confident that if there are monopolistic practices in the food distribution industry, they are not responsible for the increases in food prices this past year and a half or the rapid rise in food prices in the first quarter of this year.

There are reasons for food being higher. There are reasons for food going up in the last year and a half certainly in the last several months, and I intend to get into that a bit further.

Our big problem is that farmers have not done a very good job of telling their side of the story. Until now it wasn't necessary. Our biggest problem is that urban America does not know what encourages or discourages farm production. Because of this the consumer is being used and things are being advocated that while politically expedient are economically idiotic. These things are one of the reasons why we are going to have food shortages unless this Congress and the President start to level with the consumer. Much of what is being said for the ears of the consumer supposedly to lower or freeze food prices result in higher food prices or food shortages.

Clearly the consumer is being abused, used, and misled.

I was back in my district in February. At that time we had anticipated increases in beef prices. The farmers and cattlemen that I talked with were buying heifer replacements. They were looking for cows, keeping back sows, gearing up for increasing their herds. They were looking forward to better meat prices this year. I have never seen such a fury of optimism in my district from the beef production industry. Every farmer I talked to was preparing to produce an abundance of poultry, beef, and pork. They were going to produce more than they have ever produced because they could see prices were going up.

Now, that was in February. I went back in April. At this time, in April, in north Missouri, the farmers who were buying heifer replacements were selling. The people who were looking for cows were not looking. The cattlemen and farmers holding back sow replacements were selling sows. The farmer out trying to buy heavy machinery to produce more food weren't looking anymore.

Now, what had happened? Well, in April we had a lot of boycotts. In April we had a lot of talk and discussion from consumers and people who advocated to be consumer supporters. We had boycotts; we had freezes, we had threats of rollbacks, we had intimidations from the consumer and Congressmen.

What had they really done? All of these things had simply discouraged the farmer from producing more food and fiber.

All the boycotts, the freezes, the ceilings, the intimidations, the threats of rollbacks really did was raise the price of food, because those same cattlemen and farmers who were confident in February had no interest in producing a lot in April because they had no assurances that the prices would be higher as they thought they might be in February.

Now, we have had some freezes. If you will take a look at the kill weights throughout the midlands it will surprise you. At this point, feeder prices are such that farmers are finding when their cattle reach about 900 pounds in the feedlot, for every pound they put on their cattle they are losing money. They are bumping up against the ceiling.

Now, what do they do? They are selling their cattle at lighter weights. Farmers are no dummies. They keep records. They know when they lose for every pound they put on an animal in the feedlot. They are going to start to sell them. And they are selling them.

Take a look at the kill weights now. You will find they are down. What happens when a feeder sells his cattle at 900 instead of 1,100

or 1,200 pounds? That is 300 pounds of beef the consumer will never see, 300 pounds of beef that will never see the light of day, and that is happening in feedlots all over the United States. Kill weights are down.

Eighteen percent of the hogs going to market in my State about 3 weeks ago were sows. A big percentage of them were pregnant sows. These are pigs that will never see the light of day.

Sale barn operators in my district now report the quality of the dairy cows going to market at their sale barns is the highest they have ever seen. What does that mean? That means dairy farmers are selling good producing cows. They are not selling culls like they did last year. They are digging deep into their herds. They are fearful that good milk prices won't be there in the future. They are selling good producing milk cows. This means the cows that go to market in these sale barns won't produce milk next year.

So all we have done is raise the price of food to the consumer. We think we are helping them, but every time we make some of the idiotic economic statements we have been making in the last year we drive the price of food a little bit higher.

Now, I don't think urban America realizes what really causes the farmer to increase or decrease his production. If they did, they wouldn't make the kind of threats they make or support the Members of Congress who make such threats at critical times, knowing that these threats make food prices simply go higher.

Just imagine for a minute, you members of this subcommittee—imagine you are a farmer and imagine you have the capacity on your farm to keep 10 sows or 100 sows. Now, you are trying to determine, will I keep 10 or 100? You can keep either number.

Well, you read a report and hog estimates are down. Prices look favorable. So you think you might keep 100 sows.

Then you read somewhere prices might move down, so you move back toward the idea of keeping 10 sows.

Now at this point you understand the per capita consumption of pork is up and beef numbers are down, so you start thinking about 100 sows. On the other hand, you hear some reports from Washington of boycotts, or ceilings, or freezes. Now you decide to keep 10 sows.

These are the kinds of decisionmaking factors that influence the farmer to raise 10 or 100 sows.

Now, what is the difference? About 1,000 pigs is the difference, or 1,000 hogs is the difference.

Now, a lot of urban people simply can't realize that these are the decisionmaking factors that the farmer goes through. If the farmer decides to keep 10 instead of 100 he is not punishing the consumer. He simply has less optimism about a profit.

The same is true with the stock market. You or I make a statement today, the stock market goes down. Another statement is made tomorrow; it goes back up.

These are hundreds of thousands of people making individual decisions. That is what takes place on the farms of our country too.

I noticed in President Nixon's statement he mentioned food was high 10 times in 15 minutes in his inflation statement. I visited with a farmer the next day that shipped six pregnant sows. That is 50 or 60 hogs that will never produce bacon.

The demonstration in the House gallery yesterday is a prime example of people that simply don't understand what causes farmers to produce or not to produce. One of the signs in the House gallery yesterday said "Milk is for children, not for profit." Farmers produce milk for children, but they have to have a profit or they won't produce it for children.

Some people have asked me when we are going to see dollar meat. Well, a few years ago Congressmen got $30,000 a year. Now they get $42,500. When are we going to see $30,000 a year Congressmen again? Probably when we see dollar meat again.

Well, I won't go on with my written testimony because I know you have other matters to bring before you, but keep in mind that we are dealing with food which reacts on an inelastic demand. People have to eat. If we have a slight decrease in the food supply, we have a substantial increase in the price. That is what is happening today.

Why did food go up quickly? Because we had a slight decrease in supply. A 1 percent decrease in supply results in a 3 or 4 percent increase in price. That is what is happening. No great conspiracy.

Why did food prices go up? You put $10 billion more into social security and medicare as of September 1972 and increased food stamps 17 percent. Russia and China changed their trade policy, changed their food policy and had bad weather. We devaluated the dollar twice in 14 months which made our food more competitive abroad. Wages have gone up, people at the low income level can now buy more and a big percentage of that goes for food. We had a bad crop year and we have had inflation.

These are the reasons that food prices are higher. There is no conspiracy.

Now, this does not mean that we don't have monopolistic practices in the food industry, but what I am saying is that it is not the reason food went up. If monopolistic practices are there, they have been there working all along. Food is up for a very real, sound economic reason.

Thank you.

Chairman RODINO. Thank you very much, Mr. Litton.

Mr. Flowers?

Mr. FLOWERS. I would like to thank my colleague from Missouri for a very cogent statement. I have read the same thing in lots of different publications and heard it stated before but never quite as well as you have done here this morning.

I come from an agricultural, largely agricultural district, cattle producing, hog producing. I have seen the same sort of things that you have mentioned this morning in the attitude of farmers who are either going to produce more or less this coming year than they have in the past years. The things that you have stated that they base their decisions on are a very real consideration to the farmers in my district, and I understand exactly what you are saying and would agree with practically everything that you have concluded.

I thank you.

Chairman RODINO. Thank you, Mr. Flowers.

Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I think we have had a most illuminating statement here from the standpoint of one who knows what the situation is insofar as food

supply is concerned at the source of supply. I think it has been most illuminating, particularly because it seems to me that we are not investigating and are not prepared to investigate that aspect of the high price of food.

Now, in general, the freezes have not directly affected the farmer, the producer of food. The squeeze is really in the next stage, or stages, of the food process between the farmer and the consumer. I assume that your position is that, in the first place, there should be no freezes. There should be no price rollbacks. There should be no controls insofar as the processor, distributor, or retailer of food is concerned. Is that correct?

Mr. LITTON. Yes. My position is that if you freeze food prices supposedly to help the consumer, all you really do is eventually drive the price up.

Mr. MCCLORY. In other words, even by exempting the farmer we are not promoting a greater supply and a consequent reduction in food costs to the consumer. All we are doing is squeezing these other elements to the extent that their profit is reduced or completely eliminated, as it is today with in the poultry business. The poultry processors and distributors are actually closing down because poultry costs them more wholesale than they are authorized by law to sell it at retail.

Mr. LITTON. I think this is true. The best example, of course, is in the broiler industry, but a lot of people have failed to take that broiler picture and move it into the pork and beef picture, which is going to really hit the consumer in the face and the pocketbook, in 6 months to a year, year and a half.

True, when it is going to cost you more to feed the baby chicken, more than the chicken is worth, farmers have been drowning the baby chicks. They simply can't afford to keep the baby chicks because they are going to lose more than the value of the chick. Let's move back a minute. Those who have not yet hatched their chicks won't hatch them because there is no need to hatch something you then have to drown.

The same thing is happening in pork today. The farmer who knows he is not going to make a profit in pork is going to sell the pregnant sow. Now, that is backing up somewhat from drowning the pigs. Instead of drowning pigs you are just selling the pregnant sow. In the beef picture you are just not breeding the cows, you are shipping them.

So while there is going to be a shortage of broilers probably in 10 to 12 weeks, there is going to be a shortage of pork in 5 to 6 months and a shortage of beef in a year and a half or 2 years. That is all the freezes have done, guarantee us less food.

Mr. MCCLORY. Our committee, of course, is not authorized to enact legislation with regard to the overall subject of price controls. Our jurisdiction is limited to the subject of the antitrust laws. I would gather from your testimony that agricultural cooperatives, such as milk, and marketing orders and other practices of that kind that take in a whole segment of the industry are not factors that are increasing the price of food.

Mr. LITTON. I think milk went up 3 percent in the last year. During the interim, soybean meal, the chief ingredient of the feed for the dairy farmer, went up 150 percent. The price of milk went up 2 or 3 percent. So really the dairy farmers have not raised their prices as much as

some of the other commodities have been raised. What I am really trying to say today, though, is that I realize you are not engaged in a discussion of freezes. You are engaged in a discussion of whether or not there are monopolistic practices. But what I have tried to say is, don't look at the price rise in the last year and a half and attempt to look for a culprit there because there are some very logical reasons for price increases in the last year and a half, economic reasons.

Mr. McCLORY. How about the large agricultural corporations that buy up on a contract basis the entire crops of a large number of farmers to the exclusion of other potential purchasers of the product? Are you concerned about the monopolistic aspects of that kind of operation?

Mr. LITTON. I have some concern, but my greatest concern is that if farmers across the board don't have a reasonable income, we are going to have far more than that in the future, and once we don't get a reasonable income for the farmer, there are going to be fewer and fewer and fewer producers, and once we get the production of food in the hands of just a few, then certainly we are moving into area where monopoly may play a role. The best way to see monopolies don't play a major role is to see that food production is in the hands of one or two million independent producers which is as it is today.

Chairman RODINO. The gentleman's time has expired. We are going to have to move along. We have other witnesses.

Ms. Jordan?

Ms. JORDAN. I have just one question or observation that I would like to comment on now.

You said in your statement, Mr. Litton, several times, that there may be monopolistic practices in the food industry, but whether there are or not has nothing to do with the increase in prices.

Now, you relate rollbacks, ceilings, conversations, as one of the reasons for the farmer not producing at maximum capacity and yet you state with absolute assurance, don't go looking for monopolistic practices as having anything to do with the food increase. So are you saying that the rationale for these hearings is baseless?

Mr. LITTON. No. I am saying the rationale for these hearings does have a base, but I don't want you to be witch hunting in the wrong area. I think you need to take a look at the food industry as it was prior to——

Chairman RODINO. I would like to interrupt right here to state that we are not witch hunting in any area.

Ms. JORDAN. Mr. Chairman, you took the words out of my mouth. That was an unfortunate choice of words—witch hunt. What we are trying to do is to plow through the very complex layers of the food industry and try to see if perhaps there is some anticompetitive practice which has some relationship to the cost increase of food.

Now, this inquiry is designed to get at that truth. If you are going to say as a matter of finality that monopolistic practices, whether they exist, or not have nothing to do with the cost increase of food, and you seem very convinced about that, then our hearings would have a baseless rationale or no rationale at all.

Mr. LITTON. What I am saying is that there are some very logical reasons for food having increased in price in the last year and a half.

Ms. JORDAN. Would you say that anticompetitive practices could possibly conceivably be one such reason?

Mr. LITTON. Very unlikely. The reason is there is less food, and when there is less food, prices are higher.

Ms. JORDAN. Why is there less food? Who controls that? Why do we have less food? I cannot agree with you and I am not arguing with you, but I just don't agree that the reason the farmer is not producing as much, is because the Congress and the President are saying too much about freezes and rollbacks and threats and ceilings.

If you look at the farm bill that we have presently under consideration, you can see that the farmer is all for monopoly and anticompetitive practices when it inures to his benefit. But what I am trying to get at is that if monopolistic practices exist somewhere in the food industry, couldn't there be some possibility that rising food prices might relate to those monopolistic practices?

Mr. LITTON. It could be, but I think it would be of a very minor nature because we are dealing with a million to 2 million independent producers who produce our food and fiber. They will keep 100 sows instead of 10 if they think the price of pork is going to be higher. If they think it is going to be lower they are not going to keep 100 sows.

Now, call that monopoly if you like, but these are the decisionmaking factors of a million to 2 million producers. We are not talking about four automakers that pretty well know what the market might be or how many cars they are going to produce. We are talking about 1 or 2 million independent producers that don't know how much supply there is going to be of a given commodity or how much demand there may be for pork or beef.

Ms. JORDAN. Well, I won't call that situation monopolistic practices. I would just call it inordinate market control.

Chairman RODINO. Thank you, Ms. Jordan.

Mr. Dennis.

Mr. DENNIS. Mr. Litton, I would like to thank you for what I consider a very intelligent statement which I think this committee could well use.

Now, Ms. Jordan asked you a question, and when you said prices were higher because there was less food she said. "Why is there less food?" Then she more or less proceeded to answer her own question. I would like to give you a chance to answer that question if you want to.

Mr. LITTON. Well, there is less food because the incentive for profit is not that sure. As soon as the producer assumes there is an incentive for profit or reasonable profit for any given commodity, he will produce more of it. He is ready to produce as soon as he feels some assurance that the price is going to be higher, but if all we hear is discussion that we are going to freeze or rollback or do this or stop the export of something else, all of this simply tells the producer you had better raise 10 sows, not 100.

There are farmers in my area that are not even producing another 30 or 40 acres of beans that are laying idle. They are late producing them, late getting them into the ground, and last week they told me they weren't going to plant. Why? Even though beans are very high, they are fearful the Government will step in and the price won't be there. They will produce when they think there is a profit involved.

Mr. DENNIS. I would like to remark on another thing you said here. I talked to a packer in my area when I was home over the Fourth of July. He confirmed what you said a minute ago. He said the percentage of pregnant sows running through his place has increased tremen-

dously in the last few weeks. He said they are coming in in a way they never have come in before.

He also said because of the freeze during the last 3 months in the first 4 weeks he cleared $50,000, in the second 4 weeks he cleared $60,000, and in the last 4 weeks he lost $110,000—everything he made in the previous 8 weeks. He said he can't keep open very long at that rate, and I believe that.

Now it seems to me all the charts I have seen support what you said about the $30,000-a-year Congressmen that at least until the last very few months, farm prices and other prices have risen at similar rates. Farm prices have not outpaced other prices very much until very recently, isn't that correct?

Mr. LITTON. Yes. The percentage of disposable income that went for food in the United States in 1930 was 24 percent. In 1940 it was 22 percent. In 1960 it was 20 percent. In 1970 it was down to about 15.8 and in 1972 it was 15.7. So food is cheaper now than it was 10, 20, 30, 40, 50 years ago——

Mr. DENNIS. When you take the percentage of income that is spent on food.

Mr. LITTON. True.

Mr. DENNIS. As you say, our supply of food is set basically by the independent judgment of several million people who are producing food as to what the prices are going to be. This is what has always been the case in this country, is it not?

Mr. LITTON. That is true, and I think a lot of people here fail to realize that food is a good buy. Sixteen percent of our income goes for food, in England, 25, Japan 35, Russia 58, and Asia 80. When you're spending 50 to 80 percent of your disposable income for food that doesn't leave very much left over. When you're spending 16 percent that leaves a lot left over for a color TV, second home, and nicer vacations. Why do the people in this country have those things? Partly because of low food prices.

Mr. DENNIS. Well, I thank you again for what I regard as a very useful statement. I appreciate your appearance.

Chairman RODINO. Thank you, Mr. Dennis.

Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Chairman, I know you have other witnesses. I want to say to Congressman Litton I certainly appreciate his remarks on the farm cycle and the role of the farmer since I come from an agricultural State, but let me say that we hope the purpose of these hearings is to go through the chain, the chain from the farm to the dinner table, and see how that is operating. So I think what we are taking a look at, I might simply point out, that you have probably 10 of the largest corporations in this country involved in food production as farmers, corporations like, ITT and Tenneco, and we have every need to look at how the marketplace is being controlled by giant firms like those and that is the purpose of the hearing.

So irrespective of the role the farmer has in this, which I am very sensitive to, I think it is incumbent upon us to take a look at the entire chain and how the profit cycle is working up and down that chain and see whether or not price fixing and anticompetitive devices are being used, and why we find monopolistic overcharges of over $2 billion from some of those same large corporations that are getting into food production. I think that is one of the main purposes of our hearings

and I hope we can find that answer without making the farmer the culprit.

Mr. LITTON. Mr. Mezvinsky, I think you are right and I would say this. I do appreciate what this committee is doing and what it is attempting to do. I know the farmers are happy to see that Members of Congress and this particular subcommittee are in fact looking into the food production and food distribution chain because the farmers would like to know if there might be some monopolistic practices involved from the point of their production to the point of sale. My effort was simply to try to relate to this subcommittee some of those factors which cause farmers to produce more or less and with that understanding perhaps one might take a better look at the overall subject that you are considering.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Chairman RODINO. Thank you very much, Mr. Litton.

[The prepared statement of Hon. Jerry L. Litton follows:]

STATEMENT OF HON. JERRY L. LITTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

I am very happy to testify this morning before this subcommittee on the subject that is on the minds of most Americans . . . food prices. I realize there is some concern on the part of some of this sub-committee and on the part of many in America that there may be some great conspiracy either on the part of the producers or others in the food industry which has caused food prices to increase during the past year and a half and especially in the first quarter of this year.

First let me say that I have been a farmer all of my life and a Congressman only 6 months. I would hope that I am looking at the picture from the side of the producer as well as from the side of the consumer which makes up more of my constituency than the producer.

My academic background includes a degree in agricultural journalism and minor in agriculture economics so I have had a background in both understanding the economics of production as well as in explaining it to others.

I do not know if there are any monopolistic practices involved in some of the wholesale or retail aspects of food distribution. I know there is none in the production of more general farm crops due to the number of diverse producers involved. I am also confident that if there are monopolistic practices in the food distribution industry that they are not responsible for the increases in food prices this past year and a half or the rapid rise in food prices in the first quarter of this year.

Unfortunately farmers have not done a very good job of selling their side of the story. Until now it hasn't been necessary. Our biggest problem is that urban America does not know what encourages or discourages farm production. Because of this the consumer is being used and things are being advocated that while politically expedient are economically idiotic. These things are one of the reasons why we are going to have food shortages unless this Congress and the President start to level with the consumer. Much of what is being said for the ears of the consumer supposedly to lower or freeze food prices result in higher food prices or food shortages.

I was back in my district in Northwest Missouri in February. At that time in anticipation of higher beef and pork prices farmers in my district were keeping back heifer replacements, buying cows to build their cow herd numbers, keeping back more than the usual number of sows and preparing to produce record numbers of pork and beef.

I was back in early April. This was at the time of the consumer boycotts. At this time we heard comments of boycotts, ceilings, freezes, price roll-backs and intimidations from both the consumer and the Congress. Farmers who were earlier keeping back heifer replacements were selling. Those who were looking for cows and sows were no longer looking. Statements made by well meaning politicians in Washington and threats by unknowing consumers had eliminated the confidence these farmers once had in the market. They were not prepared to make costly investments in anticipation of higher prices because they were not sure higher prices would be there by the time they had a product to sell.

What then did the ill-conceived and poorly-timed threats of boycotts and price roll-backs do for the consumer? They assured the consumer that she would have less meat to buy and this meant higher . . . not lower meat prices.

I don't think urban America realizes what causes farmers to decide to increase or decrease their production levels. If they did, they wouldn't make the kind of threats they make or support members of Congress who make such threats at critical times knowing that these threats at critical decision-making times are the very things that turn down the spigot that produces food.

Just imagine for a minute that you are a farmer. You have room to keep 10 or as many as 100 sows. You have other livestock as well as crops. Do you keep 10 sows or 20 or 100? Do you buy an expensive picker-sheller to harvest your corn for your hogs? This depends on how many sows you decide to keep. Whether you buy the picker-sheller determines whether or not you plant more corn or put the land in grass.

Hog estimates cause you to want to keep more sows. A report of a crop failure indicating higher corn prices may cause you to back off. Another report that Japan may be increasing their hog quota causes you to think of keeping more sows. This coupled with increasing per capita consumption of pork and reduced numbers of beef on feed cause you to think of 100 sows. But, now you hear talk of boycotts or possible food price freezes. Now you are back down to the idea of keeping only 10 sows.

These are the kind of things that enter a farmer's mind when he considers increasing or decreasing production. When he keeps back fewer sows it isn't to hurt the consumer. He isn't holding his product from the market. If General Motors thinks it can't sell a million cars this month, they don't produce a million cars. They don't hold them off the market to punish the consumer.

Unfortunately marketing decisions on the part of the producer influence supply more than the month in which the decision is made. When the farmer decides (because of some Washington statement) to keep 10 instead of 100 sows that represents nearly 1,000 pigs that won't be produced. If a farmer wants to cut back on beef production he saves fewer heifer replacements and that won't show up in the production figures at the supermarket level for more than 2 years.

After President Nixon's speech where he mentioned high food prices 10 times in less than 15 minutes and how he was going to see to it that food prices did not continue to go up, I visited with one farmer who shipped 6 pregnant sows the next day. What did Nixon's statement do? It was meant to help the consumer. On just one of two million farms it resulted in 6 sows going to market which is 50 or 60 pigs the consumer will never see and that is a lot of bacon. Did the farmer do it to hurt the consumer? No, he did it because he was afraid the government action suggested would force down prices and he would lose money.

In a demonstration in the House galleries yesterday there was a consumer group carrying a sign which read, "Milk is for children, not for profit." I wonder if these women and others should realize that the only thing which will bring food prices down is the likelihood of higher food prices. Give farmers the likelihood of higher food prices (instead of lower food prices as producers might expect based on Washington statements) and farmers will produce more food. When they do prices will go down . . . but not until.

Remember Nixon's TV statement that if food prices got too high he wanted the authority (he already has that authority) to stop food exports? Again this was a statement designed to sooth the consumer. What did it do? It hurt the consumer. I have since visited with many grain farmers who in anticipation of higher grain prices were going to make long-range investments in big machinery which would have made it possible for them to produce far more grain. After that statement they decided against these long-range investments. Why? Because they had already been told that if the high prices they were anticipating were realized the government would step in and shut off exports. How many people would have joined your Congressional staffs if at the time they were considering joining your staff they heard rumors that staff salary reductions were on their way?

Two weeks ago I was back in Northwest Missouri. This has been a bad winter. Farmers were late planting corn and beans. Keep in mind soybean prices are two or three times higher than they have ever been in history and predictions are for a continued world shortage of soybeans. I visited with many a farmer who with 30 or 50 acres of crops not yet planted had decided not to plant the additional acres. Sure soybean prices were high. But with bean seed high, it already being late in the season and a government already talking of future export embargoes, they were deciding not to plant.

That may not sound like much, but 50 acres on one farm, 30 on another, etc., it soon adds up to the 5% less crop which makes the big 20% difference in price that consumers cry about. What caused it? Was it conspiracy? No, just foolish statements from Washington from people unaware of what causes farmers to decide to produce more or less.

And I might add that statements from this subcommittee and its members may also have a bearing on future food prices. Statements which may come from this group designed to reassure the consumer that she will have lower food prices (due to action you are going to suggest) may simply assure the consumer of higher food prices if in the process they cause the producer to think his prices will be going down in the future when he markets his product.

In looking at the cause of the increase in food prices, we find a combination of economic factors rather than a conspiracy on the part of the farmers of America. Most of these factors increased the demand for food which drove food prices upward and if the market is permitted to work its will without outside interference, these higher food prices will be sufficient incentive to the producer to increase his production which in turn will drive food prices downward.

Among those economic factors which brought about increased demand for food is that if increasing income. In the last 25 years, per capita disposable income in this country has increased 223 percent. In the last 20 years, wages have gone up 2½ times. Since 1965, per capita income has increased 62 percent. Minimum wage laws—recently increased by this body—have increased the ability of those in the lower earning bracket to buy more food. A higher proportion of each new dollar added to those in lower income levels go for food than do comparable dollar increases to those in higher income levels. A person in the higher income bracket can eat only so much food.

Starting in September 1972, we pumped $10 billion more into our annual expenditures for social security and medicare benefits. When the elderly get additional income directly through social security or indirectly through medicare, which frees income from other sources, they usually do not spend it on a bigger car or bigger house. Much of this money went into the market to bid up food.

Last year we had a 17-percent increase in the volume of food stamps issued. Of course, all of this went into the market to bid up food. We had a change of policy in Russia and China relative to their attitudes in feeding their people which was accompanied by a change by a change in their trade attitudes toward the United States, which was also accompanied by bad crop years in these two as well as other countries. Had they bought grain elsewhere instead of the United States, it would have had a similar effect of driving up the price of grain on the world market.

All of this was accompanied by an increased standard of living throughout the world, especially in the have-not nations where we find a high percentage of the increased income—similar to increased incomes to lower income persons in this country—going for food.

To fan the fires of consumer demand for food, we have had two devaluations of the American dollar in 14 months which made American-producer food a better buy abroad and we have had runaway inflation which has put more dollars on the market to bid up the price of food.

Now you may ask, why have food prices increased so suddenly? If we could explain this to the consumer, she would not be so angry at the producer. The answer is quite simple: Demand for food is inelastic. As we seek ways to handle the gasoline shortage, we may find that demand for gasoline is also inelastic.

Technically, the relationship between price and purchasing rate, which is known as the elasticity of demand, expresses the percentage change in the buying rate divided by the percentage change in price.

In simpler terms, where increases in price are not met by comparable decreases in purchases, we recognize this as representative of inelastic demand for that particular product or line of products.

In times when more money is available the consumer may buy more food, but not much more, because one can only eat so much food. This is why a higher proportion of increases on the lower end of the wage scale, as opposed to those on the higher end, find their way into the food market.

Because of inelastic demand for food, this also means that a slight increase in food supply results in sharply decreasing prices. Again this is true because one can only eat so much food. By the same token, slight decreases in food supply result in sharply increasing food prices. It is thought a 1-percent decrease in the supply of food results in a 3- or 4-percent increase in price. If demand for

food were elastic like demand for many other products, we would find a 1 percent decrease in supply would bring about a comparable 1 percent increase in price.

When we have a slight decrease in supply and prices go up sharply, we find people buying almost as much food as they did at lower prices because people must eat.

Two things affect the elasticity of demands. One involves the essential nature of the product or service and the other involves the price as it relates to the role performed by the product or service.

Water, air, and food are all essential to human beings. People must have them regardless of the price. The less essential the item, the more elastic the demand for the item becomes. Gasoline is not as essential, but is certainly more essential than many luxury items. It is also priced low in relation to what it does for the consumer.

If you increase gasoline prices slighlty, it is doubtful that many people will reduce their purchases of gasoline accordingly. Here we are not speaking of an absolutely essential item but one priced low enough that slight increases do not result in a similar decrease in demand. If you were to increase gasoline to a dollar a gallon, you might find you would have altered the cost-benefit ratio of gasoline to the consumer to such a degree that it would meet with a more elastic demand. At this point, and probably sooner, people would buy smaller cars, take fewer trips, live closer to their work, and so forth.

In food we have a product that is essential. It is not essential in its convenience form—a chicken cut in the pieces you like and ready to serve as opposed to a live chicken the consumer would have to kill, clean and cook—but like gasoline the convenience is priced low in relation to its value to the consumer.

All of this is meant to say that slight decreases in food supply result in sharp increases in food prices because of the inelasticity of demand, and that the demand for food is inelastic for the reasons I have just mentioned.

To protect both the consumer and producer from such widely fluctuating market conditions, the Government has often been more involved in the farming picture than either the producer or consumer would have liked. Keep in mind that millions of independent producers—American farmers—cannot be as accurate in predicting not only what the consumer will demand, but what they, the producers, will eventually produce, as can the four major automobile manufacturers in America.

Chairman RODINO. Our next witness is Mr. Mark Silbergeld of the Consumers Union, Washington office.

Mr. Silbergeld.

TESTIMONY OF MARK SILBERGELD, ATTORNEY, CONSUMERS UNION, WASHINGTON FORCE

Mr. SILBERGELD. Thank you.

Chairman RODINO. Mr. Silbergeld, I wonder whether or not in the interests of moving along we might have you summarize and highlight your statement and we will insert it in its entirety in the record and then submit you to questions. [See p. 105.]

Mr. SILBERGELD. Thank you, Mr. Chairman. I certainly will.

I appreciate the invitation to be here. The subcommittee has a long history of developing significant information with regard to the state of competition in our economy and I commend the committee for holding these hearings to develop further information.

I would certainly like to begin my testimony by telling you just where there are monopoly problems in the food industry and by telling you just how much these cost, but I can't. The Federal Trade Commission can't. The Justice Department can't. The Agriculture Department won't. And you were told by Dr. Mann of the FTC that when they try to go over to the Census Bureau and get some of that information from the business census raw data, they are the only

agency that is not permitted to see that, I assume along with the Antitrust Division. So what we have is Government ignorance as a possible source of oligopoly power.

Now, I might add that although if I and all of those agencies can't get that information, it makes it very difficult for this committee to get that information also, especially since FTC is supposed to be this committee's independent agency charged with doing the day-to-day work that a committee of Congress simply can't keep up with and with providing that information to the Congress.

There are some real problems here. I think the problem is not only to solve the particular problems we might identify in the food industry but, first of all, to solve the problem of the inability to get the systematic data necessary to monitor the economic problems which underlie, partially those which underlie the cyclical inflation in food prices, but also the levels of food prices.

Inflation is important not only as an isolated phenomenon but also in relation to general price levels over the long term.

There is a problem which relates very much to a topic which I know is very near and dear to the hearts of people here on the Hill, and it is that—when it comes right down to it—you have got a wall between you and the information. That wall is the executive branch. The reason that this information is not available is the Office of Management and Budget and the wall that they have constructed between the Congress and the data Congress needs to perform its legislative and investigative functions is the Federal Reports Act of 1942.

Let me briefly summarize. The act provides, as Dr. Mann told the committee 2 weeks ago, that when an agency submits a questionnaire for the purpose of—not for investigative purposes but for the general economic survey purposes or other Government data-collecting purposes to more than 10 firms, it must clear that questionnaire (or "reporting form") with the Office of Management and Budget according to provisions of the Federal Reports Act. The Federal Trade Commission, at least since 1970, has been trying to get the authority to collect line of business data, that is, data from firms on the basis of individual product lines so that, as has been suggested before, you can tell Twinkies from telephones, Crisco from soap, and Chun King Chinese Dinners from cigarettes. Because that is the way some of the items in our economy are reported to the Government for purposes of, for instance, the Federal Trade Commission's quarterly financial report. To briefly summarize this problem, Mr. Chairman, without going into all of the details, we are making some very specific recommendations to the committee and we will be glad to submit draft language if that would be helpful.

We are recommending that this committee consider legislation to lodge the responsibility for the quarterly financial report and the closely related report on rates of return in selected industries in the Federal Trade Commission so that it cannot be moved by Executive order, as it now can be, to the executive branch and so that that data becomes held in the protective custody of the executive.

We also are recommending that the FTC's data-collecting activities in this field be exempted from the provision of the Federal Reports Act, so that when the Congress wants to get an economic report from the Commission with regard to problems in the food industry or any

other industry, it can get it without interference from the Office of Management and Budget and their Business Advisory Councils. These Councils have used some very obstreperous techniques and raised very spurious objections to the collection of these data. There are admittedly technical problems how that data is collected, but the general objection is spurious.

We are recommending those specific actions so that this data can be collected on a systematic basis.

We are also recommending that in order better to understand how a competitive problem arises involving both anticompetitive conduct and also conduct which may be economically anticompetitive but protected by specific Federal legislation such as the Capper-Volstead Act, that the committee obtain from the Federal Trade Commission a report on the economic conditions in the fluid milk industry, and after that report is available, the committee seriously consider holding hearings on that to determine and make known to the public how all of the factors which affect the price of a particular product come together to determine what the price level is.

If you look at fluid milk prices you will find no doubt that there is some effect of the Capper-Volstead Act, as Dr. Kauper mentioned 2 weeks ago; and that marketing orders may well have some effect. There have been over the years frequent antitrust actions against price fixing in the fluid milk industry. That and the baking industry, I am told by economists familiar with those areas, are two of the most frequent areas in which price fixing in local markets is found.

We believe that if the committee undertakes this or a similar study and undertakes to educate the public and to develop the information which is not now available, that we will have a much better understanding of the kinds of problems in law and public policy which determine the prices the consumers pay out of their pocket for food and other commodities.

I think I will just let the rest of my testimony be inserted in the record, Mr. Chairman, and the rest of the time for questions.

Chairman RODINO. It will be inserted in the record. Thank you very much. [See p. 105.]

Mr. Silbergeld, one of the points that you emphasize is the inability of the agencies entrusted with protecting the rights of the consuming public to develop the information that is necessary to make the proper judgments in order to assess whether or not something should be done to correct the problems that arise or otherwise to convey the information to the legislative branch of the Government.

Is this an area which gives rise to some concern on your part, a withholding of information for some reason or other, or is it, as you view it, as one who has been studying the question of consumer policies, something that needs to be corrected from the top?

Mr. SILBERGELD. Mr. Chairman, I think it is something that needs to be corrected from the top. As I suggest in my prepared statement, it is reflected in general public policy. The policy at this point is that business is nobody's business.

I had the rare opportunity about a year ago, year and a half ago, to sit in on a conference with Ralph Nader—for whom I worked at that time—and the president of one of America's very large corporations, which happens to be the dominant firm in a market in which the top

two firms control more than 50 percent of the sales for their product lines. We were talking at one time very specifically about corporate economic performance data and we asked the president of this company whether he would be willing to—not just his company but if we could arrange for the entire industry—to release their profit data on a region-by-region basis, and he said "surely not." We asked why. His answer was it would invite competition into those areas in which the profit levels were the highest. In other words, the corporation did not want to be subjected to competition, that competition which is supposed to keep prices at the most low level possible consistent with creating the incentives necessary to keep people producing those products.

I turned and said to the gentleman, "Would your answer be different if you were the second largest firm in your industry?" He was stunned. He looked at his lawyer and looked back at us and he snorted and said, "I never thought of it that way," and he hadn't and he probably will continue not to.

The idea that business is nobody's business, that the public, the antitrust agencies, the Congress, have no right to know what is the economic performance of our great business corporations with regard to the specific products we buy, is leading to—not necessarily cyclical inflation—but to the general price levels which cause the cyclical inflation to put such a tremendous crimp in family budgets. If we spent less for cars we could afford more for food.

I don't think we can deal with this unless we change the public policy of making business nobody's business and I think the specific legislative recommendations that I have indicated are the most appropriate way to do it.

Chairman RODINO. I would like to comment, Mr. Silbergeld, on a reference made in your statement before I address the next question which relates to what you just have touched upon, the inability to secure proper information, proper data.

There appeared before this committee a representative of the FTC who was interrogated concerning a study which had been developed by the FTC which I thought was going to be most revealing because it was suggested without any actual final conclusion that there might have been a saving if there had been really normal competitive practices of some $2 billion to the consuming public, and it seemed to me that it was rather vague as to whether or not the FTC, which had prepared this study, was ready to live up to it or really tell us what it was all about. We finally were able to at least get them to consent to supply us with a copy of the study and I was surprised in reading your statement that the FTC nevertheless had declined to provide a copy of the full study when it had been requested by Senator Proxmire, then the chairman of the Joint Economic Committee, and that it declined to provide a copy of the study when it was requested by the Cost of Living Council.

My question is how can the Congress, charged with the responsibility of legislating and protecting the public interest, do a job if the executive agencies charged with collecting this information and having all the availability and feasibility of opportunity to be able to gather this data, don't provide us with the information?

Mr. SILBERGELD. Well, Mr. Chairman, I am somewhat reluctant to suggest means by which you can get the FTC to be more responsive to questions like that, especially since they are not really part

of the executive. They are an independent agency which is supposed to function as an arm of the Congress, and I think some of the problems there may be more subject to pressure by individual committees which have an interest and that directing specific attention—perhaps I can discuss it in terms of this particular study.

The reason the FTC was reluctant to release this is that they are not sure how reliable the study is. They admit it is very rough. We talked about the problem of not having line of business data. This study is not based upon line of business data, but only firmwide data. While the economists over there are apparently convinced that the ordinal ranking is accurate, if you do the little multiplication that has been done by Mr. Scanlon who first published the data after it was leaked, that the ranking one, two, three, is accurate, but they are not sure about the dollar figures. Well, I can see where they are hesitant to do so.

On the other hand, I think that if the proper pressure were brought to say, all right, let it out, explain why and explain the views if there is a difference, as Chairman Engman says, among the staff as to the reliability of the study, explain the reasons why so that we all know what the problems are. Then, I think, it is really a matter of having to bring the pressure to bear to get this information.

Chairman RODINO. At that point, Mr. Silbergeld, do you have any opinion as to why the FTC acquiesced in the OMB's interpretation of the Federal Reports Act of 1942 with the result that the Federal Trade Commission is unable to gather the business data it needs?

Mr. SILBERGELD. No. I think that there are probably very good legal arguments on both sides as to whether the Congress intended that provision to apply to the independent agencies and they may have simply come down on that side of the question. And I understand it, back in the 1960's, Paul Rand Dixon, who was then Chairman of the FTC, had a great go-around, with whoever was then the Director of the Bureau of the Budget, about whether the Commission was going to comply at all with the Federal Reports Act, and they reached a compromise. But I think part of it is that OMB has other pressures over the Commission if it doesn't cooperate in the sense that it also reviews the FTC's budget.

My understanding is that while OMB will protest that they never line item out anything from the FTC's proposed budget request, in fact they do. So if the Commission does not cooperate with regard to the Federal Reports Act they are liable to get some favorite line items, at least the threat is that favorite line items will be deleted from the proposed budget request.

I think in order to alleviate that, there are bills—and Mr. Evins has a bill pending before the Commerce Committee now—to relieve the FTC of requirements under the Budget Control Act for preclearance budget submission with OMB. I think that is the kind of pressure that keeps FTC on OMB's side of that legal interpretation. Our recommendation is that you simply lift the Federal Reports Act requirements with regard to the Commission's data collecting activities.

Chairman RODINO. Mr. Silbergeld, the suggestion was made to this committee that there be a review of the Capper-Volstead Act. Do you feel the exemptions that exist under the Capper-Volstead Act should be eliminated or that the Capper-Volstead Act should be repealed or modified?

Mr. SILBERGELD. I can't take a position on that. What I am trying to tell the committee is that there isn't enough data to know what the impact is. When the Capper-Volstead Act was passed, there was a very sound legislative reason for passing it. Producers, that is, producers at the individual farm level, were subject to a market situation in which there was monopsony power, oligopsony power. Buyers had much more weight in the market than sellers, and the farmer was unable, as an individual small producing unit—no one unit had any affect on the price—to get what was considered reasonable return and also an economical return necessary to keep an adequate number of producers producing milk. So the Capper-Volstead Act provided certain antitrust exemptions for collecting market power on the part of those sellers.

But the question is what conditions now obtain? Does it need to be cut back? Does it need to be amended to prevent certain other exercises? For instance, there are suggestions, although I haven't seen any specific documentation of it, that the larger cooperatives now under the exemptions of the Capper-Volstead Act are putting the squeeze on the independent producers. So that there may be some misuse of the market power which has been gained on the sellers' side.

What I am suggesting is not that the act be repealed or amended in any specific way but that a study be obtained on the effects, the kind of study that Mr. Kauper said he would like to have but doesn't have the authority to make.

Chairman RODINO. Is it possible, then, that monopoly power of the buyers has passed to monopoly power of the sellers?

Mr. SILBERGELD. I think that probably depends upon the individual situation. There is a paper which I can provide a copy of for the record by two economists, both of whom were at the Department of Agriculture, which describes the buyer power in the meat packing industry. [See p. 112.] This may have to do with Congressman Litton's concern about seller power as he previously expressed it.

Yes, that is a problem. How that affects prices I don't know. I don't know that any economic study has ever been done on that. The Department of Agriculture tends not to do the kinds of studies that make clear for the public and the Congress just what the competitive situation is in particular agricultural markets.

Chairman RODINO. Well, Mr. Silbergeld, one final question. Can the existing levels of market concentration be dissipated by the application of our presently existing antitrust laws?

Mr. SILBERGELD. I think they can, Mr. Chairman. I am most concerned about, aside from the areas of antitrust problems——

Chairman RODINO. Could you specify in what areas of concentration?

Mr. SILBERGELD. Yes. With regard to concentration and not with regard to conduct—such as price fixing, which is frequently encountered in the bread and milk industries—but with regard to monopoly overcharge producing industry structure, I am most concerned about branded, processed foods, and in that area mostly about the barriers to entry created by high levels of advertising of brand names. There are two ways to dissipate that. One is to use the antitrust laws and specifically section 5 of the Federal Trade Commission Act, which has now been interpreted very broadly by the Supreme Court, to bring

some cases in industries where high advertising ratios have created entry barriers which prevent new entries.

An easier way to do that in some respects, technically, but more difficult politically, is to adopt the recommendation of the National Commission on Food Marketing to produce consumer grades for all food products which have substantial sales and are identifiable product lines, and to require the disclosure of those grades on the package or on the product so the consumers can rely on food grades rather than on advertised brand names. This happens in fresh meat, for instance. You don't go look for Iowa Beef Packers brand of fresh meat or Missouri Beef Packers brand of fresh meat. You look for Government grade Prime or Choice or whatever you are looking for in grades of fresh meat. As long as it is that grade, it is adequate. It is like every other packer's product of that grade.

I think that is the easier way to do it. The question is whether it is legislatively—politically possible to get that kind of proposal through the Congress.

Chairman RODINO. Thank you.

Mr. McClory.

Mr. MCCLORY. Thank you.

I am happy to have this testimony, too, and I have a particular respect for the publication, Consumer Reports, which is available to the American consumer and is extremely useful in connection with consumer purchases and practices. I am also happy that we have some emerging farmers, 4–H members from Illinois, here today who are witnessing this hearing.

I am concerned about the latter part of your testimony concerning the grading of many consumer products. I note that we are spending approximately $175 million a year for inspecting and grading meat and poultry alone. Do you have any estimates as to what it would cost to grade all of the additional products that you would like to see graded on the shelves of the retail stores?

Mr. SILBERGELD. No, Mr. McClory, I don't have, and it would be necessary to take an estimate of the costs involved and also an estimate of the costs involved in not grading it and relying upon brand names for consumer identification of quality satisfactory products and to do a simple subtraction. What the consumer now relies on in many lines of food is brand names which are heavily advertised.

That costs the consumer in three ways. No. 1, the consumer will usually be willing to pay a premium for the more heavily advertised brands. We don't know exactly how advertising works, but it is a fact in many product lines.

No. 2, he pays for the advertising which, for instance, in breakfast cereals runs up to 13 percent of the total sales volume that the big four put into advertising.

No. 3, it means new entrants into market cannot get in and keep prices low by bringing in more competition where profits are high.

Mr. MCCLORY. I think that you overlook that there are people who will buy a product not because of its contents but to favor a company that finances a TV program they enjoy. Now if we required the grading of all these products on the shelves, the American consumer who may be willing to pay for the cost of advertising would pay a premium for every item that he bought, not only the advertised but the un-

advertised products, isn't that true? The consumer ultimately is going to have to pay the price of grading.

Mr. SILBERGELD. As I say, the consumer will pay for the grading, but the consumer may well save more than he pays by having that supplant heavy advertising not by Government fiat, not by the Government saying you can't advertise, but by the consumers no longer having to rely upon heavy advertising expenditures as a means of identifying the quality of a particular item on the shelf that he wants.

Mr. MCCLORY. Would we correspondingly augment public television? Without the proceeds from advertising which supports private television, we would necessarily have to find the funds elsewhere unless—

Mr. SILBERGELD. Well, that is an interesting question. First of all, we are only suggesting, this at least here, with regards to food products. I don't know what percentage of TV advertising income is from food products. Furthermore, I think you will note, if you run through the Fortune Directory, that the advertising networks are making very, very handsome profits. I am not sure you have to continue assuring the consumers can only rely on noninformational advertising as a means of identifying product quality——

Mr. MCCLORY. We are not——

Mr. SILBERGELD [continuing]. To have the TV programs——

Mr. MCCLORY. We are not against profits, are we? This is the lifeblood——

Mr. SILBERGELD [continuing]. We are not against profits. But the assumption of the free enterprise system, and the economics which underlie it, is that when profits for a particular product get so high, new entrants will come into that market because it is so attractive and bring in new competition which will then bring the profit down to a competitive level.

Mr. MCCLORY. You do devote a fairly substantial amount of your statement to the subject of monopoly over-charges. Now, do you have some average profit figure that you think a company should enjoy and above which they should be prosecuted or they should be taxed?

Mr. SILBERGELD. No. There is no suggestion that anybody should be prosecuted for making any particular return on investment. The first question, of course, is whether there is any violation of the antitrust laws.

Mr. MCCLORY. Is there any mean, any level? Do you think 6 percent is enough profit? If it is 100 percent, is it evil or wrong?

Mr. SILBERGELD. The real question is what rates of return would companies make if all substantial industries were competitive. That is the real test. We don't have the answer, but that is the measure.

Yes, there is a national average for all manufacturing industries which is computed annually by the FTC in the quarterly financial report. That will tell you what the average is.

Mr. MCCLORY. You would favor some legalized rate of return?

Mr. SILBERGELD. No. I am not suggesting that. There may be different rates of returns for different lines of products under competitive conditions.

Mr. MCCLORY. If they were flexible standards——

Mr. SILBERGELD. What I am saying is the market would set that. All I am suggesting is that we should use the antitrust laws to assure that

industries are competitive, that new entrants can enter into the markets and compete where profits are sufficiently high that new entrants would be attracted. That means first of all they have to be able to identify those markets as good investments. It is businessmen, and not only consumers, that are getting hurt by the lack of information as to where there is room in the economy for new competition.

Mr. McCLORY. In response to a question about possible repeal of the Capper-Volstead Act in order to eliminate the exemptions, you gave a very qualified answer, apparently feeling that monopolies are all right in certain circumstances and not in other circumstances. Do you feel that monopoly at the producer's level is all right but not at any other level?

Mr. SILBERGELD. No, I don't.

Mr. McCLORY. What about union monopoly? That affects the price of goods. We have union monopoly in a number of different industries.

Mr. SILBERGELD. That does indeed, and Senator Hart's committee on the other side of the Hill has found time and time again that the tremendous wage differential that we have between unions in different producing industries very much follows the concentration of producers in those industries.

Mr. McCLORY. At the present time, with the expansion of union activitiy into farm labor, would you favor legislation that would restrict or prohibit union monopolies?

Mr. SILBERGELD. No. I haven't studied that question, Congressman, and I don't know what the answer to that is. There are, of course, in any of these questions certain social questions as well as economic questions and we are not—as I say, I have not suggested that anybody's profit should be restricted by Government fiat. What I have said again is that we should assure that the antitrust laws work so that we can have new entrants into any particular line of manufacturing or production where the profit rates would warrant that, so potential new investors could identify those potential new markets.

Mr. McCLORY. We should place producers, processors, retailers, all equally under the antitrust laws, in other words. Is that correct?

Mr. SILBERGELD. No. I haven't taken that position either. I have not suggested that the antitrust laws——

Mr. McCLORY. Do you want to direct the attention at one segment and not at another? Is that it?

Mr. SILBERGELD. No. The antitrust laws are specifically directed toward manufacturers, producers, and distributors of goods and services. There are specific congressional exemptions for laborers (among others) and we have not taken the position that those exemptions should be repealed and, frankly, I haven't studied that question sufficiently to know what the economic effect of taking that action would be.

I am suggesting again, however, that the Senate Antitrust and Monopoly Subcommittee has found a direct relationship between the ability of a union to demand high wages in industry and the particular structure of the industry in which that labor is engaged, so that it is not two different questions. It is one question with two parts.

Mr. McCLORY. Thank you.

Chairman RODINO. Thank you very much.

Ms. Jordan.

Ms. JORDAN. Mr. Silbergeld, if I understand your testimony, you do not quarrel with the substance of current antitrust legislation as we have it on the books, but with the enforcement capability of the agencies directed toward the enforcement of antitrust laws. Is that a fair statement?

Mr. SILBERGELD. Yes, that is, and I would say this. Taking the antitrust laws to mean not only those which are technically antitrust, but also section 5 of the Federal Trade Commission Act, I think that the antitrust laws are more than adequate to deal with any competitive problems that we have that are not specifically exempted from prosecution by legislation. The Supreme Court in the case of *FTC* v. *Sperry-Hutchinson and Company in* 1972 gave a very, very broad interpretation as to what the FTC could determine to be an unfair practice or unfair method of competition under section 5. The only question I have there is if we are able to identify problems as being the cause of a lack of sufficient competition and if the Federal Trade Commission's—and I don't know of any areas where it consistently refuses to consider reasonable applications of that broad authority, then some legislative prompting may be necessary, but with regard to the technical ability of the FTC and the Justice Department to deal with our competitive problems, I think that the laws are adequate where there are not existing exemptions.

Ms. JORDAN. So even, Mr. Silbergeld, if we as a committee were to recommend legislation which would provide for more adequate and thorough reporting procedures, we still would have no guarantee that the Antitrust Division of the Justice Department or FTC would act meaningfully on securing the reports and taking action when they found some evidence of anticompetitive activity, would we?

Mr. SILBERGELD. You would not have a guarantee, but the very fact that information was made available in more meaningful form; that is, that we could identify specific product lines in which continuing long term high rates of return without the new entry which should be attracted under those conditions, the very identification of those problems would bring pressure upon the Commission and Antitrust Division to bring those cases because then we could tell where they are doing a job and where they are not and if it is something they can't reach, of course, that could be identified, too, but the very availability of the data in the more meaningful form would be a form of pressure for the agencies to perform.

Ms. JORDAN. All right. The Office of Management and Budget and the Cost of Living Council have no enforcement capability whatsoever regardless of what information they want to procure. Now, the question then is whether any cooperation or exchange of information between those agencies, the Cost of Living Council, OMB—you know, when the President made his talk about the economy and said we are going to investigate several industry profit factors and see whether an inordinate profit has been made during a given period of time—is there any procedure whereby that information is exchanged with the enforcement agencies like FTC and the Antitrust Division of the Department of Justice so that if we do find anticompetitive factors, action could take place?

Mr. SILBERGELD. I think the flat answer to that is "No." I am quite sure that the Cost of Living Council has no plans on providing that

information to any other Government activity. The minutes of the Office of Management and Budget's Business Advisory Council on the Federal Reports Act, known as BACFR, consistently reflect the business point of view that those agencies which do economic surveys should not be the same agencies which enforce the law because the collection of information for survey purposes which identifies competitive problems and potential law violations, should somehow be completely separated from actions to eliminate those competitive problems. That is a position with which I personally do not agree. I think that kind of pressure and the expressed, and perhaps not publicly expressed, views of people over at the Cost of Living Council that they need the cooperation of business will prevent them for these reasons from providing that information to the enforcement agencies.

Ms. JORDAN. Mr. Silbergeld, one final question. How do we draw the line between the corporation's right to protect the confidentiality of its information and the public's right to know how this business is doing business?

Mr. SILBERGELD. There clearly is a problem there. You certainly, for instance, do not want to start revealing customer lists or source lists. Part of the competitive system assumes the companies will seek out the best and cheapest sources of supply and that this creates—should create some desire to do that.

I would say offhand that one draws the line between data which indicates performance and data which indicates the details of operation that economists have. In the quarterly financial report of the FTC, and the less frequently published report on Rates of Return of Selected Industries, it shows the kinds of corporate information, also form 10–K, filed with the SEC—the kinds of information—used to measure corporate financial economic performance. That kind of information, I think, should be available, and on a permanent basis. If the firm is registered at least, the question is simply whether it should be available on a line-of-business basis. I think the line is drawn on the other side of that question.

Yes, it should be available on the line-of-business basis for all the economic reasons I have suggested. I think the operative kind of information, the question of what your supply sources are and details of particular contracts is on the other side of that line. I know of no compelling reasons for that information to be systematically available. I think there are some good arguments that it shouldn't except in cases of law violation investigations and I think that that is where the line is drawn.

Ms. JORDAN. Thank you, Mr. Chairman.

Chairman RODINO. Thank you.

Mr. Dennis.

Mr. DENNIS. Mr. Silbergeld, I have been very interested in listening to your presentation here. Without passing on the merits of any of these recommendations which I am not prepared to do at this point, it occurs to me that suggestions you are making have a potential for more fundamental changes in our society and our way of doing business, and so on, than the scope of this committee's inquiry into food prices. In other words, if we should require that certain data be revealed as you suggest, or that products be graded as you suggest, all of which may have a bearing here, we are considerably changing the way American private business actually operates today, are we not?

Mr. SILBERGELD. No, sir, Mr. Dennis, we are not. We are returning to what we used to have before conglomeration hid all of this information.

Let me give you a current example. Maytag is a highly profitable business because—according at least to the—frankly I don't know how we have rated the product, but according to people who have studied that industry they tell me a quality product is produced.

Maytag is only engaged in one substantial line of business, laundry equipment. Their economic performance data is available on a line of business basis because they only are engaged in one line of business. Their competitors are primarily conglomerate firms. That same information is not available for their competitors with regard to the production of laundry equipment because they are conglomerates and they produce in many lines of business.

Maytag has not been harmed by that. Before those other manufacturers, or whoever their predecessors in the laundry equipment business were, became conglomerated, they also produced in primarily one line of business, laundry equipment, and at least after the 1934 Registration Act, they also disclosed their information on a line of business basis because they were only engaged in one major line of business. So really, if we make this information available, it is a very conservative recommendation we have now, if this recommendation is adopted, we are now going to be able to find out what we could find out 40, 50, 60 years ago.

Mr. DENNIS. Well, if I may return to what you and Ms. Jordan were discussing as to the type of data which should be revealed and the type of data which shouldn't be revealed, some bureaucrat down the street here is going to have to get out his pencil and decide that question for the whole business spectrum. Can you foresee any problems with that kind of thing?

Mr. SILBERGELD. No, sir. If, as I recommend, the quarterly financial report is lodged in the Federal Trade Commission by statute I would assume there would be some definition and there would be some limiting provisions with regard to what kinds of information would be made public and what kinds of information wouldn't. I would also point out that as the Quarterly Financial Report—let me distinguish, not the Rate of Returns in Selected Manufacturing Industries report which is published every 3 or 4 years, but the Quarterly Financial Report as now published—it gives aggregate data, not firm data. The problem is not simply knowing what each firm makes. The Federal Trade Commission already has that raw data in its locked files and registered companies disclose it publicly; but in knowing what each firm makes in each separate line of business in which it is engaged. It is not reported in that fashion. It is aggregated for each industry.

Now we take the firmwide data and put it in the industry in which the firm has the highest sales volume. If they had the line of business authority they would take it and divide it up among the various lines of business and put each one in the proper slot. It would still be reported in the aggregate. It is true that, the Rates of Return in Selected Industries Report give the performance of each of the leading firms in the selected industries over a 10-year period, and it is true then that you would have the firm performance for that, but it does not mean

that Congress would have no control over what kinds of data would be revealed and which would not.

You could easily get, if you were to hold hearings on that kind of legislation, a dozen leading industrial economists up here to tell you what kinds of data is performance data and what kind of data is not performance data and is not useful in the aggregate for telling us how industries perform economically in particular lines of business.

I don't think—everything is left to the bureaucrats, sure, as far as the final application goes and there are good bureaucrats and there are bad bureaucrats—but there is no reason why the Congress could not set very firm guidelines with regard to protecting information which should be protected.

Mr. DENNIS. Of course you are still going to have a problem. The more you get Government into business, the less business is private. You cannot avoid that. You may say there is a compensating virtue but I can see the wide and ugly vistas of litigation being opened up here as to what is on which side of the line which is going to be great for us lawyers, so that we end spending more and more time litigating that kind of question instead of producing the products. There is that danger.

Mr. SILBERGELD. I think the question is producing the product at what price and under what degree of competition. Again, yes, we can leave everything business does to be private. We will continue to have high price levels, not necessarily inflation because that may be cyclical, but high price levels. We hope inflation is cyclical. It has been in the past. We hope there is some indication it will be in the future. But you have also got to look at general price levels and the question really is whether we are going to be able to identify the economic problems which result in price levels higher than we would have if particular industries were competitive.

Chairman RODINO. Thank you, Mr. Dennis.

Mr. DENNIS. May I ask two more questions?

Chairman RODINO. I am afraid we will have to go on with Mr. Mezvinsky.

Mr. DENNIS. Let me ask one. I will discontinue even though the subject is very interesting. For I would like to explore his answer.

Chairman RODINO. Will the witness try to respond as briefly as possible?

Mr. DENNIS. But I will skip that in order to ask you this. You say enforce the antitrust laws and make them work. We have talked here about the Capper-Volstead exemption in the food area. Mr. McClory asked you about the labor union exemption. You said you hadn't studied that, which is fair enough, but my question is, don't you think if you are going to come up here and make recommendations about enforcing the antitrust laws or if we are going to try to enforce the antitrust laws that you or somebody ought to give some study to the question of whether or not the labor unions ought to be included?

Mr. SILBERGELD. Yes. I think that that would be very useful in connection with the committee's study of the antitrust laws, but as I say, I haven't made a complete study and I am not ready to make recommendations. The information developed over on the Senate side is that wages do not tend to outstrip productivity gains in industries where

there is competition and they do tend to do so in industries which are not. Therefore, it is not my wont to suggest that the antitrust laws be applied to laborers unless there is some other economic conclusion drawn from other studies of which I am not aware.

Chairman RODINO. I also suggest, Mr. Silbergeld, the responsibility of this committee is one of overviewing like the Department of Justice and FTC that have some responsibility to protect what the consuming public does or does not do. This is our area of concern as to whether those executive agencies are doing what is necessary to maintain competition in the markets in order to protect the consumer.

Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. Silbergeld, I appreciate your statement. It was very forceful and forthright. I think it was on target as far as attempting to look at the problem that we are confronting.

Your position basically is that one of the reasons, if not the major reason, why the FTC and Justice and Department of Agriculture haven't done their job in the field of antitrust enforcement is because of the lack of data; or, are there other considerations in addition to that from your background and experience with the FTC, with the public interest research group that could add to the picture?

Mr. SILBERGELD. Well, first of all, let me distinguish between the Department of Agriculture and the two antitrust enforcement agencies. The Department of Agriculture has what I think can fairly be called a built-in conflict of interest in enforcing antitrust considerations with regard to agricultural producers. Secretary after Secretary, and certainly the present Secretary, have said that their concern is to assure high prices for producers. Antitrust enforcement may be inconsistent with that.

With regard to the other two agencies, the lack of data is a problem. It is certainly not the only problem. I am told that with the increased interest and more visible interest of Congress in the inflation problem, the FTC of late has been asking not "Is this condition illegal according to the 40 cases that deal with it?" but rather, "If we take this action, what will it do to the prices?" something they should have been asking all along. In other words, the interest of Congress in getting prices down increases the interest of the FTC in getting prices down rather than being a traffic cop who stops jaywalking even if it is 3:30 in the morning and there aren't any cars around.

There are certainly political considerations and there are capability considerations, the quality of the Commissioners who serve on the Commissions, the disposition of the Assistant Attorney General for Antitrust and the disposition of the Attorney General and—I am concerned now with Mr. Bork's statements prior to his confirmation—the disposition of the Solicitor General with regard to their views toward the antitrust laws and what they should and shouldn't do, and how they may or may not be applied and whether there are rules of conduct or basically economic rules which assure the viability of our economic system.

All of those things are serious problems which perhaps should be studied in addition to the data problem.

Mr. MEZVINSKY. Now since we are looking at the chain from the farm to the dinner table, to account for projected 12-percent increase

in food prices, is it fair to say from your research that anticompetitive forces are at play?

Mr. SILBERGELD. In some sectors.

Mr. MEZVINSKY. And that the study done by the FTC is a good guide for us to look at and to follow through and to pursue and that we should ask them to do economic reports whether it is of the meatpacking industry, fluid milk, bread, what have you, across the board?

Mr. SILBERGELD. Yes. It is my understanding that while the dollar amounts which can be calculated my multiplying two columns—the overcharge margin, which is a percentage figure, by the value of shipments—while the amount that results from that multiplication may not be reliable because they didn't do the study on a line-of-business basis, that the ordinal range, 1 through 100, is a reliable ranging of the 100 industries they study.

Now, there are 300 industries they didn't study, but they know from the economic literature where economists have identified competitive problems. We have reason to believe that the 100 industries studied would fall in the top hundred if they did all 400. It is a good guide in that respect.

I have only found in looking it over one industry about which I have some question, the meat industry. I have some question as to why that is on there and why it ranges so high. All the economic literature says that the barriers to enter industry are very low and with the new kinds of operations that it takes practically no capital to get in. The problem may be at this point in finding a supply.

On the other hand, I think perhaps the market measurements defining a national market instead of a regional market. This is a study which could be done, I think, not by going to them, but going to some grocery stores in a few selected cities to find out how far meat is shipped and how that defines markets. With the exception of the meatpacking industry I think there is in the economic literature identification of the particular structural kinds of problems which corroborate the Commission's list, and I would be very interested when that list is provided by the Chairman of the FTC to see what reasons the backup study to the table that was published assigns to the lack of competition in each industry. I think that will tell you just what kinds of things should be looked into.

Mr. MEZVINSKY. I have one last question. In 1966, we had Dr. Williard Mueller, considered a leading economic expert in the food industry, come before this subcommittee, and he pointed out that there was a similar economic data problem regarding food retailing, pointing out that you get an incomplete picture from the retail food markets because you have the national chains not providing the data on a division market, not taking into account that in the District of Columbia four chains control over fifty percent of the market. Do you think this is a problem and if it is, would you agree with him that we need divisional reporting. Is there any form of legislation that should be considered?

Mr. SILBERGELD. Yes. Congressman, there certainly is a problem. Although retailing is considered to be very competitive and many people have said food retail is competitive, the 1966 FTC report referred to in my testimony identifies a very high percentage of 185 markets studied have a 4-firm concentration ratio of over 50 percent.

Dr. Mueller was referring to a very—actually an identical data problem.

There are two kinds of conglomerations. One is product conglomeration in which the same firm makes many products so that when it reports on a firmwide basis, the specific data disappears.

The other is market conglomeration. People from Washington do not go to Denver or Cleveland to buy food, so you have a local market defined pretty much by the metropolitan statical area. A&P or Kroger, for instance, report nationwide data. We don't know how they perform in different markets. It is the *National Tea* case, to which you referred two weeks ago, and which as a result I mentioned in my testimony, shows that, in a particular case the FTC brought some years ago, where National Tea's market shares were higher, its profit margins were higher, and where they were lower, its profit margins were lower.

So when Dr. Mueller recommended that the Commission ought to be able to get the information on food retailing performance in terms of profits—again we are talking only about performance data—on a market basis or divisional basis, he was talking about exactly the same problem I have discussed with regard to product lines. It is just that the markets are defined by geography and not by the kind of product.

Mr. MEZVINSKY. Thank you. Thank you, Mr. Chairman.

Chairman RODINO. Thank you very much, Mr. Silbergeld.

Mr. DENNIS. May I ask just one question, Mr. Chairman?

With regard to this FTC study, which we are now going to get, I thought it should be helpful for you to mention the basic problems other than the lack of line-of-business data that you already noted which made the FTC reluctant to release it?

Mr. SILBERGELD. Well, as I understand it, and I am not privy to conservations over there—once in a while somebody floats by me the fact that somebody said some specific thing—but as I understand it, the main concern was that they had been unable to collect the information on a line business basis, and therefore when they say fluid milk, they may be reporting as income, as shipments, and as profits in the fluid milk industry some other product data for a firm which is engaged not only in fluid milk production but also in the production of some other lines that are not defined as fluid milk. That is the reason that they are concerned that the figures aren't accurate.

However, I am told that in staff discussions the economists still insist that the ordinal ranking is accurate even though this lack of business data may make the dollar amount somewhat inaccurate.

Mr. DENNIS. The income totals would not be accurate.

Mr. SILBERGELD. Not necessarily accurate. They don't know how inaccurate this may or may not be. They also may not have identified certain costs such as monopoly inefficiency. They don't know how accurate it is because they don't have the power to get the kind of data they need, but as I say, they are quite sure that the ordinal ranging is accurate.

Mr. DENNIS. You indicated before, I think, that there were several problems. You mentioned one. Are there others?

Chairman RODINO. Mr. Dennis, I don't want to——

Mr. DENNIS. I don't want to push you, Mr. Chairman. Simply——

Chairman RODINO. It is now 12 p.m. and we have two other witnesses

who are representative of the consumers' point of view, and I think that we ought to be considerate of their presence here.

Thank you very much, Mr. Silbergeld.

Mr. SILBERGELD. Thank you, Mr. Chairman.

[The prepared statement of Mr. Silbergeld follows:]

STATEMENT OF MARK SILBERGELD, ATTORNEY, CONSUMERS UNION WASHINGTON OFFICE

Mr. Chairman and members of the subcommittee, I greatly appreciate your invitation to appear at these hearings and to present some views on antitrust and food prices. This subcommittee has a long history of developing significant information and writing vital legislation related to the state of competition in our economy. Competition is a key factor in keeping prices as low as the law of supply and demand will permit and it is essential to the well-being of consumers. Therefore, any assistance which Consumers Union can give to this subcommittee in identifying competitive problems in the food industry we readily offer.

Before I begin, I should offer you some personal background. I am at attorney in the Washington Office of Consumers Union.[1] For the 15 months prior to last November 1, I was a member of Ralph Nader's Public Interest Research Group here in Washington. And prior to that for 5 years I was on the staff of the Federal Trade Commission. My experience since leaving the FTC in 1971 has been concentrated primarily in the area of the regulatory agencies—primarily the Federal Trade Commission and the Cost of Living Council.

GOVERNMENT IGNORANCE AS A SOURCE OF OLIGOPOLY POWER

I should like to begin my testimony by identifying for you the precise areas in which ineffective competition among food producers or among food distributors has resulted in higher food prices. Also, I should like to estimate the amount of consumer savings which would result in each such area from effective antitrust action by the Federal Trade Commission or the Justice Department. Unfortunately, I cannot. Nor can the Justice Department. Nor the Federal Trade Commission. And this Committee has been told that the Department of Agriculture has shown little interest in providing such information, and that the Census Bureau has been downright uncooperative when asked by FTC for access to such information. As a result, this committee cannot identify these problems comprehensibly either, although I am certain that you would like to be able to do so.

The truth of the matter is that the government and the public are basically ignorant regarding the state of competition in the food sector of the economy—as in most other sectors. There is one sole cause for this ignorance. The information needed to make the judgments this committee desires to make is considered to be private property. In a phrase, business is nobody's business. This is not my conclusion alone. This was the effect of testimony during these hearings by the Assistant Attorney General for Antitrust and by the chief economist of the Federal Trade Commission two weeks ago.

As a result of this policy of treating data on the state of competition in the economy as privileged information, the government cannot distinguish Twinkies from telephones, shortening from soap, or egg rolls from cigarettes.[2] This need not be so, but it is. There are at least two consequences of this lack of data which enhance discretionary market power and lessen competition. One is that the government—specifically the FTC and the Justice Department—cannot systematically utilize economy-wide performance data to identify areas for possible

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information and counsel to consumers about the management of family expenditures. Consumers Union's financial support comes from our more than two million subscribers and newsstand readers. We accept no support from any commercial organization. *Consumer Reports*, the magazine published by Consumers Union, carries no advertising. Besides testing and reporting tests on consumer products, *Consumer Reports* publishes general information for consumers on health, medicine, product safety, the economics of the marketplace, and legislative, judicial and regulatory actions of government which affect consumer welfare.

[2] Twinkies are baked by ITT–Continental Baking Co., but reported by the parent corporation, IT&T, as telephone equipment; Crisco is manufactured by Procter & Gamble, and reported in the soap and detergent category; one brand of frozen Chinese dinner is manufactured by a subsidiary of R. J. Reynalds Co. but reported as a tobacco product.

investigation. The other is that business cannot systematically utilize such data to identify best areas for new investment, which would create competition where profit levels most warrant new competition.

The Congress should be especially concerned about this state of affairs. For the Executive branch has built a wall of secrecy behind which business corporations are hiding from the Congress and from its independent regulatory and reporting arm, the Federal Trade Commission.

That wall is the Federal Reports Act of 1942[3] as interpreted and administered by the Office of Management and Budget. This Act is utilized to require that all FTC forms used to collect data from ten or more firms be approved by OMB—and has been used specifically to stall FTC plans for collecting corporate economic performance data on the line of business basis which it needs to perform its functions and to report to the Congress. Although there is nothing in the Act's legislative history to show that it was meant to apply to independent agencies,[4] the FTC has acquiesced in the OMB interpretation.

The Act has been used to prevent the FTC from conducting its data collection for the Quarterly Financial Report—a vital set of data on the state of manufacturing in our economy—on a line of business basis. Furthermore, Dr. Mann, the FTC's chief economist, has stated—and the public record shows[5]—that if FTC is granted the line of business data collecting authority which it seeks, there will be pressure to transfer the Quarterly Financial Report function to the Bureau of the Census. This would be more unfortunate—especially in view of this committee's desire to obtain information regarding the state of competition and its expressed interest in having the FTC and Antitrust Division utilize such information in planning antitrust resource allocation—because such a move would place the data in the protective custody of the Executive.

Therefore, as discussed more fully below, we recommend that the legislative measures be adopted to take the Federal Trade Commission out from under the wraps of OMB, so that it begins to and continues to collect corporate economic performance data on a systematic, line of business basis; specifically:

1. The FTC should be exempted from the Federal Reports Act of 1942; and
2. The authority and responsibility for publishing the Quarterly Financial Report and the related Report on Rates of Return in Selected Manufacturing Industries should be placed in the Federal Trade Commission.

DATA GAP I—BUSINESS IS NOBODY'S BUSINESS

The Federal Trade Commission's chief economist has already told the committee that the FTC needs the authority to obtain line of business data. The reason is fairly simple. Conglomeration in American industry has resulted in the aforementioned reporting of Twinkies as telephones to a degree which renders the FTC's Quarterly Financial Report data inadequate to permit a systematic monitoring of the economic performance of industries the products of which are in competition with each other.[6] As stated previously, this has two adverse effects on competition. The government cannot effectively monitor the economy to determine where best to investigate for possible antitrust violations. And the business sector cannot efficiently identify the best places for new investment, which creates competition when prices and profits rise above competitive levels.

The Federal Trade Commission has been seeking Office of Management and Budget clearance for a line of business reporting form since at least 1970.[7] And the OMB has strongly resisted approval of this form, at least in part on the basis of objections from business executives representing large corporations and trade associations who voice their objections at meetings of OMB's Business Advisory Council on Federal Reports, Panel on Proposed FTC Survey Form LB, "Annual Receipts and Income, by Line of Business."

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[3] Title 44 U.S.C. § 3502 *et seq.*

[4] At the time the Act was adopted by Congress, the QFR was published by the Office of Price Administration. The primary purpose for the Act was to streamline the operations of the Federal Government and to free as much producer time as possible for wartime production by minimizing the need for preparing Federal Reports.

[5] See Minutes of the Thursday, October 5, 1972, meeting of the Office of Management and Budget's Business Advisory Committee on Federal Reports Panel on the Federal Trade Commission's Quarterly Financial Report for Corporations, pp. 5–6.

[6] See Staff Memorandum to Federal Trade Commission, April 10, 1970, published in Hearings on the Role of Giant Corporations in the American and World Economies, Subcommittee on Monopoly of the Senate Select Committee on Small Business, November 9 and 12, 1971, pt. 2A, p. 1808. (Hereafter "Staff Memorandum to FTC"). Pt. 2A hereafter referred to as "Role of Giant Corporations Hearings."

[7] Many documents bearing upon the FTC requests to OMB are found in the Giant Corporations Hearings, pp. 1807–1944.

Some of the objections have been specious, to say the least. One such objection, subscribed to by the Financial Executives Institute, the Automobile Manufacturers Association, the National Association of Manufacturers, Xerox Corporation, among others, is that the FTC can rely in "line of business" data submitted to the SEC for that agency's purposes—and that, therefore, the FTC line of business form would be redundant.[8] An FTC staff analysis of fifteen firms' "line of business" reports to the SEC, however, showed an average of 31 corporate divisions per reporting firm, but an average of only five lines of business reported to the SEC. The FTC staff concluded that the data reported to the SEC is meaningless.[9]

As an end to the OMB Business Advisory Council obstruction to development of Quarterly Financial Report line of business reporting seems near, the battleground has shifted. The effort now seems to be directed toward removing the QFR from the Federal Trade Commission and sending it to the Census Bureau. This was a major topic or discussion at the October 5, 1972, meeting of the OMB Business Advisory Council on Federal Reports, Panel on the Federal Trade Commission's Quarterly Financial Report for Corporations.[10] Dr. Mann of the FTC previously described for this committee the lack of cooperation which FTC has had from the Census Bureau regarding corporate financial data. This move would create a substantial barrier to effective FTC monitoring of corporate economic performance.

Such a transfer could be effected by executive order, as was the transfer to the FTC from the Office of Price Administration of the QFR functions at the end of World War II.[11] To leave to the Executive branch the authority to determine the quality of information which is available to the Congress, its independent regulatory agency, and the public regarding the economic performance of food and other vital industries will most likely produce less—not more—such information than that which is now available.

In order to correct this dismal situation, it is necessary to exempt the Federal Trade Commission from the requirements of the Federal Reports Act and to place with the FTC the authority and responsibility for publication of the Financial Report and the less frequently published—but extremely significant—Report on Rates of Return in Selected Manufacturing Industries.

DATA GAP II—ACTION INSTEAD OF REACTION

The foregoing discussion regarding the availability of data ignores, of course, the fact that the government can obtain economic performance data for an industry if it is investigating possible violations of the law in that industry. The oversight is intentional. Government utilization of information relating to industries under investigation is insufficient, because it is this same kind of data—systematically collected and analyzed for all major industries—which should tell the FTC and the Antitrust Division *where* to investigate.

In other words, it is the *systematic* collection and scrutiny of industrial performance data which should determine the allocation of investigational and prosecutive resources, and not the "hot tips" from industry insiders which the FTC, according to Bureau of Competition Director James Halverson, so often relies upon. If the government targets its resources on the basis of tips, it will act where the leaks are greatest. If it targets its resources on the basis of a systematic review of adequate, comprehensive performance data, it will act where the possibility of saving consumers the most money is greatest. It is the latter situation which is clearly the preferable public policy.

Such a systematic attempt was undertaken at the Federal Trade Commission. In a planning study designed to assist the FTC in allocating its resources in areas where there are the greatest potential savings for both corporate and individual consumers, the FTC estimated monopoly overcharges in one hundred industries. In the spring of 1972, a summary table of those estimates was obtained and made public by Senator McGovern. The FTC, nevertheless, declined to provide a copy of the full study when requested to do so by Senator Proxmire, then the Chairman of the Joint Economic Committee. As late as last month, the

[8] See minutes of the Office of Management & Budget's Business Advisory Council on Federal Reports, Panel on Proposed FTC Survey From LB, "Annual Receipts and Income, by Line of Business," Jan. 21, 1971 (with attachments), reprinted in Role of Giant Corporations Hearings, pp. 1831–1852.

[9] Staff Memorandum to FTC, p. 1813.

[10] Minutes, pp. 5–6.

[11] Executive Order 9809, Item 9, December 12, 1946, reprinted in Role of Giant Corporation hearings, pp. 1747–1749.

FTC declined to provide a copy of the study when it was requested by the Cost of Living Council. It is to the great credit of this Committee that the study will, at your request, finally be made available.

Although FTC Chairman Lewis Engman has agreed to make the study available, I would like also to offer for the record a copy of the summary table in the form in which it was first generally published—with an accompanying explanatory article—from the Antitrust Law & Economics Review.[12] Mr. Paul D. Scanlon's article rebuts some of the suggestions from within the Federal Trade Commission that the study is not reliable.

The study is not based on line of business data, but on the same firm-wide data which creates the same difficulties previously discussed. *Nevertheless,* I am told that, in discussions among the FTC staff of appropriate uses of the study in its present form, it is generally agreed that the study provides *at least* a reliable ordinal ranking of the industries included—in the approximate order by which they are able to overcharge the public due to a lack of effective competition. In other words, the FTC could wisely allocate its enforcement resources by bringing cases to instill competition in the industries included on this list, in the approximate order in which they are listed by Mr. Scanlon.

As you will note, there are at least seventeen food producing or food-related industries on that list. If the FTC were to bring and win competition-restoring cases in those industries, consumers could expect some identifiable amount of relief from the current epidemic of pocketbook anemia.[13]

Additional methods of analyses can also be useful in identifying markets for scrutiny and possible action to increase competition. In the retail food industry, for instance, the FTC should conduct a study of the statistical correlation between market shares and profit margins. A positive and significant correlation, if one exists, may be utilized to identify markets in which there is not vigorous competition—for one reason or another. Such a correlation was established in the FTC case *Matter of National Tea Co.,* Docket 7453, Dr. Mann told the Committee two weeks ago that this kind of data is used in FTC litigation. It should also be used to identify systematically possible areas of fruitful FTC litigation.

The government's antitrust agencies should be allocating their resources on the basis of a systematic collection and analysis of industrial performance data. In order to do this, they must have access to more reliable data than they are now able to obtain. This need underscores the urgency of our recommendations regarding the Federal Reports Act and the Quarterly Financial Report. In short, the economic performance of business should be public, not private, knowledge.

THE FOOD INDUSTRY AND THE FTC'S MONOPOLY OVERCHARGE LIST

Among the 100 industries included in the FTC study of monopoly overcharge are seventeen which produce food or food-related products. With both the limitations and the possible uses of that list in mind, those seventeen industries warrant the Committee's close attention.

When the full study is in hand, it will be important to analyze the reasons attributed to the overcharges in each industry. It may be anticipated that more than one reason will be encountered in most. Some of the factors which permit these overcharges to be made may be subject to action by the FTC and the Justice Department. Others may be authorized by laws such as the Capper-Volstead Act, quite predictably a factor in the estimated overcharges for fluid milk, so that economic analysis and legislative review of specific statutory policies may be warranted. Still other factors may not be subject to action under existing legislation, at least in the minds of the regulators who must make the decision to enforce the law, so that either the encouragement of test cases or clarifying legislation may be appropriate.

In any event, the Committee should assure that there are better methods and plans—regulatory or legislative—to deal with the economic problems identified by this study.

The seventeen food producing and food-related industries on the FTC list (as arranged by Scanlon in order of the annual amount of monopoly overcharge) are:

[12] Paul D. Scanlon, "FTC and Phase II: The 'McGovern Papers'", *Antitrust Law & Economics Review,* vol. 5, No. 3, Spring 1972, p. 19 *et seq.*

[13] This does not mean that the best allocation of FTC resources would be to bring food cases to the exclusion of other cases. To the extent that the cost of other commodities is reduced, there would be more room in the family budget for food.

SIC[1] and industry		Value of shipments (billions)	Monopoly overcharge (millions)
2011	Meat packing plants	$15.6	$489.3
2026	Fluid milk	7.8	256.7
3522	Farm machinery	4.3	251.1
2036	Soft drinks, bottled and canned	3.2	247.8
2042	Prepared animal and fowl feed	4.8	201.5
2082	Malt liquors	2.9	198.0
2051	Bread, cake and related products	5.1	191.9
2033	Canned fruits and vegetables	3.5	143.6
2071	Confectionery products	1.9	94.4
2041	Flour and other grain mill products	2.5	88.5
2085	Distilled liquor, except brandy	1.4	88.3
2037	Frozen fruits and vegetables	2.1	84.9
2062	Cane sugar refining	1.4	71.5
2032	Canned specialties	1.4	71.2
2654	Sanitary food containers	1.1	64.1
2052	Crackers and cookies	1.4	57.3
3551	Food products machinery	.8	38.5

[1] Standard industrial classification, according to the Standard Industrial Classification Manual, U.S. Office of Management and Budget, 1972. The classifications are broken down into 2-digit descriptions (major groups—e.g., "food and kindred products") (manufactured), 3-digit descriptions (groups, e.g., "meat products") and 4-digit descriptions (industries—e.g., "sausages and other prepared meats"). Thus, for example, canned ham is listed in industry 2013, "sausages and other prepared meats", which is in turn 1 of 4 industries included in class 201, "meat products", which class is in turn listed in major group 20, "food and kindred products" (manufactured). The Census Bureau's decennial Census of Manufactures utilizes a further breakdown into 5-digit classifications, and some special Census Bureau publications utilize a 7-digit categorization.

The FTC, according to Chairman Engman and Competition Bureau Director, James Halverson, is conducting investigations into several of the industries which are included on the study list. Among these are beer (malt liquors) baking (bread, cakes and related products), crackers and cookies, and acquisitions by Nestle's in the canned goods industry (assuming the acquisitions involved specialty products). FTC is also engaged in highly significant litigation with the soft drink industry, which is on the list, and the ready-to-eat cereal industry, which is not.

Appropriate as these efforts are, however, they do not meet all of the demands imposed upon the government by the current food crisis and by the need for good public policy with regard to assuring competition in the food industries. *First*, they do not systematically inform the Congress or the general public as to the scope of anticompetitive factors in the food sector of the economy (or in any given industry—with the possible exception of the breakfast cereal industry). *Second*, they do not offer a comprehensive remedy for the competitive barriers in the industries involved—again with the possible exception of the cereal industry. And *third*, they do not constitute a comprehensive approach to the problem. So far as we have been told, for instance, there is no investigation underway of competitive barriers in the meat packing industry, which is at the top of the list of seventeen industries.

This is not necessarily the fault of the FTC. In the fluid milk industry, for instance, the FTC study predictably will show that the Capper-Volstead Act and other policymaking agricultural legislation restricts competition—and the FTC can do nothing about that.

In order to inform the public, and to obtain information about which members of the Committee had previously inquired regarding competitive problems which may exist in a food industry, and how those problems can be identified, measured and evaluated, this Committee should consider obtaining an economic report on some food industry from the FTC's list, and—when that report is prepared and has been made generally available—holding hearings on the economic, legal and public policy issues raised thereby.

Because it will involve issues raised by the Capper-Volstead Act, and thereby highlight the juncture at which the desired goals of economic stability and economic competitiveness may conflict, the fluid milk industry—second among the food producing industries on the FTC list—would be an excellent choice.

If the Committee accepts this suggestion, the obvious source of this economic report would be the Federal Trade Commission, which has the economic expertise to prepare such a report. Under § 6(f) of the Federal Trade Commission Act, the FTC is empowered:

. . . to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation.

If the FTC were to undertake the preparation of a special report on the state of competition in the fluid milk industry at the request of a committee on the Congress, many of the difficulties the FTC has reported in dealing with the Office of Management and Budget may be obviated. It is difficult to conceive that OMB would obstruct such an investigation by the delaying or revision of the data collection forms to be utilized by the FTC in preparing a report at the request of a Congressional Committee. Indeed, it would be appropriate to consider whether the FTC would even be required to submit forms to OMB for that purpose, quite aside from the question of whether the Federal Reports Act normally applies to FTC.

We hope that the Committee will seriously entertain this recommendation.

ADVERTISING EFFECTS ON COMPETITION

A competitive problem in many food product lines which costs consumers substantial—although unmeasured—amounts of money is the practice of "product differentiation." This is the practice of building consumer loyalty to brand name items through heavy advertising—measured either in dollars or as a ratio of advertising expenditures to sales volume. Such differentiation, where it has been successfully achieved, will result in consumers' willingness to pay additional amounts for heavily advertised brands of a product *even though the less heavily advertised brands may be of substantially identical function and quality.* It is not clear whether this result is achieved solely as a result of advertising expenditure levels, or solely as a result of the success of particular advertising messages in creating the proper brand image or brand name recall, or whether it is a result of some combination of these factors. Then phenomenon is, however, recognized as being important in many product lines.

The successful differentiation of a product through heavy advertising and promotion has three effects on the prices consumers pay at the grocery store. *First,* it creates a willingness to pay a premium price for the advertised brand or brands. *Second,* the consumer pays for the high advertising expenditure, the cost of which is passed along in the price. *Third,* the additional advertising expenditures of the differentiated, preferred products increases the costs of entering that manufacturing industry. Because products are sold on the basis of advertising-created preference, rather than on the basis of quality and cost, a new entrant into the industry must be prepared to spend not only the very substantial percentage of sales which the leading advertisers in the industry are already spending, but most probable much more than that in order to compete with them for the public's association of its brand name with the product it proposes to sell. In short, it "raises the barriers to entry", as economists say.

Examples of this problem are familiar to all of us. Soft drinks are heavily advertised and eight firms sell the great bulk of the syrup concentrate in that industry. Cold breakfast cereals are heavily advertised, and one of the practices alleged in the FTC's oligopoly complaint against the leading firms in that industry is a proliferation of brands by four firms, accompanied by heavy advertising expenditures which new entrants could not expect to match.

There are two possible remedies for this problem. One is a limit on advertising expenditure levels which have the effect of limiting new entry into an industry. This authority may already belong to the Federal Trade Commission under the "unfair practices" and "unfair methods of competition" provisions of Section 5 of the FTC Act. On the other hand, it has not been utilized by the FTC, so that it may be appropriate for the Congress to encourage regulatory consideration of the problem through hearings and specific authorizing legislation.[14]

The second possible remedy is to limit the importance of advertising as a means of identifying satisfactory products. The Congress has already done this in the fresh meat industry by adopting laws which require inspection, grading and labeling of fresh meat. The 1966 Final Report of the National Commission on Food Marketing recommended:

Consumer grades should be developed and required to appear on all foods for which such grades are feasible, that are sold in substantial volume to consumers, and that belong to a recognized product category.[15]

[14] The Supreme Court decision in FTC v. Sperry & Hutchinson Co., 405 U.S. 233 (1972) gives the FTC very wide authority to determine what practice which in fact cause economic harm to consumers are unfair practices or unfair methods of competition under sec. 5.

[15] National Commission on Food Marketing, "Food From Farmer to Consumer" (1966), p. 109.

Consumers Union has long advocated a revision of the USDA grading system, extension of grading standards for a greater variety of products and mandatory grading and disclosure requirements. A bill has just been introduced in the Senate by Senators Magnuson and Moss. We recommend that similar legislation be sought in the House. Such a revision in the way consumers identify satisfactory items of food would predictably result in a very substantial reduction in food price levels.

SPECIAL TREATMENT

The Congress has, from time to time, seen a need to depart from the policy of encouraging the greatest degree of competition. The legislation enacted in these situations was designed to deal with conditions which may well have changed substantially over time. As Assistant Attorney General Kauper pointed out to the Committee in his testimony, the Capper-Volstead Act is one such piece of legislation, and it may well have a substantial effect on the degree of competition in food production.

Even as the Congress has been reminded of the need for systematic review of such legislation, it is entertaining new proposed legislation to grant special antitrust consideration in the soft drink industry, which is among the industries high on the FTC's monopoly overcharge list. The Senate has already acted favorably on this proposal, S. 978. The House Commerce Committee has before it H.R. 122 and numerous identical bills. We are greatly concerned about the granting of special antitrust treatment as a matter of general policy, and most especially so to a food industry in a time of rising food prices—even more so when the Federal Trade Commission has taken steps to reduce the monopoly overcharge in this industry and when we expect the FTC to repeat such efforts in other monopoly overcharge industries. The spectre of Congress looking over its shoulder in mid-litigation is not likely to encourage greater FTC efforts in this regard.

FOOD RETAILING

It has been generally considered that food retailing is substantially price competitive. The Federal Trade Commission's food retailing merger guidelines have for several years prevented further substantial concentration in this vital industry. However, antimerger policies do not deal with existing levels of concentration—and the previously mentioned data in the National Tea case suggest that there is a positive, direct relationship between market shares and profit margins.

In 84 of the 158 metropolitan areas studied by the Federal Trade Commission,[16] the four largest grocery firms controlled 50 per cent or more of the market. This is a level of concentration considered likely by economists to reduce the degree of price competition. And yet we are unaware of any efforts by the antitrust agencies to analyze the competitive problems in these markets—or a portion of them—and to determine whether any antitrust action could induct greater competition in them. Here also, there is a substantial lack of data available to Congress and the public.

In the Washington, D.C. retail food market, a highly concentrated market, apparently predatory pricing conduct was engaged in by a leading firm to prevent a new market entrant from competing successfully in the D.C. area. To date, no FTC action has been taken, even though the matter was noted in a 1969 FTC economic report.[17]

A potentially important effort, now in the planning stage, which could lower consumer food expenditures in the proposed FTC supermarket price survey, which—if properly designed and conducted—would help consumers identify the most economical food chains in which to shop. Presumably, as consumers change their shopping patterns in response to the availability of this information, general food price levels will fall to more ideally competitive levels in markets where such levels do not now prevail.

A REPORT ON THE STATE OF THE FOOD ECONOMY

I have noted throughout my statement, Mr. Chairman, the sad lack of adequate information available to the Congress, the regulatory agencies and the public which is necessary to evaluate and improve the state of competition in the food sector of our economy. This situation was addressed by the National Commission on Food Marketing in its 1966 final report. It concluded:

[16] Federal Trade Commission, Economic Report on the Structure and Competitive Behavior of Food Retailing (1966), Appendix Table 4, p. 293.

[17] Federal Trade Commission, Economic Report on Food Chain Selling Practices in the District of Columbia and San Francisco (1969), p. 4.

In order that the Congress, the executive branch, and the public will be fully informed, we believe that the Federal Trade Commission should be charged with making a continuing review of market structure and competition in the food industry and report annually thereon to the Congress.[18]

The Federal Trade Commission has never been charged with this responsibility as recommended. It should be at the earliest possible moment. The charge should be accompanied by the authority to obtain all needed data in whatever degree of detail the Commission deems necessary, without interference from the Office of Management and Budget. Only when information which seriously affects public is treated as public, not private, information, will the Congress and the regulatory agencies be able to discharge their duties to the public. Thank you, Mr. Chairman.

National Oligopoly and Local Oligopsony in the Meat Packing Industry*

(By Arnold Aspelin and Gerald Engelman)

ABSTRACT

In 1920, the four largest packers slaughtered about half of the livestock in the country. By 1970, the four largest were only about half as important. However, in livestock procurement, effective market areas are not national—they are usually smaller than a single state. And in most cases, they are highly oligopsonistic. In recent years antimerger law has emphasized local markets. But antimerger law enforcement only prevents reconcentration. To improve competition, more sophisticated pricing systems, such as the teletype hog marketing system in Canada, can enlarge the effective market area without changing industry structure.

The meat packing industry of 1920, the year of the meat packers consent decree, was moderately oligopolistic within the national market. The "Big Four" meat packers (Armour, Cudahy, Swift, and Wilson)[1] were the ranking slaughter firms in each species.[2] They accounted for about 49 percent of cattle slaughter in the United States, 34 percent of the calves, 44 percent of the hogs, and 62 percent of the sheep and lambs (table 1). Since 1920, the structure of the meat packing industry has become less oligopolistic as concentration ratios have declined considerably at the national level. Increasingly, members of the Big Four have been displaced in the rankings by other firms.

Concentration in cattle slaughter declined—beginning in the 1930's. By 1950, four-firm concentration ratios had dropped for cattle to about 36 percent—but the other three species were about the same in 1950 as in 1920 (table 1). Ratios for all four species declined sharply during the late 1950's as a result of strategic operating policy changes by certain large packers. Decisions were made to scrap or remodel old and outmoded plants, to discontinue slaughter of certain species, to emphasize processing over slaughter in overall operations, and to diversify into other industries. Underlying these developments have been improvements in transportation and communications and shifts in the location of livestock production such as the growth of commercial feedlots in the western half of the country.

The late 1950's marked the end of the dramatic decline of concentration in meat packing. Four-firm concentration ratios did not trend downward during the 1960's. Ratios in 1969 were near 1960 levels except for sheep which increased from 54.7 to 60.4 percent (table 1).

In 1970, concentration declined in all four slaughter species due largely to major slaughter capacity cutbacks by one of the leading packers. Then, four-firm ratios were at relatively unconcentrated levels of 21 percent for cattle, 24 percent for calves, 32 percent for hogs, but at a still concentrated level of 53 percent for sheep.

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[18] National Commission on Food Marketing, op. cit., p. 107.

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[1] The "Big Five" became the "Big Four" in 1923 when Morris was merged with Armour.

[2] Cattle, calves, hogs, and sheep are the categories commonly used for slaughter animals and for meat, and are referred to as separate species, although both cattle and calves are bovines.

TABLE 1.—PERCENT OF U.S. COMMERCIAL LIVESTOCK SLAUGHTER BY THE 4 RANKING FIRMS IN EACH SPECIES, 1920 AND 1950–70

Year	Cattle	Calves	Hogs	Sheep
1920	49.0	34.4	43.8	61.8
1950	36.4	[1] 35.4	40.9	63.6
1951	32.0	[1] 34.6	40.5	62.9
1952	34.3	[1] 36.0	39.3	63.5
1953	34.4	[1] 39.0	37.9	[1] 62.4
1954	32.4	[1] 37.5	38.7	[1] 61.4
1955	30.8	[1] 36.6	[1] 40.6	[1] 61.0
1956	29.8	[1] 37.4	[1] 40.2	[1] 61.5
1957	[1] 29.3	[1] 35.4	[1] 38.7	[1] 58.4
1958	27.4	[1] 32.4	[1] 35.9	[1] 56.6
1959	24.7	[1] 29.8	[1] 33.5	[1] 54.4
1960	[1] 23.5	[1] 29.0	[1] 34.9	[1] 54.7
1961	[1] 24.2	[1] 30.1	[1] 33.7	[1] 54.7
1962	[1] 23.7	[1] 28.2	[1] 34.4	[1] 55.4
1963	[1] 22.9	[1] 29.1	[1] 33.8	[1] 54.5
1964	[1] 22.6	[1] 32.1	[1] 34.9	[1] 56.8
1965	[1] 23.0	[1] 32.4	[1] 35.2	[1] 57.8
1966	[1] 22.4	[1] 30.4	[1] 31.7	[1] 59.0
1967	[1] 22.2	[1] 30.2	[1] 29.8	[1] 58.1
1968	[1] 21.5	[1] 29.0	[1] 30.1	[1] 54.2
1969	[1] 23.0	[1] 27.3	[1] 33.5	[1] 60.4
1970	[1] 21.3	23.8	[1] 31.5	[1] 53.1

[1] Includes 1 or more firms other than the original "Big Four" (Armour, Cudahy, Swift, and Wilson).

Sources: (1) 1920 and 1950–56: Record of Civil Action No. 58 C 613, United States v. Swift & Co., et al, Government Exhibits 5A, 5B, 5C, 5D; and (2) 1957–70: annual reports of meat packers filed with the Packers and Stockyards Administration (P. & S.A.-125).

Some concentration is present among the firms ranking 5 through 30 in the individual species. As of 1970, the top 8 firms (by species) accounted for about one-third of the cattle and calf slaughter, half of the hog slaughter, and two-thirds of the sheep slaughter in the United States. Concentration ratios for 4, 8, 12, 20, and 30 firm levels for 1970 were as follows:

Species	Percent of commercial slaughter by firms ranking—[1]				
	1–4	1–8	1–12	1–20	1–30
Cattle	21	31	37	44	50
Calves	24	37	46	57	66
Hogs	32	47	54	63	72
Sheep	53	67	76	85	88

[1] From annual reports of meat packers filed with the Packers and Stockyards Administration, U.S. Department of Agriculture.

The ranking 30, by species, account for half the cattle, two-thirds of the calves, three-fourths of the hogs, and nearly nine-tenths of the sheep slaughtered commercially in the United States.

At the national level, concentration in the livestock slaughter industry does not give the industry an oligopolistic structure in all sectors. Cattle and calf slaughter—with the four-firm level at less than one-fourth and the eight-firm level at around one-third—are relatively unconcentrated.[2] Hog slaughter was borderline at the "low-grade" oligopoly level. But sheep slaughter was moderately concentrated with the four largest firms above the 50 percent level.

In the meat packing industry at the national level, competitive rivalry is intense—resulting in what may be termed "workable or effective competition."

[2] Bain (2, pp. 124–133) classifies oligopolies according to the following concentration ratios:

Industry concentration type	Concentration ratios	
	4-firms	8-firms
I. Very highly concentrated oligopolies	75	90
II. Highly concentrated oligopolies	65	85
III. Moderately concentrated oligopolies	50	75
IV. "Low-grade" oligopolies	35	45
V. Unconcentrated industries (less than)	35	45

Market power of major packers is held in check quite effectively by ease of entry by horizontal competitors dealing in "public franchise" commodities, such as USDA Choice beef and lamb, and by the mass purchasing power of the retail food chains. Profit margins in meat packing usually have not been evidence of excessive market power [7, pp. 59–69].

STATE AND REGIONAL CONCENTRATION—OLIGOPSONY/OLIGOPOLY

National concentration ratios do not reflect the market power of the packers in the procurement market for slaughter livestock from livestock producers. Nor do such data necessarily reflect the market positions of ranking meat packers as sellers of meat products in relevant local or regional markets.

The wholesale market for fed beef carcasses is a national market. Beef carcasses are federally graded and sold by description over the wire. The Denver area tends to be a "divide" with carcasses moving both eastward and westward from that area. Wholesale prices on the East and West Coasts do not differ by more than transportation costs. The wholesale market for fresh and frozen pork is a national market with carload movement both eastward and westward from Omaha plants and others in the Missouri River area.

Processed meats are privately branded and advertised. Here, the relevant markets for some products may be as small as a single metropolitan area. For other products, markets may be regional, or even national in scope.

The relevant market for slaughter livestock is generally much more localized than for meat. The market for livestock is quite circumscribed inasmuch as most slaughter livestock is sold out of first hands by the producer to a packer or other buyer located within 50 or 100 miles. Shipping live animals out of the local market area in search of higher prices is costly because of the trucking costs involved, as well as shrink, and injury and bruises losses. Effective market areas for live animals tend to be smaller than most single states.

Tables 2 and 3 show concentration data in livestock slaughter, by species, at the four-firm level—by state and region for the year 1970. The tables also show the percentages of the U.S. total slaughter accounted for by state or region and the number of major slaughter plant outlets in the state or region.

Major slaughter plant outlets for individual species for purposes of this analysis have minimum annual slaughter purchases of 20,000 head of steers and heifers, 5,000 cows and bulls, 20,000 cattle, 10,000 calves, 100,000 hogs, or 100,000 sheep and lambs. In 1970, numbers of major and minor slaughter plants reporting to the Packers and Stockyards Administration were:

Species	Number of slaughter plant outlets—		
	Major	Minor	Total
Cattle	345	769	1,114
Calves	79	437	516
Hogs	135	584	719
Sheep and lambs	31	251	282

These major slaughter plant outlets are the dominant influence in the purchase of livestock. In 1970, major plants accounted for 92.7 percent of the cattle, 92.4 percent of the calves, 94.1 percent of the hogs, and 91.6 percent of the sheep and lambs (based upon slaughter purchases reported to P&SA).

The meat packing industry tends to be highly oligopsonistic (oligopolistic) at the state level—much more so than it is nationally. Four ranking firms account for 65 percent or more of slaughter for different species at the state level in most of the cases presented in tables 2 and 3. Of the concentration ratios shown for the 40 individual states, only in 12 cases did the four-firm ratio drop below 65 percent in steers and heifers, 11 states for cows and bulls, 21 states for all cattle, 5 states for calves, 4 states for hogs, and sheep and lambs—no states. These levels of concentration describe highly oligopsonistic markets in most states.

Of the ten most important livestock producing states in the North Central region (those other than Michigan and North Dakota), two, South Dakota and Wisconsin, had four-firm ratios for fed cattle over 75 percent. Four more, Indiana, Minnesota, Missouri, and Kansas, had ratios over 65 percent. Seven states, Indiana, Wisconsin, Minnesota, South Dakota, Missouri, Kansas, and Nebraska, had four-firm ratios for hogs over 75 percent. Illinois had a ratio of 71 percent.

State market definitions used in this study are only one of many possible sets. However, we believe these market definitions are representative of relevant actual state and regional sized market areas. The high levels of concentration at the state and regional levels in the meat packing industry limit the number of livestock slaughter outlets available to individual producers located in any particular state or region.

Even producers located in some of the leading slaughter states have relatively few major slaughter plant outlets available to them in their own state. This is particularly true of the minor slaughter species of calves and sheep and lambs.

TABLE 2.—DISTRIBUTION OF U.S. LIVESTOCK SLAUGHTER, BY STATE AND REGION, NUMBER OF MAJOR SLAUGHTER PLANT OUTLETS AND PERCENT OF SLAUGHTER BY THE 4 RANKING FIRMS IN STATE, REGION, AND UNITED STATES, BY SPECIES, 1970

State and region	Steers and heifers			Cows and bulls			Cattle		
	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms
New England	(0.1)		71.4	2.0	5	81.6	0.4	4	79.5
New York	0.4	2	84.6	3.0	12	44.4	1.0	4	42.3
New Jersey	1.0	3	100.0	.7	2	100.0	.9	3	99.3
Pennsylvania	1.5	4	75.8	3.8	14	41.0	2.0	6	57.6
Delaware and Maryland	.2		66.7	.4	3	92.0	.2	0	76.1
Mid-Atlantic	3.1	9	56.2	7.9	31	25.5	4.1	13	42.8
Virginia	.4	2	88.0	.7	4	80.0	.4	3	84.2
West Virginia	.1		86.7	.1		80.0	.1	0	76.9
North Carolina	.2	1	89.1	1.0	4	58.9	.4	2	70.4
South Carolina	.1		90.0	.2	1	93.3	.1	1	82.9
Georgia	.5	1	53.0	2.4	7	68.0	.9	6	48.6
Florida	.6	4	62.3	2.6	6	81.4	1.0	9	53.6
South Atlantic	1.9	8	40.1	7.0	22	37.8	2.9	21	29.5
Kentucky	.5	3	89.0	1.4	4	85.4	.7	5	72.1
Alabama	.5	2	94.0	.8	6	80.4	.6	3	86.1
Tennessee	1.4	6	73.4	3.2	11	53.8	1.7	9	55.5
Mississippi	.5	3	88.1	3.1	7	88.8	1.0	6	79.8
Southeast	2.9	14	50.5	8.5	28	38.6	4.0	23	38.9
Michigan	1.5	6	47.5	2.6	6	70.7	1.7	7	44.9
Ohio	2.9	10	42.8	2.6	11	41.1	2.9	14	36.7
Indiana	1.6	7	66.3	1.0	3	67.7	1.5	7	64.4
Wisconsin	1.8	5	85.6	7.6	10	63.9	2.9	10	63.6
Illinois	4.0	9	58.1	1.3	5	69.2	3.4	10	55.1
East north-central	11.8	37	27.0	15.1	35	32.1	12.4	48	22.6
Minnesota	4.4	9	71.5	6.6	9	83.3	4.9	11	59.2
North Dakota	.5	1	1 100.0	.8	2	100.0	.5	2	100.0
South Dakota	2.0	4	93.5	1.7	6	93.3	1.9	7	88.8
Iowa	13.9	20	47.1	5.5	10	77.4	12.3	21	45.2
Missouri	5.5	10	65.9	2.5	7	71.8	4.9	11	62.9
Kansas	5.6	14	69.5	3.0	8	75.8	5.1	18	67.2
Nebraska	15.1	27	49.2	4.9	13	76.4	13.1	31	46.3
West north-central	47.0	85	38.1	25.0	55	28.7	42.7	101	35.3
Arkansas	.3	1	77.6	1.4	3	77.4	.5	2	66..
Louisiana	.2		70.0	.9	4	69.1	.3		57.4
Oklahoma	1.7	3	72.6	2.3	6	58.0	1.9	5	63.8
Texas	7.5	26	39.1	13.3	28	40.9	8.6	36	32.4
South-central	9.7	30	42.3	17.9	41	34.4	11.3	43	33.5
Montana	.4	1	91.1	1.1	2	98.5	.5	2	94.0
Wyoming	.1		1 100.0	(.1)		1 100.0	(.1)		1 100.0
Colorado	7.4	9	63.9	1.4	6	70.1	6.3	11	61.4
New Mexico	1.0	3	96.7	1.3	4	97.3	1.1	4	96.8
Idaho	1.0	3	69.5	1.8	5	80.9	1.2	7	65.7
Utah	.6	2	70.9	1.2	2	88.4	.7	3	74.5
Arizona	1.7	5	84.8	.4	1	58.3	1.4	5	82.9
Nevada	.1	1	1 100.0				.1	1	1 100.0
Mountain	12.3	24	45.3	7.2	20	38.4	11.3	33	41.1

TABLE 2.—DISTRIBUTION OF U.S. LIVESTOCK SLAUGHTER, BY STATE AND REGION, NUMBER OF MAJOR SLAUGHTER PLANT OUTLETS AND PERCENT OF SLAUGHTER BY THE 4 RANKING FIRMS IN STATE, REGION, AND UNITED STATES, BY SPECIES, 1970—Continued

State and region	Steers and heifers			Cows and bulls			Cattle		
	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms
Washington	1.6	7	61.3	1.5	6	48.4	1.6	8	56.5
Oregon	.8	4	60.3	1.2	4	73.0	.9	5	61.0
California	8.9	39	19.0	6.7	23	37.9	8.4	46	16.7
West coast	11.3	50	17.1	9.4	33	27.0	10.9	59	15.6
Alaska									
Hawaii									
Far west									
United States	100.0	257	26.1	100.0	270	14.7	100.0	345	23.2

[1] Less than 4 firms included in percentage. (0.1) denotes value less than 0.05 percent.

Note: Percentages based upon livestock purchases for slaughter, by State where slaughtered, excluding firms reporting less than 500 head of species. Slaughter plants were considered major outlets if minimum purchases for slaughter were 20,000 cattle, 100,000 hogs, or 100,000 sheep and lambs.

Source: Annual reports of meatpackers (P. & S.A.–125) filed with the Packers and Stockyards Administration, USDA.

TABLE 3.—DISTRIBUTION OF U.S. LIVESTOCK SLAUGHTER BY STATE AND REGION, NUMBER OF MAJOR SLAUGHTER PLANT OUTLETS AND PERCENT OF SLAUGHTER BY THE 4 RANKING FIRMS IN STATE, REGION AND UNITED STATES, BY SPECIES, 1970

State and region	Calves			Hogs			Sheep and lambs		
	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms
New England total	4.4	5	84.5	0.1	.....	100.0	0.1	.....	100.0
New York	18.8	15	60.1	1.2	3	99.4	.6	.....	100.0
New Jersey	8.9	6	88.3	.4	1	[1] 100.0	7.5	2	100.0
Pennsylvania	9.0	6	62.9	4.5	6	77.0	1.1	.....	74.0
Delaware and Maryland	.6	.....	100.0	.6	1	97.5	.4	.....	100.0
Mid-Atlantic total	37.3	27	40.0	6.7	11	59.9	9.6	2	80.5
Virginia	3.5	2	99.3	3.6	7	82.5	(.1)	.....	.....
West Virginia	(.1)	.....	[1] 100.0	.1	.....	96.4	(.1)	.....	[1] 100.0
North Carolina	.2	.....	[1] 100.0	2.2	4	82.4	(.1)	.....	[1] 100.0
South Carolina	3.2	1	[1] 100.0	.3	1	82.1	.....	.....	.....
Georgia	.4	1	100.0	2.0	3	66.3	.....	.....	.....
Florida	4.6	4	100.0	.7	1	83.3	.....	.....	.....
South Atlantic total	11.9	8	85.2	8.9	16	42.9	(.1)	.....	[1] 100.0
Kentucky	.1	.....	100.0	2.0	3	97.5	1.8	1	[1] 100.0
Alabama	.5	1	[1] 100.0	1.1	3	70.5	.....	.....	.....
Tennessee	2.7	2	100.0	3.5	8	62.5	.2	.....	[1] 100.0
Mississippi	1.3	2	94.1	1.3	3	90.1	.....	.....	.....
Southeast total	4.6	5	88.8	7.9	17	45.7	2.0	1	[1] 100.0
Michigan	3.1	4	100.0	3.1	4	87.2	3.6	2	100.0
Ohio	1.2	.....	45.2	4.2	10	49.8	.5	.....	78.0
Indiana	1.0	1	100.0	4.7	6	83.8	.1	.....	92.3
Wisconsin	7.8	4	97.4	3.8	4	97.5	.1	.....	[1] 100.0
Illinois	4.6	3	100.0	6.7	10	71.1	6.9	2	99.5
East-North Central	17.7	12	55.6	22.5	34	38.7	11.2	4	83.9
Minnesota	3.4	2	98.5	6.6	4	98.4	4.2	2	[1] 100.0
North Dakota	.....	.....	.....	(.1)	.....	[1] 100.0	.....	.....	.....
South Dakota	.....	.....	.....	3.1	4	100.0	2.8	1	[1] 100.0
Iowa	5.4	1	[1] 100.0	26.9	22	45.6	4.8	2	[1] 100.0
Missouri	.4	1	[1] 100.0	2.8	3	93.7	2.6	1	100.0
Kansas	.....	.....	.....	2.3	3	94.1	.....	.....	.....
Nebraska	.2	.....	[1] 100.0	3.1	3	99.5	9.3	3	[1] 100.0
West-North Central total	9.4	4	95.1	44.9	39	54.0	23.7	9	81.9

TABLE 3.—DISTRIBUTION OF U.S. LIVESTOCK SLAUGHTER BY STATE AND REGION, NUMBER OF MAJOR SLAUGHTER PLANT OUTLETS AND PERCENT OF SLAUGHTER BY THE 4 RANKING FIRMS IN STATE, REGION AND UNITED STATES, BY SPECIES, 1970—Continued

State and region	Calves			Hogs			Sheep and lambs		
	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms	Percent of United States	Number of major plants	Percent by 4 firms
Arkansas	.1		[1] 100.0	.4	1	73.5			
Louisiana	2.8	4	74.8	.2	1	90.6	(.1)		
Oklahoma	.5		89.5	1.1	1	83.6	(.1)		
Texas	6.6	9	52.9	2.3	6	65.9	13.2	3	97.3
South Central total	10.0	13	36.8	4.0	9	54.0	13.2	3	97.3
Montana				.4	1	98.3			
Wyoming				(.1)		[1] 100.0			
Colorado				1.1	2	97.3	12.0	3	99.8
New Mexico				.1		95.7	.5		[1] 100.0
Idaho				.1		64.3	.1		65.7
Utah	.1		[1] 100.0	.1		97.1	7.8	2	98.8
Arizona	.1		[1] 100.0	.2	1	[1] 100.0			
Nevada									
Mountain total	.2		[1] 100.0	2.0	4	78.6	20.4	5	89.6
Washington	.2		100.0	.9	3	88.2	1.9	1	[1] 100.0
Oregon	.3		91.7	.2		79.3	1.3		100.0
California	4.0	5	44.4	1.9	2	99.9	16.5	6	72.7
West coast total	4.5	5	40.0	3.0	5	83.1	19.7	7	66.1
Alaska									
Hawaii									
Far West total									
United States total	100.0	79	24.7	100.0	135	33.4	100.0	31	58.1

[1] Less than 4 firms included in percentage. (0.1) denotes value less than 0.05 percent.

Note: Percentages based upon livestock purchases for slaughter, by State where slaughtered, excluding firms reporting less than 500 head of species. Slaugnter plants were considered major outlets if minimum purchases for slaugnter were 20,000 cattle, 10,000 calves, 100,000 nogs, or 100,000 sheep and lambs.
Source: Annual reports of meat packers (P. & S.A.–125) filed with the Packers and Stockyards Administration, USDA.

For example, even a major livestock producing state such as Minnesota has only eleven major slaughter plants buying cattle, two buying calves, four buying hogs, and two buying sheep and lambs (tables 2 and 3). Indiana has only seven major cattle slaughter plants, one plant for calves, six plants for hogs, and none for sheep and lambs. Many other examples of relatively few outlets could be cited in relation to the high levels of concentration in the meat packing industry with emphasis upon livestock slaughter procurement by meat packers.

The significance of concentration in livestock concentration may also be growing due to increasing geographic dispersion among plants. The old Chicago stockyards of the 1920's had a primary trade territory encompassing substantial portions of several states. A specialized beef slaughter plant in Iowa may have a primary procurement area with a radius of 50 to 75 miles. Rational decision making on plant location calls for construction of new plants away from established plants and closer to livestock production areas. This has been the general pattern of decentralization for more than 20 years.

CONCENTRATION AT STATE AND REGIONAL LEVELS AFFECTS PRICES PAID

According to received economic theory, it is axiomatic that the behavior of leading individual firms or groups of firms can influence prices in oligopolistic (oligopsonistic) markets. Whereas the theory seems quite clear on the subject, and economists seem to agree on the theory of competition in concentrated markets, relatively few studies show that prices are actually and systematically affected in the real world in concentrated markets (without invoking the work of Nicholls decades ago).

It is commonly observed in the livestock industry that prices in individual markets can vary measurably from their "normal" relationship with prices elsewhere. This happens even though market prices are widely reported and market participants are "free" to make corrective actions. Such deviations from equilibrium price relationships can be due to the normal supply and demand forces in a highly competitive atomistic market. However, they also may be due to the actions of oligopsonistic buyers (or, possibly less often, oligopolistic sellers).

For example, a study of hog pricing at a major terminal public market by Love and Shuffett demonstrated that a local market price can be depressed relative to other markets for considerable periods of time by as much as $.25 per hundredweight [4]. This study showed that the market price for 200–220 pound mixed U.S. grade 1, 2, and 3 hogs at the Louisville market declined about $.25 per hundredweight compared to other markets as one of the two large buyers left the market. Price differentials for the 69 weeks before the structural change in the concentrated market were compared with prices for the 87 weeks after. These results indicate that there was a significant degree of market isolation and immobility in market supplies so that price relationships were significantly affected for an extended period of time.

Another study of livestock pricing at major terminal public markets indicated that the market activities of individual firms can significantly affect prices paid farmers for fed slaughter cattle under oligopsony [1]. In this case, the four primary buyers accounted for more than three-fourths of the market. The analysis indicated that cattle feeding activities of one of the four packers buying at the market had significant depressive effects upon weekly average prices compared to other terminals. Price depressive effects from increasing packer-fed shipments (which substitute for market purchases, thus tending to reduce current demand) were within a range of 25–50 cents per hundredweight on Choice steers (1.0 to 2.0 percent). The study indicated highly significant price effects at the particular market on the basis of one-week, two-week, and four-week data during a several year period giving due consideration to the problems of intercorrelation among independent variables and serial correlation in residuals, which often complicate time series analysis.

RECENT ANTIMERGER CASES EMPHASIZE LOCAL MARKETS

In a recent merger, the acquisition of Blue Ribbon Beef Packing, Inc., by Iowa Beef Packers, Inc., in 1969 was successfully challenged by the Antitrust Division of the Department of Justice under Section 7 of the Clayton Act.[4] Blue Ribbon was a previously independent cattle slaughterer with two plants in northern Iowa. The Department of Justice alleged that the merger would have significant anticompetitive effects on relevant local, state, and regional markets for fed beef animals. The case was settled February 18, 1970, by consent order, whereby IBP agreed to divest itself of Blue Ribbon plants and not to engage in a merger involving a cattle slaughtering plant in a four-state area for ten years. This case serves to point up the economic importance of concentration and its effects in competition on local and regional markets in the meat packing industry.

This particular merger case is instructive in demonstrating the increased market concentration as one moves from the national market to the local trade territory where competition in livestock procurement actually takes place. At the national level the merged firms accounted for only 8 percent of the fed beef market. The resulting firm accounted for 17 percent of the fed cattle purchased in the four-state area, Iowa, Minnesota, Nebraska, and South Dakota, 21 percent of the fed cattle purchased in the State of Iowa, and 32 percent of those purchased in a ten-county area of Iowa which was the primary trade territory of one of the acquired plants. The Government argued that the merger of IBP and Blue Ribbon would remove one important competitor, affecting both actual and potential competition for fed slaughter cattle in the local procurement market.

This case illustrates the extending reach of antimerger law since the 1950 Celler-Kefauver Amendment to the Clayton Act extended the "lessening of competition" test for illegal mergers to "any line of commerce in any section of the country."

In the Philadelphia National Bank case (*U.S.* v. *Philadelphia Nat'l. Bank*, 37 U.S. 321, 257 (1964)), the Supreme Court held that a four-county metro-

[4] See Engelman affidavit in *U.S.* v. *Iowa Beef Packers, Inc.*, and *Blue Ribbon Beef Pkg., Inc.*, Civil Case No. 69–C–3008–W. For a more extended discussion of this case, see [8, pp. 248–251].

politan area in which the merging banks were located was the relevant geographical market. (Id., 374 U.S. at 335, 359). In this case the Court rejected the defense argument for a market consisting of the northeastern United States. Also rejected was the argument that the acquisition was made in order to compete more effectively against outside New York firms in supplying credit in the Philadelphia area. Nor was the national market for credit, the obvious national influence of Federal Reserve rediscount rates on local finance markets, a deciding factor in the case. In this decision the Court held that a merger of two firms which produces a combined market share of 30 percent is presumptively illegal (at pp. 363, 364).

In two later decisions involving horizontal mergers, the Supreme Court struck down (1) a merger which produced a firm with a 23.9 percent market share of the beer sold in Wisconsin (*U.S.* v. *Pabst Brewing Co.*, 384 U.S. 546, 551 (1966)) and (2) a merger of two grocery chains which produced a market share of 7.5 percent in the Los Angeles metropolitan area (*U.S.* v. *Von's Grocery Co.*, 384 U.S. 270, 275 (1966)).

The unique aspect of the IBP case was the first application of the extended reach of antimerger law to an important area of agricultural procurement. Other Justice Department action against horizontal mergers had all been directed toward areas of product or service distribution.

Recent antimerger history is significant for the procurement of agricultural commodities because of its focus on local markets where competition is affected. Antimerger actions may be important as a restraint against tendencies to further concentrate an industry. But they have little effect on dominant buying positions of present firms in many livestock procurement areas. Antimerger law may be useful to save competition, but not to improve it.

MORE SOPHISTICATED PRICING ENLARGES MARKET AREA AND INCREASES COMPETITION

How can competition in the procurement of livestock be improved without changing the structure of the meat packing industry? The answer must lie in improvements in the pricing system which effectively enlarge the market.

Insights into possibilities for improving livestock pricing are provided by some of the swine marketing procedures in Canada. The Canadian livestock industry is approximately one-tenth the size of that of this country. Relative to its size, however, it is geographically dispersed much more widely than ours. It extends from the maritime provinces East of Maine to the westernmost prairie province, Alberta, which lies North of the western half of Montana. With such wide industry dispersion and sparse livestock production, the problem of concentration in local procurement markets was more acute in many areas than in this country.

During the last ten years, most of the Canadian provinces, the Maritimes, Ontario, Manitoba, and Alberta, have instituted teletype systems which now sell about three-fourths of the hogs in Canada. Under this system the simultaneous presence of buyer, seller, and hogs being sold, is not required since selling is by wire on a base weight and grade of carcass. Other weights and grades are priced at a previously agreed-to system of premiums and discounts.

Sellers list the number of hogs and location. The selling agency for the province relays this to a packers in the province and in some cases to others. Prices are started a little higher than the expected sale and decline at 5-cent intervals until some packer buyer, sitting at a machine in his own headquarters, stops the movement by pressing his bidding key indicating his acceptance of the lot at that price. Details of the transaction are confirmed and the sale is consummated. The buying packer then arranges with the seller to take delivery of the consignment.

Improvements in the level of competition under teletype pricing stem from these different sources: (1) the enlarged market area and improved buyer access to available supplies, (2) buyer anonymity during trading, and (3) organized producer control of the terms of trading.

In Canada each farmer's hogs are displayed before every packer in the province and also others, many more than was possible before teletype pricing. Any packer, large or small, can get enough hogs to satisfy his kill schedule if he is willing to pay the price. A small packer can get hogs from anywhere in the province without stationing buyers in every community. A small packer buying 5 percent of the market has no more difficulty geting his necessary supplies than the large packer getting 50 percent. Hog-for-hog, in teletype pricing the small packer has the same influence on the price making process as the large buyer.

The identity of the buyer of a particular lot only becomes known when he arranges with the seller for the delivery of the livestock. Under teletype pricing

the trading process becomes depersonalized. This dilutes the power of the dominant firm to influence price, to exercise market retaliation against weak firms, or to discipline other buyers who "encroach" in his competitive area. With buyer anonymity it would be difficult for parties with tacit understandings as to price, market shares, or allocation of trade territories to police such arrangements.

Organized producer control of selling in Canada has provided farmers a voice in specifying the terms of sale. It has enabled the use of available Federal grade standards. The selling agency negotiates schedules of premiums and discounts between adjacent grades to reflect value differences in the wholesale market. In the United States both quality grades and yield grades (related to quantity of saleable retail meats) are available for fed cattle and lambs. Except for beef quality grades, however, they are little used in live animal trading.

Quantitative yield grades for hogs have been available in this country for about 20 years and are used to some degree in trading. But their effectiveness is clouded because present use is limited to private grade specifications of individual packers which all differ from each other. Packers also differ in the standard yields by which they convert live prices to "computed" carcass paying prices. As a result, hog producers when they sell on the carcass basis find it difficult, if not impossible, to compare settlement reports from competing packers.

Under a teletype system, a maximum of competition could be combined with a maximum of incentive pricing to producers. Efforts to measure the pricing advantage attributed to the competitive aspects of teletype pricing of hogs in Manitoba have differed. One analysis reports a price improvement of $0.50 per 100 pounds carcass weight [5, pp. 75–86], another $1.55 per 100 pounds [6, pp. 26–33].[5]

Product improvement potentials of pricing incentives can be illustrated by the value differences between adjacent beef yield grades at the retail level—$4.00 per 100 pounds of carcass, $25.00 per carcass, equivalent to a half billion dollars for 20 million steers and heifers. These value differences are largely ignored in present fed cattle trading. An improvement of one yield grade in the average consist would provide 6.3 percent more beef in the retail market.[6]

This more sophisticated electronic method of pricing livestock is possible. The technology is here. Additional statutory authority would be required and new selling institutions would have to be established.

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Chairman RODINO. Our next witness is Ms. Ellen Zawel, president of the National Consumers Congress, accompanied by Ms. Sandy DeMent, treasurer.

I would like to welcome you here before this committee. I applaud the actions you have taken in behalf of the consumers. I know that yours is a grassroots organization which has certainly at this time of

[5] Reference [6] was developed from a Master's thesis at the University of Wisconsin by J. C. Lowe.

[6] A single national teletype system has been hypothesized in [3].

skyrocketing prices sought to do what you might, given the time, your energy, and whatever leadership you have shown, in order to try to do something about at least focusing attention and calling upon us and other responsible areas of Government to do something at this time.

I know that we are at midday and the House is going to meet, and although we ordinarily would be going to the floor with a quorum call, at least the Chair will state that the Chair is going to be here through a quorum providing it is not a vote on the amendment which is before the House and which I know is of interest to you because it does affect the consumer as well.

TESTIMONY OF ELLEN ZAWEL, PRESIDENT, NATIONAL CONSUMERS CONGRESS; ACCOMPANIED BY SANDY DeMENT, TREASURER

Ms. ZAWEL. I want to thank you very much for having us. I will proceed as quickly as I can and will try to cut down my testimony if I may.

I am Ellen Zawel. This is Sandy DeMent. I am a consumer. I feed a family of six every day except when I am here testifying in Washington. I am also the president of the National Consumers Congress which, as you indicated, is a grassroots organization.

We formulated approximately 2 months ago, and during that period we made one major policy stand. The other stands are to be taken at a later date on a grassroots basis. That stand was: We are opposed to the proliferation of huge monopolies and we support vigorous antitrust action to break them up and restore genuine price competition and quality competition to our economy.

I wish to present to the committee today what I think is a uniquely consumer viewpoint. The consumer I speak of is first and foremost an American. As such he still believes in and responds to American myths of opportunity, productivity, almost boundless natural resources, turned into consumer products and wealth by hard work. He still essentially believes that each man or woman through his or her own efforts can achieve a level of comfort, prosperity, and success in a peaceful world.

Now we have to contrast this dream with the shock of ugly reality. We have only begun to even conceive of running out of land and pure air and water and to realize the extent to which the industries of which we were so proud have corrupted our environment.

A realization of the nature of our economic problems is even harder to accomplish, for they have long been masked by theorizing, political rhetoric, glib explanations of Democratic spending or war costs or Republican recessions. These did not disturb the essential fabric of the American myth. Now the American consumer is suddenly in a state of shock. He is now being told that we have no surplus food stocks, and that we lack crucial energy resources. The value of the dollar is spiraling downward, inflation spirals upward, and in the middle of it all we hear that major corporations are having their most profitable first quarter in years.

Thus we bring to this committee two concerns: The first is for the direction in which the economy is moving. We think monopolies and oligopolies are a significant part of the problem. Concentration in our

major industries causes prices to rise relentlessly as corporations attempt to widen their profit margins. Conglomerates are operating in broad sectors of the economy. We believe this committee can identify those sectors where antitrust action is appropriate and charge the Justice Department to commence action accordingly. We, too, suggest, as Mr. Silbergeld did, that you start with the FTC list of monopoly overcharges published in the spring 1972 Antitrust Law and Economic Review.

Our second concern is that someone communicate with the American people as to what is really happening in the American economy and why. This too, this committee is ideally suited to do. The people must be informed honestly and directly to reestablish confidence that Government is working and that the crisis in the economy will not destroy them.

In our investigation we have come to a few conclusions and uncovered many questions about the problems of food production in America. I would like to share some of these now with you.

The concentrated economic power which comes from vertical integration lends itself to conglomerate formation. The end result is that even those companies whose primary identification has been with food production find greater benefit in other areas of the economy and diversify. Witness the fact that Borden Co., once synonymous with dairy produce vis-a-vis "Elsie the Cow" no longer produces milk.

Concentrated economic power in the food sector worries the consumer because the variety of natural foods available is being severely curtailed. In their place we have artificially created substitutes which are successfully "sold" to the public through intensive advertising programs. These products, such as pudding cups, artificial scrambled eggs, quick toast breakfast foods, and the like, in many cases contain virtually no agricultural products at all. We can have a peach pudding cup which, in fact, contains no peaches and no milk but many chemicals and artificial flavorings. True, many of these products are fortified with artificial vitamins and the like, but who is to judge what will be the effect of the loss of trace minerals and vitamins which are found in natural produce and cannot possibly be duplicated in the laboratory. There was a time that youngsters took a piece of fresh fruit to school for dessert—but fresh fruit is becoming more scarce and more expensive. The pudding cup, and toaster popups and laboratory concoctions of various types are taking the place of the apple, the orange, and the pear. Thus, not only is economic concentration affecting the economy as a whole in terms of supply and price, but it is potentially dangerous to the health and well-being of the people of this Nation.

There are other problems with conglomerate food production. One which has impact not only on individual consumers but on the economy as well is the fact that these corporate giants are often not in the food business for either maximum production or maximum profit. Frequently the agricultural activities of such companies are secondary methods of financial gain and profit through control of related products on the input level; that is, farm machinery, fertilizer, and so forth, processing—canning, marketing, labeling, and so forth—and marketing—retailing, and so forth. Large conglomerates may take on agricultural subsidiaries for tax-loss farming, low-profit operations to disguise actual profits—by using the SEC's 15-percent

income report by grouping "low profit" subsidiaries—and many conglomerates use the averaging of profit margins to camouflage total reportable profits.

During the freeze, particularly where Government decisionmaking was based on reporting profits, we can see how this opportunism really acts very severely. We are asking this committee to seriously question why the 10 largest U.S. corporations engaged in the production, processing, and marketing of food are familiar names such as Standard Oil of California; Aetna Life & Casualty; RCA Corp.; Ling-Temco-Vought; Tenneco, Inc.; ITT; Greyhound Corp.; Occidental Petroleum; and Sears, Roebuck & Co.

Why does Boeing Aircraft lease 100,000 acres of land in Oregon? Why has it irrigated approximately 3,300 acres of pasture land for grazing with plans to develop vegetable, fruit, and grain processing industries in addition to slaughterhouses and packinghouses? We cannot fly beef cattle. Why does ITT make bread, and cookies, and pastries—without even phone-in orders?

Perhaps Mr. Litton can tell us why Greyhound controls a broad range of fresh processed and portion-controlled meats, poultry, and food products and purchase and placement of the cattle for future sale on the open market. We didn't realize that "Leave the driving to us" meant cattle roundups.

The conglomerate can be an inept farmer but its capacity to merge, to vertically integrate, and to invest and even lose huge sums of money is enough to overwhelm real farmers.

The American consumer still believes and holds on to the American dreams of unlimited opportunity in a free enterprise system. His confusion now results not because his dream is wrong, or because he has lost it, but because for many years he has not realized that he lost control of the economy and government. He is now beginning to wake up to the reality and now is saying, "We've got to get it back together again." We are not naive enough to believe that we can turn the clock back. But the National Consumers Congress must insist that august bodies such as this fulfill their responsibilities to the law and to the people of this Nation by tenaciously pursuing redress through antitrust action and whatever other means are necessary in order to insure that the food production of this Nation remains high enough to meet the domestic as well as world market. This committee is charged not only with a legal responsibility to do so, but a moral one as well. Cynicism and skepticism can corrupt ideals—and the people need to have their shaken beliefs reaffirmed by a Congress willing to take action which may be unpopular with big business but essential to the health and well-being of the Nation.

Thank you, Mr. Chairman.

Chairman RODINO. Thank you very much.

I understand you are going to submit your statement and that of Ms. DeMent for the record, and we will include them in their entirety. [See pp. 133 and 135.]

Ms. DEMENT. We make two unrelated suggestions. One has to do with the whole area of advertising and its relation to monopolies. We suggest this as an area for the committee's concern.

The second suggestion we make is that this committee consider and pursue a rule change in the House of Representatives to allow this committee the privilege of reviewing all legislation before the House

which has any relevance in antitrust matters. It is particularly relevant because bills such as the farm bill, which is now before the House, bills such as the bottlers bill which is also before the House, are not before this committee; they will not have, we think, the kind of antitrust review that they should have, and will be passed without that review.

Chairman RODINO. I would like to comment, Ms. DeMent, on your concern in that area. This committee does have primary responsibility in the area of antitrust. However, it still is within the discretion of the Parliamentarian along with the Speaker of the House as to the reference that is made of legislation that is developed in the House in the introduction of bills. But I want to assure you that insofar as our responsibility is concerned, we intend to discharge it and the farm bill which is before the House now, being debated, came to our attention and, as a matter of fact, we made our views known to the chairman of that committee with relation to some exemptions that were being sought that might have again prejudiced the interests of the consumer and we were assured that there would be no effort to reinstate those provisions.

May I now direct some questions, a few questions, since I agree with all that you say? Responsibility certainly is somewhere. We have a responsibility. We are seeking as a committee of the Congress to discharge that responsibility. We, however, do not have the total responsibility and neither could we possibly perform such a duty. It would be more than any committee of the Congress could possibly undertake.

But in the area of our responsibility, let me say that there are some things that concern us. You have touched on some of the problems that concern us, but what would you as a consumers congress who have now studied this question—apparently you have gathered some information, have some insight—what would you suggest as specific proposals, the steps that could be taken to insure that the food industry is as competitive as it possibly could be and to bring about the kind of vigorous enforcement of the antitrust laws? How do you as the public and the consuming public answer this question?

Ms. ZAWEL. One of the first things—I believe Mr. Silbergeld alluded to it—is that we must stop looking at food nationally and start looking at it regionally. Aside from the realistic problems of trying to provide for a national market, particularly in agricultural products, there are also other problems in terms of processing. A farmer in a particular area cannot really be competitive with various processors and various manufacturers who have the economic concentration to be able to service the whole country.

If we looked at food regionally and started to break up what is becoming monopolistic-type practice, something more than monopsomy, in the food industry, I think that would do a great deal to increase competition and to increase the number of products which the market manufactures nationally. What is beginning to happen, at least from my studies—and I am not an economist, I am a sociologist, so this is a little bit difficult for me to explain to you in any clear way—what seems to be happening is that because we are looking at things on too large a scale, companies that have very distinct monopolistic practices in other industries are going into agriculture and are able to control it because they can meet huge scale demands. There is a trend and we can foresee that it is possible in this Nation for nine major U.S. cor-

porations to ultimately control all of the food production in this country. So I think that is the first step we should take.

Chairman RODINO. Do you have a position on the Capper-Volstead Act on Federal marketing orders? Are you aware of the exemptions that are provided under the Capper-Volstead Act? Do you have a position on that?

Ms. DEMENT. We have testified before the Agriculture Subcommittee on that question. We do not at this point recommend that the Capper-Volstead Act be repealed or anything like that. We have very serious reservations about the milk marketing order system. We think that the nature of the industry has changed considerably since the early part of the century when that act was passed. We think that the cooperatives currently have more power perhaps than they need. They are concentrating—between the cooperatives and federations they have managed to concentrate the milk industry considerably. We think this is perhaps grounds for reviewing the Capper-Volstead Act with certain changes in mind.

Chairman RODINO. Do you feel that the dual market, dual pricing system in the milk marketing orders, has unduly imposed upon the consuming public—that the increases in prices that we know have resulted do not reflect a truly competitive market?

Ms. DEMENT. I think that is so to a limited extent. Let me say that the increases in milk prices have been relatively modest compared to increases in other sectors of the agricultural economy. We are concerned that the monopoly power is being used at this point to push the independents out of the milk industry. When this happens, there will be no kind of competition at all and the industry will be in a better position, we think, to ask for any kind of price increases they wish. We are very concerned that the independents are in danger in the milk industry.

Chairman RODINO. Mr. Dennis.

Mr. DENNIS. Have you ladies given any consideration to the question of exemptions of labor unions from the antitrust laws?

Ms. ZAWEL. No. We have been studying the food industry.

Mr. DENNIS. What about the unions in the food industry?

Ms. ZAWEL. We have not looked into that very closely and I would not want to make a statement on something that we hadn't at least studied.

What we have done is to look at where food is being produced and the lack of information regarding concentration of the food industry. I personally am extremely concerned about it and I bring that concern to this committee. We have been talking about price a great deal, and in response to Mr. Litton's testimony, we also are very concerned with supply, not just to lower prices, but because we have to feed our families.

In my own research, what seems to be happening is those large companies and many individuals who take on food production enterprises don't do it for maximum production to market. They do it because it fits well into the tax structure and they use it as a tax shelter. They do it because agriculture is not highly profitable compared to other big industries and can be grouped with more profitable industries to fulfill SEC's 15 percent reporting requirement.

They camouflage a great deal of information. They are not really concerned with maximum production and that bodes ill for us because

we have to eat and, yes, we are very concerned with prices. We are concerned with price setting.

We have heard, I think, testimony today that ignores a great many things that affect the supply of food. Mr. Litton, who referred to beef and was very distressed about the boycott and concerned about prices and freezes, really did not place emphasis on the fact that this administration made a deal with a foreign nation without planning, without making sure they had the transportation, so that they could get grain and various other things to market, and so our supplies and our prices were severely affected by governmental action and governmental arrangements. I think that has a great deal more to do with the cost of food than any boycotts that we may have threatened or may have carried out for a week.

Mr. DENNIS. Do you disagree with Mr. Litton's thesis that prices are basically set by the determination of a million and a half individual producers as to whether or not the market will be profitable at a given time?

Ms. ZAWEL. Yes, I do disagree with him.

Mr. DENNIS. Do you think they are not set by that factor but rather by these great economic conglomerations you are talking about? Is that true?

Ms. ZAWEL. Well, let me first clarify that. I do not have statistics in front of me, and so I will try to speak in more general terms. I have seen the statistics. Something like 80 percent of the meat that is brought to market is controlled by something like 7 percent of the producers of meat. So you may have a million people who own cows and cattle, but they are not the people who are feeding this Nation. A very, very small group of people are bringing in cattle and bringing the bulk of the meats in this connection.

I think we have to look at this thing. I am not saying to this committee we know all the answers. We are looking into these things because, by and large, our organization is made up of women primarily, but men, too, who found that they can no longer feed families, that they had no sources of protein left, that the alternative sources of protein also cost more money than they had, and they started to look at why. So we are novices at it. We are finding out that there is a concentration in industry, that Government itself is part and parcel of that concentration, that Government tends to pass legislation which allows exemptions from antitrust, that gives tremendous benefits to business; the consumer, even when he wishes to have his voice heard, finds it very difficult because he is not a special interest group with a single point of view.

Chairman RODINO. Will you yield?

Mr. DENNIS. Certainly.

Chairman RODINO. I know that your group has been meeting with the Cost of Living Council from time to time. Would you tell us as briefly as you can what your experience has been and whether or not the information that you bring to the Cost of Living Council has, in any way, had any impact on their actions?

Ms. ZAWEL. Well, I am trying to be nice.

Chairman RODINO. I would rather you be factual.

Ms. ZAWEL. I will try to be factual.

The Cost of Living Council has not implemented any of our suggestions regardless of how simple or how complex. They have met with

us three times. They have indicated they will meet with us again. I was invited to the White House to meet with Mrs. Knauer and with officials of the Cost of Living Council a week ago Friday. My general impression is that consumers are viewed with scorn. I think the biggest thing that we have to combat is the attitude that because we don't have the economic degrees we don't have something valuable and something essential to bring, that we can't do research and bring intelligent ideas into Government. We have made suggestions that were very simple regarding the freeze. A simple thing like being asked to police a freeze and as consumers report illegal rises and price increases. We have indicated to the Cost of Living Council, and I bring it to you, and I am not sure what you can do about it either at this point, that it is impossible for a woman shopping in a supermarket dragging along two kids to police a freeze unless the freeze prices are posted at the counter along with the regular prices.

It is just an unrealistic thing to expect.

We know that consumers have been able to police prices in the past. It was a simple suggestion, a suggestion which could have been very easily implemented and it wasn't.

We have also suggested that the entire economy be controlled for a period of time until we can reach some semblance of stability and long-range planning to breaking up large conglomerates and monopolies, with a schedule of decontrolling competitive industries. We have asked for the resignation of Secretary Butz and unless Mr. Schultz will recognize that there are such things as monopolies, we have asked him to leave the government as well.

As you well know, none of those recommendations have been implemented either.

But more seriously, I am becoming very discouraged that government is the place to appeal to.

Chairman RODINO. I am sorry, Mr. Dennis.

Mr. DENNIS. That is all right. I think the witness has answered most of my questions. I wanted to ask her what her program was and she just told us.

Chairman RODINO. Mr. Counsel.

Mr. FALCO. Ladies, you apologize for the fact that you are sociologists, but you are well aware that the antitrust laws express fundamental economic and social objectives, are you not?

Ms. ZAWEL. Yes; I am.

Mr. FALCO. So your deference was one of rhetoric rather than reality in law.

Ms. ZAWEL. My deference is one to the treatment which I have received in the past.

Mr. FALCO. Returning to your experiences at the Cost of Living Council, isn't it true in your opinion that the so-called squeeze that is making the news is really a squeeze on profit margins at the food industry level above production, that they are insisting they must pass on to the consumer rather than the squeeze on shortages as it is discussed at the Cost of Living Council?

Ms. ZAWEL. Yes. I am aware of that. I am also concerned about something else which I feel has not been brought out today. We have heard a great deal about chickens and beans. I think we must recognize, and I think I have it in my testimony that poultry is 97 percent vertically

controlled, either through direct producers who raise chickens themselves and then bring them to market or through contractual agreements with independent farmers in a particular area; such contracts are usually signed well in advance of any freeze or any thought of one. So there is speculation as to the reasons for destroying chickens and the reasons for massive shortages we will have. I think that is an important point.

Mr. FALCO. So the true concern is in preservation of the profit margins for the corporations rather than profit for the pocketbooks of the consumer.

Ms. ZAWEL. I would say so. I wish to add that we are not unaware of the plight of the independent farmer. We, by and large, are very, very concerned with the preservation of the independent farmer and producer. He is in serious trouble because he is in a position where large companies are more and more the only people who will buy his produce, and they can set their price. I think I have an example somewhere in my testimony where Del Monte will contract for a product with an independent farmer. The farmer will say I can barely make it on that. They say then we won't buy it and the guy has absolutely no alternative. This is monopsony. In the classic definition of monopoly you need to have certain control over the nationwide market; we have situations regionally with monopolistic effects.

Mr. FALCO. Let me ask you, in your scheme of controls, do you favor control at the farm level of farm prices?

Ms. ZAWEL. I favor a control across the board to give us some time.

Mr. FALCO. That includes the individual farm.

Ms. ZAWEL. I think that at this particular moment the reason we are hearing such a hullabaloo is because the freeze was put on for reasons of political expediency rather than any really serious consideration of the effect of the *way* the freeze was put on.

I don't quite understand why we then didn't put a freeze on agricultural produce. I really don't. I have been wondering if you do either. But I am for an economy which is controlled for a period of time, a short period to time, temporary period of time, to allow a comprehensive program of decontrol of competitive industries. There are industries in this country which are already "controlled" but the people controlling them are the industries themselves and they are controlled for profit. Those industries could stay controlled by the administration forever and it wouldn't create any aberration in this economy, I am convinced. Decontrol of more competitive industries including some parts of agriculture has to be seriously examined in terms of the way we bring produce to market. I think we should have things like emergency subsidies instead of consumers having to subsidize the whole cost. We have had subsidy programs historically. We should not have to face crises such as these. I also believe that many of these crises certainly have been of created hysteria and an awful lot of public relations.

Mr. FALCO. Your answer to my question is yes for the time being, isn't it?

Ms. ZAWEL. Yes, for a period of time, but with long-range planning.

Mr. FALCO. Thank you.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. Thank you, Mr. Chairman.

I was interested in your statement, not only for the content but for what you are telling us about the whole psychology of consumer reaction to food prices. I gather from your statement as well as Mr. Silbergeld's that there is a lack of consumer confidence in the economy, a belief that the Government has consciously avoided trying to find out the real reasons for the increase in prices.

Would you elaborate on that? Can you discuss more of the psychology of the consumer, why the consumer feels this way, besides the facts involved as you outline them in the statement?

Ms. ZAWEL. I think that there are two points you are bringing out. There is, one, psychology of the American myths which are part of the freeze, part of what you believe being American, what America is and those are very tenacious in the face of opposite information.

We have had concentrations in industries for a very long time. We have all sorts of things, but people have believed throughout because it is the American creed that we are boundless in our ability to produce, that we are boundless in terms of the land, that any man and woman can become President, and these mystiques have remained. By and large we have seen the bulk of the people of this Nation reaching some level of comfort.

As a suburban person I can tell you that a middle American is somebody who worked darn hard to get that little house and doesn't have much backlog to keep it if something goes awry.

But what is happening now is that everything that was ever believed is being denied. There is no supply of food or fuel. The Government isn't functioning. Big business has control. The public can't get its point across. I mean, the meat boycott was not something we organized. The meat boycott was an expression of complaint by 80 percent of the people of this country; 80 percent of them weren't organized. They took part to tell the Government and the business community something, and if you don't think that the boycott had a direct immediate perceivable affect on the Nation, didn't increase the sense that this country has run short, not only in supply but in responsivity, then that would be a very serious mistake.

There is also the reality that I believe Mr. Silbergeld was referring to and what I alluded to in terms of not being able to get data and not being able to evaluate who is doing what where, and that is a functional reality that we have to deal with. If we don't have that information, then how are we going to get it out to the average citizen? The psychology of that, I believe, is devastating. I think we are in a moral and social crisis as well as an economic one.

Mr. MEZVINSKY. If this persists, if we have a lack of action, what would you predict would happen as far as the National Consumers Congress? What steps do you have for further action or activity on the part of your organization so I can understand better the role that you want to play?

Ms. ZAWEL. Well, among other things we are going to organize all those disenchanted consumers who are sitting out there and being frustrated. That is the first thing. Organization is the key.

If we are organized we will have a voice by virtue of our numbers and our ballot box power if not by our financial power. That will make some difference.

In terms of actual plan, we have taken our grievances here to Government, to Congress, to the executive branch. I can only say to you that we need some sign that we are having some kind of an impact. We are doing everything we can within the system to represent the people who are appealing to us, who have not asked us to sit in front of this committee. They are asking us to march in the streets. They don't feel that sitting in front of this committee or visiting with the Cost of Living Council is going to change their plight.

So I think our attempts to organize and to pull together a massive organization is the first and probably will be the most profitable thing we can do.

Mr. MEZVINSKY. We have asked the Justice Department and the FTC again in what we have termed the oversight hearings, whether they give priority to antitrust investigations of particularly inflated segments of the food industry or whether they have a game plan that would single out certain areas of the food industry they should investigate.

Now your organization has a direct line to the consumers. What aspect of the food industry or what particular commodities do you think consumers are most worried about and what would the consumer Congress think should be given priority for antitrust investigation, both by the Congress and by the agencies involved?

Ms. DEMENT. I think the demonstration yesterday in the House gallery, although something we did not especially organize, is evidence of concern in that particular area. That is, the milk industry. We found out about it after it happened and had to bail them out.

I don't know that we want to be too narrow in pinpointing meat or peaches or milk. I think the price increases that have come have come across the board in the food area and the questions that we are being asked by our constituency is how come? The inscrutable anchovy and the problems caused by the grain deal and floods and world supply are gradually sinking into the consciousness of the American people as a response to the questions raised by meat and poultry.

One of the alternatives that we discussed with the Cost of Living Council, and I think they were shocked, was that they consider direct major subsidies rather than allowing the price structure of the economy to be so badly skewed by this peculiar combination of problems.

We are discussing these kinds of problems. The crop report came out today and seemed to indicate that the grain situation will be mitigated by the fall. I think that the Agriculture Department should have been a little more on its toes in terms of the allocations, the planning allocations that were established a year ago.

Chairman RODINO. At this point, Ms. DeMent, you talk about going over a broad base and I recall again that the FTC's study which much has been said about suggests that the consuming public can save some $2.5 billion at least. As a matter of fact, some public interest groups say it might be as much as $20 billion, if competitive practices were normal, and that as a result of the anticompetitive practices, as a result of possible monopoly practices, the amounts aren't small in the areas that you talk about.

For instance, the 17 food producing and food related industries on the FTC list, and this Mr. Silbergeld called to our attention, when broken down show that in the meatpacking plants, the value of

shipments is $15.6 billion, and it is estimated that as a result of monopoly overcharges there might be at least $489 million.

When you come to prepared animal and fuel and feed, the matter of shipments, there is $4.8 billion and the monopoly overcharge could be well in the vicinity of over $200 million.

When you come to talk about grain, and we talk about bread, cake and related products, the value of shipments there is $5.1 billion and possibly monopoly overcharges in the area of $198 million.

This is a lot of money to the consuming public, to the housewife who is trying to scrimp and save and do everything she possibly can. This is the one reason why we are trying to put our fingers on where the responsibility actually is, whether we can do anything about it, and surely the areas of government charged with overseeing the antitrust regulations so that there is a protection to the consuming public which are the Department of Justice, its Antitrust Division, the Federal Trade Commission. They have got their responsibility in knowing what is happening and doing something because these are not small figures.

Ms. DeMent. We think this FTC list is probably the best place to start. We have been running around town with it for weeks and have not gotten an appreciable response. We have even found it difficult to convince the Cost of Living Council that there is a monopoly problem. Dr. Dunlop sat across from us and with his bare face hanging out suggested that there might not really be any monopolies in our economy. We dispute that. We referred him to this FTC list. He gave us a lecture.

I might point out that on the retail level, the items on that particular list of 100, the top item is meat, the second item is fluid milk, and third item is soft drinks.

We have been working in the meat area. We have been working in the fluid milk area, in all milk areas actually, and we have been also very concerned over the soft drink area. I point out in my testimony that there is a bill before the House that would guarantee that the $250 million soft drink monopoly overcharge is maintained. We oppose that bill.

Mr. Dennis. Will the gentleman yield?

Mr. Mezvinsky. Yes, I yield.

Mr. Dennis. How many members are there in the National Consumers Congress?

Ms. DeMent. That is a difficult figure to say. We have a mailing list of several hundred. Many of these people on our list, however, are heads of organizations in their own States and they in turn take our materials and pass them on to theirs. We expect to go into a major organizing drive to put all this together.

Mr. Dennis. Do you have a membership list?

Ms. DeMent. We do.

Mr. Dennis. What does the membership list consist of?

Ms. DeMent. 500.

Ms. Zawel. Just as clarification, that list of 500 represents probably half a million in terms of the organizations those people represent. We have not established representatives.

Mr. Dennis. You say representatives from other organizations.

Ms. Zawel. The 500 names we have are leaders of other organizations. We have chosen to be a single member organization in order to

encompass a very, very broad spectrum of grass roots people. We have not sent out a single membership mailing list to even the names of those affiliated organizations, let alone more broadly than that.

Mr. DENNIS. You have 500 members, some of whom also are in other organizations or are prominent in other organizations?

Ms. ZAWEL. By and large they are leaders of their organizations, yes.

Mr. DENNIS. Thank you.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. I will yield back the rest of my time.

Chairman RODINO. Ms. Jordan.

Ms. JORDAN. You may have already touched on this when I left the room, but you are in conversation with the Cost of Living Council and you tell us about receiving lectures when you want to talk about antitrust activities.

You heard it stated here this morning, because you have been here for all the testimony, that there are no monopolistic practices which would have any affect on the food industry or prices of food. You heard that said in open face or bare face, whatever the word is that you used.

I would believe, then, that you do not agree with that statement, that you feel that there are some monopolistic practices which do relate to the cost of food. Is that correct?

Ms. DEMENT. That is quite correct. Given the fact that the Federal Trade Commission is charged by the Congress with responsibility for overseeing the antitrust area, I think we would rather rely on their judgment in this question of whether there are indeed monopolies.

Ms. JORDAN. Do you have any rapport with anybody at the Federal Trade Commission? Anybody over there who will listen to what you have to say?

Ms. DEMENT. We have requested an appointment with Mr. Engman and have not yet met with him, although I think he would not be unwilling.

We have been talking only with some of the staff at this point. We have taken a very strong interest in the upcoming appointments to the Federal Trade Commission. We are not happy with the most recent appointee. We are very hopeful that the replacement for Mary Gardiner Jones will be a strong consumer advocate. We have had no guarantees as yet that this is going to happen.

Ms. JORDAN. I will not get into the politics of the appointee. I would hope that the information you have would be given to the FTC and the Antitrust Division of the Justice Department where the enforcement capability is, so that if in fact there is a need for investigation and action by either of these agencies, they would not have the excuse of lack of whatever information is available.

Ms. DEMENT. Congresswoman Jordan, unfortunately they don't listen to us when we urge them to bring an antitrust suit. They listen to you.

Ms. JORDAN. I have no further questions, Mr. Chairman.

Chairman RODINO. Thank you very much. There are no further questions. We would like to thank you for appearing here and for the information you have presented to this committee. We want to assure you so far as we are able to do that we will continue our responsibility hoping that it will do some good for the consuming public.

Thank you very much.

[The prepared statements of Ms. Zawel and Ms. DeMent follow:]

STATEMENT BY ELLEN ZAWEL, PRESIDENT, NATIONAL CONSUMERS CONGRESS

My name is Ellen Zawel. I am a consumer. I feed a family of six every day except when I am in Washington testifying before Congress. I have a background in American sociology and philosophy, and have done research on communication systems between government and the people it serves. I am also President of the National Consumers Congress.

I wish to thank the committee for inviting me to testify before you today.

The National Consumers Congress is the organization which grew out of the meat boycott in April of this year. It is not just another consumer lobby. It is a grass-roots organization of consumers around the nation who are concerned with how government and the marketplace are affecting their pocketbooks. We are people from all walks of life, of varying economic backgrounds and from every region in the nation.

When we met in Chicago two months ago to organize the National Consumers Congress, we deferred most decisions on program content until thorough regional discussions could take place.

But there was one item on which there was nearly universal agreement and this we adopted as one of the major planks of our program: we are opposed to the proliferation of huge monopolies and we support vigorous antitrust action to break up monopolies and restore genuine price and quality competition to our economy.

Without such action, the prices we pay for our goods will bear even less relation to market pressures; the allocation of our tax monies will continue to bear the imprint of big business concerns to the exclusions of social needs, and government will continue to be subjected to the unopposed pressure that corporations can bring to bear.

We support extraordinary antitrust action by the Justice Department and by the Federal Trade Commission. We support extraordinary watchfulness of this Committee over all government activities with antitrust implications. We do this because we believe in something very radical and increasingly rare: free enterprise and competition.

I wish to present to the Committee today what I think is a uniquely "consumer" viewpoint. The "consumer" I speak of is first and foremost an American. As such he still believes in and responds to American myths of opportunity, productivity, almost boundless natural resources, turned into consumer products and wealth by hard work. He still essentially believes that each man or woman through his or her own efforts can achieve a level of comfort, prosperity, and success in a peaceful world.

Now we have to contrast this dream with the shock of ugly reality. We have only begun to even conceive of running out of land and pure air and water and to realize the extent to which the industries of which we were so proud have corrupted our environment.

A realization of the nature of our economic problems is even harder to accomplish, for they have long been masked by theorizing, political rhetoric, glib explanations of Democratic spending or war costs or Republican recessions. These did not disturb the essential fabric of the American myth. Now the American consumer is suddenly in a state of shock. He is now being told that we have no surplus food stocks, and that we lack crucial energy resources. The value of the dollar is spiralling downward, inflation spirals upward, and in the middle of it all we hear that major corporations are having their most profitable first quarter in years.

Thus we bring to this Committee two concerns: The first is for the direction in which the economy is moving. We think monopolies and oligopolies are a significant part of the problem. Concentration on our major industries causes prices to rise relentlessly as corporations attempt to widen their profit margins. Conglomerates are operating in broad sectors of the economy. We believe this committee can identify those sections where antitrust action is appropriate and charge the Justice Department to commence action accordingly. We too suggest, as Mr. Silbergeld did, you start with the FTC list of monopoly overcharges published in the Spring 1972 Antitrust Law and Economic Review.

Our second concern is that *someone* communicate with the American people as to what is really happening in the American economy and why. This too, this committee is ideally suited to do. The people must be informed honestly and

directly to reestablish confidence that government is working and that the crisis in the economy will not destroy them.

In our investigation we have come to a few conclusions and uncovered many questions about the problems of food production in America. I would like to share some of these now with you.

The concentrated economic power which comes from vertical integration lends itself to conglomerate formation. The end result is that even those companies whose primary identification has been with food production find greater benefit in other areas of the economy and diversify. Witness the fact that Borden Company, once synonymous with dairy produce *vis a vis* "Elsie the Cow" no longer produces milk.

Concentrated economic power in the food sector worries the consumer because the variety of natural foods available is being severely curtailed. In their place we have artifically created substitutes which are successfully "sold" to the public through intensive advertising programs. These products, such as pudding cups, artificial scrambled eggs, quick toast breakfast foods and the like, in many cases contain virtually no agricultural products at all. We can have a peach pudding cup which in fact contains no peaches and no milk but many chemicals and artificial flavorings. True, many of these products are fortified with artifical vitamins and the like, but who is to judge what will be the effect of the loss of trace minerals and vitamins which are found in natural produce and cannot possibly be duplicated in the laboratory. There was a time that youngsters took a piece of fresh fruit to school for dessert—but fresh fruit is becoming more scarce and more expensive and the pudding cup, and toaster pop ups, and laboratory concoctions of various types are taking the place of the apple, the orange and the pear. Thus not only is economic concentration effecting the economy as a whole in terms of supply and price, but it is potentially dangerous to the health and well-being of the people of this nation.

These are other problems with conglomerate food production. One which has impact not only on individual consumers but on the economy as well, is the fact that these corporate giants are often not in the food business for either maximum production or maximum profit. Frequently the agricultural activities of such companies are secondary methods of financial gain and profit through control of related products on the input level (e.g. farm machinery, fertilizer, etc.), processing (e.g. canning, marketing, labelling, etc.), and marketing (retailing, etc.). Large conglomerates may take on agricultural subsidiaries for tax-loss farming, low-profit operations to disguise actual profits (by using the SEC's 15 percent income report by grouping "low-profit" subsidiaries), and many conglomerates use the averaging of profit margins to camouflage total reportable profits. Certainly during such periods as the present freeze when reporting of assets determine governmental decision-making, we can see the glaring opportunism of such arrangements.

In light of these practices we are asking this committee to seriously question why the ten largest United States corporations engaged in the production, processing and marketing of food are familiar names such as Standard Oil of California; Aetna Life and Casualty Company; RCA Corporation; Ling-Temeo-Vought; Tenneco, Incorporated; ITT; Greyhound Corporation; Occidental Petroleum; and Sears, Roebuck & Company.

Why does Boeing Aircraft lease 100,000 acres of land in Oregon? Why has it irrigated approximately 3300 acres of pasture land for grazing with plans to develop vegetable, fruit and grain processing industries in addition to slaughterhouses and packing houses? We cannot fly beef cattle! Why does ITT make bread, and cookies, and pastries—without even phone-in orders? Why does Greyhound control a broad range of fresh, processed and portion-control meats, poultry and food products and the purchase and placement of cattle for future sale on open market? We didn't realize that "leave the driving to us" meant cattle roundups.

The conglomerate can be an inept farmer but its capacity to merge, to vertically integrate, and to invest and even lose huge sums of money is enough to overwhelm real farmers.

The American consumer still believes and holds on to the American dreams of unlimited opportunity in a free enterprise system. His confusion now, is not because his dream is wrong, or that he lost it, but because for many years he has not realized that he lost control of the economy and government. He is now beginning to wake up to the reality and now is saying, "We've got to get it back together again." We are not naive enough to believe that we can turn

the clock back. But the National Consumers Congress must insist that august bodies such as this fulfill their responsibilities to the law and to the people of this nation by tenaciously pursuing redress through antitrust action and whatever other means are necessary in order to insure that the food production of this nation remains high enough to meet the domestic as well as world market. This committee is charged not only with a legal responsibility to do so, but a moral one as well. Cynicism and skepticism can corrupt ideals—and the people need to have their shaken beliefs reaffirmed by a Congress willing to take action which may be unpopular with big business but essential to the health and well being of the nation.

STATEMENT BY SANDY DEMENT, TREASURER, NATIONAL CONSUMERS CONGRESS

My name is Sandy DeMent, I am the Treasurer of the National Consumers Congress. I want to thank the Committee for the opportunity to appear here today.

We know that these hearings are in large part a result of the fantastic climb in food prices, especially meat earlier this year. We appreciate the Committee's quick response to the crisis. But the testimony taken by the Committee in the last few weeks does not leave us confident that the solutions will be as quick to come.

I want to reiterate that consumers are looking for vigorous antitrust action in the food and other sectors of the economy. In our view, the Judiciary Committee can and should play a major role in these matters. We tend to see the Federal Trade Commission as the sole agency currently looking out for consumer interests in the antitrust area. This, despite the fact that the Commission is invariably slow in deciding to act, refuses to move at all on some issues, and will soon lose its one Commissioner who can claim to represent consumers.

We are hoping that the Judiciary Committee will become the champion of antitrust investigations in the House of Representatives. Consumers are badly in need of a champion here.

Ellen Zawel [president, National Consumers Congress] has spoken of vertical integration in the food industry and of the industry's domination by conglomerates. The Committee has heard testimony about problems in specific industries such as milk. These are all serious problems and if the Committee is serious about doing something to correct antitrust problems in the food industry they must be wondering where to start.

Let me suggest first a small but potentially very important change in the Committee's operations: we think the Committee should be able to review all House bills which deal however slightly, with antitrust matters.

The Farm Bill before the House this week is a prime example. I assume, since you have had testimony on milk cooperatives, that their antitrust implications are of interest to the Committee. Yet the Farm Bill may well be passed containing sections objectionable and unacceptable on antitrust grounds. We would have liked to see the Judiciary Committee take an interest in certain sections of that bill.

Another candidate for antitrust review is a bill currently before the House, the so-called Bottler's Bill, which would allow soft drink bottlers an antitrust exemption permitting them use of exclusive territorial marketing arrangements. The Committee recalls, I am sure, that this bill last year was before the Judiciary Committee. I suspect that redrafting this bill to place it before the Commerce Committee has not changed these aspects that the wise former chairman of this Committee found objectionable. If and when Commerce finishes with the bill, we would not be sorry to see the Judiciary Committee review it for its antitrust implications.

We have consulted the House Rules Committee and are aware that the Speaker must abide by jurisdictional definitions in assigning bills to committee. Motions for change of reference must apply only to bills erroneously assigned, and bills may not be assigned to more than one committee even if they concern matters within the jurisdiction of several committees. The House of course may refer bills to any committee without reference to usual jurisdictional considerations, but that is a cumbersome process.

In view of the importance of antitrust matters in our current economic and social framework, we suggest a rule change allowing the House Judiciary Committee the privilege of reviewing any legislation with antitrust implications after the Committee of jurisdiction has reported it. This should be accomplished auto-

matically, but for a limited period of time, at the request of the Judiciary Committee.

I would like to take advantage of being here to suggest one further area for investigation by the Committee, and that is the role that advertising plays in supporting product differentiation. Since I just referred to the soft drink industry a moment ago, I might add that advertising in that industry has not only added considerably to the price of these products but also heightens the anti-competitive effect of the exemption they are currently seeking from antitrust laws.

Interestingly enough, testimony by the Justice Department a year ago made reference to their belief that interbrand competition in the soft drink industry was not strong enough to counterbalance the loss of intrabrand competition that exclusive territories would effect. That is, products are so strongly differentiated by advertising that they are in effect seen as two completely different products and are thus not in competition with each other at all.

One of the distinguishing characteristics of consumer goods industries particularly, product differentiation is a goal vigorously pursued by manufacturers. There is, in fact, no essential difference between two kinds of soft drink, two kinds of cereal or two kinds of potato chips. Yet promotional advertising succeeds in creating such strong consumer preferences for a particular brand product that the price of the product may be at a level considerably higher than is competitive with other brands without substantial loss of sales.

Some would congratulate these corporations on having clever advertising agencies and let it go at that. But we are concerned with the anti-competitive effects of advertising, particularly as they also constitute a barrier to entry in the industry.

The Federal Trade Commissioners at one point asked the staff for a report on the subject. They got it and it was sent around for comments; they got those, but nothing further ever came of the matter, even though the report did recommend that the FTC seriously consider doing some work on the problems.

Food of course is not the only industry where heavy advertising affects competition and bars entry of new producers. The prescription drug industry is another prime example. With these modest suggestions, I would now be happy to have comments or questions from the Committee.

Chairman Rodino. The committee will adjourn until tomorrow morning at 10 o'clock.

[Whereupon, at 12:47 p.m., the hearing was recessed to reconvene Thursday, July 12, at 10 a.m.]

FOOD PRICE INVESTIGATION

THURSDAY, JULY 12, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr., (chairman) presiding.

Present: Representatives Rodino, Flowers, Jordan, Mezvinsky, Hutchinson, and McClory.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order.

Before we continue our hearings on competition and antitrust enforcement in the food industry, a report in this morning's paper is worthy of comment. It has been reported in the daily press that phase IV of governmental controls, which controls were initiated in August 1971, is expected in 10 days and further that this program will allow substantial increases in food prices.

I am alarmed by this report and feel contained to speak out on the subject.

In the hearings of this subcommittee to date, representatives, including economists in the Federal Trade Commission, the antitrust Division of the Department of Justice, as well as virtually every other witness to date has expressed an inability to explain the skyrocketing of food prices which apparently has only temporarily been halted.

Moreover, other testimony has been to the effect that industry representatives and the Cost of Living Council have been focused primarily on the preservation of profit margins.

Under the circumstances, we would hope that the executive branch would make available to this subcommittee and to the Congress as a whole its bases for any modification of controls that would permit further food price increases that are already at a 20 year high. I am sure that the public at large and the consuming public especially is going to be appalled and wonders again which direction we are going and why.

As chairman of this committee, we hope to find the causes of these problems in the food industry and hope further to offer solutions to remedy this critical situation.

Well, with that statement, I welcome Mr. Clarence G. Adamy, president of the National Association of Food Chains. I hope that his testimony may shed some light and maybe he might be able to comment on the newspaper article which appears on page 1 of the Wash-

ington Post as I saw it. I might also like to announce that though we had scheduled as witnesses this morning Mr. Ralph Nader and Mr. Beverly Moore, of the Corporate Accountability Research Group, unfortunately since the House meets at 11, it was determined that this would not provide a sufficient opportunity for these witnesses and so we are rescheduling them for a future date.

Mr. Adamy, I understand you have a prepared statement and I would hope that in the interest of trying to expedite what we are about here this morning that you might summarize it. [See p. 172.] We will be able to insert it in the record in its entirety, and it will give us an opportunity then to question you. And I think it would serve a more useful purpose.

TESTIMONY OF CLARENCE G. ADAMY, PRESIDENT, NATIONAL ASSOCIATION OF FOOD CHAINS

Mr. ADAMY. Certainly, Mr. Chairman.

My name is Clarence G. Adamy and I am president of the National Association of Food Chains, 1725 Eye Street, NW., Washington, D.C.

To summarize, it is our intent to establish the fact that food retailing is a highly competitive—maybe the most competitive—industry in the United States. We have consistently pointed out that survey statistical analyses of the structure of an industry are inadequate bases for an evaluation of an industry's performance in the public interest.

As the staff of the National Commission on Food Marketing observed, there is no correlation of a high market share of a chain and high prices charged the consumer.

And in response to such allegations that this correlation exists, the commission staff found that firms with high market shares had higher prices in only 16 of 30 comparisons and concluded that variation observed in gross margin results more from variation in the sales mix, waste, and pilferage, than variations in price levels.

According to recent reports, the approximately 406 food chains; that is, firms operating 11 or more stores, account for 49 percent of all grocery stores in the United States, and a somewhat lesser percentage of the Nation's $108 billion food store sales. That is the majority of grocery store sales are made by independent retailers. Independent firms, which are affiliated with co-ops or voluntary wholesalers, represent 44 percent of all grocery store sales—about the same percent as the corporate chains.

The success of the independent retailer can be seen in large part in the growth of the co-ops and voluntaries—which are forms of wholesaling—which give them a competitive viability.

During the decade of 1954 to 1963, their growth exceeded that of the chains; and since then has tended to keep pace.

Analysis of the data underlying the percent of grocery store sales by firms operating 11 or more stores themselves show that the greater proportion of growth has been realized by the smaller and medium sized chains.

Thus in 1963 there were reportedly 2,484 firms operating 2 and 3 grocery stores, compared with 3,000 firms in 1972. The 1963–72 figures for the 4 to 9 store category were 629 and 898 respectively.

It is evident, therefore, that the population of smaller chains has increased substantially in the past decade. During the same period the number of 10 to 25 store operators expanded from 200 to 247. The number of firms operating 26 stores or more increased from 103 to 199.

This data demonstrates that new firms steadily appear in the retail food industry and these smaller firms have enjoyed much more healthy expansion and a large number have entered the 11 or more store classification in these last 10 years.

In sum, on a nationwide basis, the food retailing industry reflects an effective level of competition even from a purely structural or market share standpoint. The approximately 400 firms operating 11 or more stores account for less than 50 percent of the total grocery store sales. The share of this category has remained remarkably stable and independent grocers affiliated with co-ops and voluntaries have continued to reflect a substantial sales growth and a steady percentage of grocery store sales.

Finally, within the chain store category, smaller and medium-sized chains have enjoyed the highest rate of expansion.

Now there is no question that the most intense competition in the food retailing is at the local level. The Food Marketing Commission staff made some very important observations on this point when they indicated that smaller firms tend to retain their market position more tenaciously than do larger firms. Firms with market shares in excess of 20 percent exhibit substantial instability. Their market position is subject to considerable erosion. And, increases in local concentration result mainly from the growth of local and regional firms.

After this last conclusion, the Food Commission explained "While the largest 20 firms show some growth in the national market, at the local level they have experienced considerable change in both directions. This has resulted in a net decline of the average share held by these firms in local markets."

No comprehensive study of food marketing has been undertaken since the work of the National Commission on Food Marketing, although as we have stated before we do not believe that a structural analysis is adequate for a realistic evaluation in any industry or any market.

The ease of entry into the food retail industry is widely recognized. For example, the Federal Trade Commission itself, in the only contested food distribution merger case decided by the agency, relied on the facility of entry in the industry in declining to attempt to require divestiture.

Other information previously referred to, the study increased in two and three and four and nine store operators and the expansion of firms operating 11 or more stores, demonstrates the free movement of smaller firms into larger size classifications.

Perhaps the most striking illustration of ease of entry in food retailing is a tabulation recently published by Chain Store Age magazine, which lists more than 300 firms described as "unknown 10 years ago" which are currently operating four or more stores.

Even in the unlikely event that the 300 figure represents a complex inventory, it would mean that nearly 25 percent of all firms operating four or more stores in 1972 were either not in existence or did not operate two or more stores in 1963.

Another point to be made here is the entrance of new forms of competition. The entrance of the convenience store has been a dramatic event of the last decade. From 1965 to 1972 sales volume has increased from $720 million to $3.75 billion in that period. Very few of these firms also operate supermarkets.

The profit performance, or rather lack thereof, of food retailers is wholly inconsistent with a monopoly or oligopoly hypothesis. Industry earnings declined sharply from near normal levels of 1.4 percent of sales, after taxes, during the period 1965–66, the last period before the spiraling inflation, to 0.83 percent in late 1971. An analysis of reports of the 35 publicly held food chains discloses average after-tax earnings on sales in the first quarter of 1973 at an even loser level of 0.64 percent.

Now, with the exception of the third quarter of 1972, this most recently reported quarter is the lowest for which any food chain has records. This data is supported by the Supermarket Institute's operations review which shows first quarter 1973 pretax earnings on sales for the typical food retailer at 0.9 percent, or after taxes, about 0.45 percent.

During the period between August 13, 1971, and June 22, 1973, the value of publicly held food chain stocks has declined by more than $2.1 billion. Part of the industry's difficulties may be attributable to the inequities which have arisen under the economic stabilization program. It is generally recognized, however, that price competition, always a crucial factor in food retailing, has been and is now extremely sharp, contributing in large measure to declining industry profits. It is highly significant that during this period the independents' profits have been sustained better than have those of the chains.

Gentlemen, now let me talk about the governmental impediments to food industry productivity, because if we are going to lower food prices and serve the consumer better it certainly must be in the realm on increased productivity.

The staff of the National Commission on Productivity has concluded that it is of critical importance for the food industry to accomplish the reduction or elimination of impediments to productivity due to Federal, State, and local government regulations.

The Commission staff has also concluded that there is a need for clarification of antitrust regulations to alleviate the climate of uncertainty that inhibits certain productivity improvements in the food industry.

Underlying these general observations are numerous examples of situations in which the industry and the public could be better served were it not for unnecessary governmental barricades.

Let me first talk about back hauls. According to reliable estimates, up to 40 percent of the trucks on the Nation's highways are running empty and this astounding figure is higher in the food industry. A restrictive interpretation of law by a Federal agency is a major contributor to this situation.

The Federal Trade Commission in Advisory Opinion No. 147, has discouraged the use of back hauls. It is estimated that between $250 to $750 million are added to the cost of food distribution by this senseless and needless restriction.

Multiple labeling requirements. Several agencies of the Federal Government exercise responsibility over the products sold in grocery stores and have promulgated numerous regulations concerning packaging, labeling, storage, and handling. There is a proliferation of labeling regulations, in particular. Many food chains do business in a number of States and incur substantial expense in complying with various dissimilar regulations between States and local governing bodies.

The Commission on Productivity states that while the intent is to inform the consumer, protect him from unhealthy food, and promote nutrition, it must also be recognized that the variations among Federal, State, and local regulations tends to impede efficiency and competition.

The Commission found that a cost of $75,000 was incurred by one out-of-State processor in adjusting his label for a single chain because of a sausage label requirement by a single State.

The answer to this problem may not be full-scale Federal preemption, but unless the States adopt uniform rules and resist the temptation to use labeling requirements to erect unjustified trade barriers against out-of-State products, there may be no other solution.

Industry standards. Perhaps the greatest opportunity for productivity increases in the food industry is in the area of industry standards. There is, because of the omnipotence and omnipresence of antitrust regulations, a great resistance or an unwillingness on the part of participants in a major industry to participate in the achievement of common industry standards.

We have just completed the adoption by our food industry of a universal product code—a truly mammoth development—which will lead to many technological advancements of great importance to the consuming public. One of the most persistent costing problems was to assure that every step of the way of reaching a common agreement on a thing—as is self-evident in the universal products code—was in step with the antitrust laws and not violating them.

Transportation is of course, a continuing problem to all industries. NAFC has been a party in adjudication before the ICC on several such provisos. We will be participants in an adjudication before the ICC on their current rate increase.

Suffice it to any that the commitment of the ICC and its programs to the maintenance of the railroads without a corresponding commitment to improved increases in efficiency are not advantageous to the public of the United States.

Antitrust enforcement in the food industry. It is not surprising, given its size and visibility, that the food industry at all levels has been accorded a measure of attention by the antitrust enforcement agencies. Both Assistant Attorney General Kauper and Mr. Halverson reviewed for the subcommittee some of the agencies' activities in this field.

The antitrust laws are inextricably woven into the economic fabric of the Nation. Insofar as they promote competition and eliminate private restraints from the market, they should continue to exact their force throughout the economy, including the food industry.

Mr. Chairman, I have prepared and presented to you a rather

complete statement, which I have only summarized here, and I do hope it is brought to the attention of the committee.

Chairman Rodino. Thank you very much, Mr. Adamy. Your statement will be included in its entirety in the record, and I am sure we appreciate the time that you have spent in developing this, and we are sorry that you just summarized it, but I am sure the committee will address itself to the statement. [See p. 172.]

Mr. Adamy, those of us who conduct these hearings, of course, are people who are seeking to enquire, and this is why we, of course, have you here this morning. We have had other witnesses who we believed would shed some light on what appears to be a big question mark at the present time, and I made reference a while ago to the fact that today's newspaper made reference to the fact that while there are going to be new controls within 10 days, that none the less some substantial increases are going to be allowed in the food industry under phase IV.

I believe that I express the opinion of the public at large who wonders just why this is all happening when prices are skyrocketing such as they have been in the food industry and are at a 20-year high and food prices are supposed to be three times higher, at least, at the rate of increase that they have been moving, than other commodities. This is why I would like some answers to some questions we have, and if they seem very simple questions, nonetheless, it is because we are trying to find some answers that maybe will give us some confidence in the ability of our Government to govern. We hope the people who are in the food industry will be able to supply us with some information so that we may better be able to use this kind of inquiry to come up with necessary legislation to correct the measures or otherwise to say there is nothing else that could be done. This, of course, would be startling for the public at large.

You made mention in your prepared statement, on page 9, that the profit performance, or rather lack thereof food retailers, is wholly inconsistent with a monopoly or oligopoly hypothesis, and that industry earnings are declining sharply from near normal levels of 1.4 percent of sales and after taxes during the period 1965–66 to the .83 percent in late 1971 and an analysis of reports of 35 publicly held food chains discloses average after tax earnings on sales in the first quarter of 1973, at the even lower level of .64 percent. And you go on with the exception of the 3rd quarter, where it was the lowest ever.

And incidentally, it seems to me that if I get the statement correctly, you are trying to say that the profits and stock prices of food retailing firms have fallen in the past year and yet, I reviewed some financial information on the top 23 food chains as carried in Fortune's survey of the largest nonindustrial companies, July 1973, and the Standard and Poor's Industry survey in 1971 and 1972 and Business Week's survey of profits, May 12, 1973; and now I am all the more confounded because I find that among these food chains there is one, for instance, Lucky Stores, and the margin in sales in 1972 was 1.5 percent, and yet the return on shareholders equity of 1972, percentagewise, was 19.7 percent. Go to Weis Markets. The margin on sales for 1972 was 3.9

percent, return to shareholders equity was 17 percent. The Winn Dixie Stores, 2.1 percent margin on sales in 1972, the return on shareholders equity, 19.7 percent. And then if we go further and we go to some of the so-called conglomerates, according to Fortune again, and we take a company like Kellogg; 1972 sales represented $699 million with return on sales of 8.7 percent, with a return on equity at 20.8 percent. Now, I am a little astounded, I am a little confused.

I see this very minimal return on sales, and this high return on equity. I do not know just how we are able to equate that.

Mr. ADAMY. No, no; that really is not as complicated as it sounds. Let me clear up one point.

Kellogg is a food manufacturer and not a distributor, and, therefore, not in the group that I have presented to you.

Chairman RODINO. I merely mentioned Kellogg, because it is so high, but we have the Consolidated Foods and Beatrice Foods.

Mr. ADAMY. None of which are food retailers. They are all manufacturers, sir.

Chairman RODINO. These are conglomerates.

Mr. ADAMY. None of which have any retailing in their conglomerate.

Chairman RODINO. They do not?

Mr. ADAMY. No. But, let me assure you that these figures on the averages of the industry were prepared by Cornell University and are prepared annually by Cornell, and they are objective and as encompassing as possible.

Just as you were talking about the good results of a few companies, I could equally make this a very bleak picture much worse by choosing for my sample the Great Atlantic and Pacific Tea Co., National Tea Co., and Acme Markets Inc., who have had extraordinarily bad results and it would not be at all a true depiction. The actual and fair depiction is with the numbers I have given you which are exactly right. In a period of lesser inflation, before 1966, the industry's earnings were a return on sales of about 1.5, with the industry average of return on investment or return on net worth of about 15 percent. Now, that return on investment today has declined with the decline in return on sales, from about 8.5 return on assets to about 4.3, so that the numbers do correlate exactly. And although the number of return on investment is a higher number than return on sales, do not forget it measures the exact amount of net profit dollars. That does not change. It is a method of measurement and it does not change, and these figures will relate one to another.

Cost out any chart you want to draw up.

Chairman RODINO. Well, I might point out, Mr. Adamy, that while I did make reference to those specific food chains, nonetheless I do want to, I will include this in the record, but while there were three of the food chain companies which showed losses, on margin of sales out of 23 and there were only three others that really showed any loss on return on shareholders equity out of the 23.

But, the others were all substantially higher.

[The following information is included for the record:]

NATIONAL SALES SHARE INFORMATION

	Sales 1972 (millions)	Proportion of— All grocery chain store sales [1] (percent)	All grocery store sales [2] (percent)
1. Great Atlantic & Pacific	$6,369		
2. Safeway Stores	6,058		
3. Kroger	3,791		
4. Jewel	2,009		
5. Lucky Stores	1,988		
1st 5 total	20,215	43	24
6. Food Fair Stores	1,980		
7. Acme Markets	1,862		
8. Winn-Dixie Stores	1,834		
9. National Tea	1,614		
10. Grand Union	1,380		
2d 5 total	8,670	17	10
Top 10 total	28,885	60	34
Top 23 total	37,748	83	45

[1] $46,000,000,000.
[2] $84,000,000,000.

Note: The proportion of grocery chain store sales to all grocery store sales has increased every year in at least the past 10 to go from 43 to 54 percent, according to Standard & Poor's Industry Survey of Food Retailing, Nov. 16, 1972.

FINANCIAL INFORMATION ON TOP 23 FOOD CHAINS

Name	Rank— Among retailing companies	Among grocery chains	Sales, 1972 (millions)	Margin on sales, 1972 (percent)	Return on shareholders equity 1972 (percent)
Acme Markets	13	7	$1,862	0.7	6.5
Albertson's	41	17	682	1.1	16.5
Applied Supermarkets	29	14	972	.1	3.7
Borman's		20	380		
Colonial Stores	39	16	722	1.3	10.8
First National Stores	34	15	853		
Fisher Foods	43	18	650	1.2	16.8
Food Fair Stores	12	6	1,980	.5	1.6
Grand Union	20	10	1,380	.6	5.4
Great Atlantic & Pacific	2	1	6,369	Loss	−8.1
Jewel	10	4	2,009	1.5	12.5
Kroger	6	3	3,791	.5	5.2
Lucky Stores	11	5	1,988	1.5	19.7
Munford		23	141	.6	15.5
National Tea	16	9	1,614	.6	7.0
Penn Fruit		21	372	Loss	−8.5
Pueblo International	47	19	495	Loss	−1.6
Safeway Stores	3	2	6,058	1.5	15.0
Southland	23	11	1,227	1.7	10.5
Stop & Shop	28	13	995	.6	9.6
Supermarkets Genl	25	12	1,194	.3	6.4
Weis Markets		22	160	3.9	17.0
Winn-Dixie Stores	14	8	1,834	2.1	19.7

		Proportion of— All grocery chain store sales	All grocery store sales
Total	37,748	83	45

Sources: (1) Fortune survey of the largest nonindusrtial companies, July 1973; (2) Standard & Poor's Industry Surveys, 1971 and 1972; and (3) Business Week's Survey of Profits, May 12, 1973.

Mr. ADAMY. Well, Mr. Rodino, I have not had a chance to see the July issue of Fortune, which, of course, I will see immediately.

But, let me assure you that I am very confident of the accuracy of my figures, and if you take the 10 largest companies you will find that out of them, few—three or four I think—you did not name one. Weis Markets are not in there. It is not a big company but, nevertheless, I think that it does very well.

A. & P. is in real trouble and lost $50 million last year. Safeway is doing very well. Kroger is at a very low figure, near zero. Acme is at zero or just under it, a little minus. Food Fair is at about zero. National Tea is a minus number, having experienced a big loss in the last quarter. Grand Union is very dull, a very low figure, lower than the industry average. Lucky Stores are doing very well. Jewel is doing very well, and Winn-Dixie is doing very well.

Well, it amounted up to four doing very well, probably, with a quick remembrance, three in a loss posture and three in a very dull posture. I am sure any listing, any way you want to take it, will work out to about what I am presenting to you as abnormally low. Incidentally the most distressing fact about that from the point of view of the public is that during this last year the food industry has been the only sector of the economy whose earnings have declined, while the remainder of the economy has had a very favorable earnings period.

Now, in the competition for funds and in the money market, this becomes a very severe handicap. Inasmuch as our industry faces, within the next 10 years, the most dramatic and most hopeful technological revolution of any industry in the American economy at this time, it is very distressing that we are going into this period—of great need for capital to expand our productivity and, therefore, our service to the public—at a time when our ability to acquire capital is low.

And, it is unfortunately too true that my figures are right. I would very devoutly desire that your supposition be correct, but it is not, sir.

Chairman RODINO. Let me ask this one question with one reference to that subject and then I will move from there. Would you say that a 20-percent return on equity is considered to be a good return on investment?

Mr. ADAMY. On equity I think that is about right.

That is about normal for the economy. One and a half percent net profit on sales would give us about a 15- to 17-percent return on equity. It is our devout desire to return to that.

But remember that I am talking about an industry average. If your best companies only do that good, you are not in very good shape at all because that would reflect a profit of about a penny and a half on a dollar of sales.

You are still in too tight a position. You should be in a position so your industry average runs at about 15-percent return on equity with, therefore, your less effective companies obviously doing less well, but some of them doing better in order to attract capital and increase productivity, and in order to be the viable industry that the public should and must demand.

Mr. MEZVINSKY. Mr. Chairman, could I interject a point?

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. You are aware, Mr. Adamy, that the FTC has computed monopoly over charge figures for 100 selected industries on the percentage of earnings to stockholders equity over about 7 or 8 percent. You are aware of that, are you not?

Mr. ADAMY. No, I am not.

Mr. MEZVINSKY. Well, I think that you had better be aware of it because that is the figure that the FTC uses to calculate monopoly over charges.

Mr. ADAMY. I think you have really caught me, and I think I was interpreting the statement "return on equity" as "return on investment" and I beg your pardon, although I think that is a manufacturer's figure. Nevertheless, our figures would not tend to be higher than the all industry average, and at no time in history has it ever been higher.

Mr. MEZVINSKY. You are aware that Safeway, Giant, Lucky Stores and a number of other chains have a return in excess of 15 percent, so if you accept the FTC figures as valid at below 10 percent, you have got monopoly overcharge in your industry.

Mr. ADAMY. No; then I would severely and fiercely argue the validity of the position taken by the Federal Trade Commission. The objective and obligation of business is to be viable, and is to perform in a constantly improving method. Our position is to provide the public with more and better food which means new technology, new stores, and new developments and adequate capital to assure the development of a viable industry, which is the total goal of any industry in a social sense. I would argue the FTC's position fiercely because the companies with better earnings companies at this time are not in a strong position to compete with the open market for the capital required.

Mr. MCCLORY. If the gentlemen would yield, as I interpret the FTC standard by which monopoly overcharge is measured, it would relate to dominance and concentrations such as in the dry cereal manufacturing industry; whereas, I interpret your statement, looking at the statistics furnished us, there is no antitrust violation you could charge against any of the moneymakers in the food chain business, because even the largest only control a very small percentage of the market.

Mr. ADAMY. As I indicated in my statement, Mr. McClory, some 400 of the companies are required to approach 50 percent. Any structuralist theory of monopoly gets two different kinds of numbers. Unfortunately I am afraid I have been confused here and I am not able to quickly mentally relate 10-percent return on equity to return on investment over assets, which would be a more meaningful figure.

Mr. MCCLORY. As I understand it, in our competitive economy, we do not have any limitations on what the percentage of profit is that a private enterprise can make, whether it happens to be a food chain or whether it happens to be a small independent grocer.

The best moneymaker is the small independent grocery store that is just operated more hours, makes a higher percentage of profit on its merchandise, and which does not really compete with the chains.

Mr. ADAMY. Any return on investment, any return on equity, any return on asset, should be adequate to provide that industry to con-

tinue to improve its service to the public, and whatever that level is, is the fair, socially just level.

The use of numbers in a structural theorist's approach is, in my opinion, both lazy and inaccurate.

Mr. McCLORY. Well, we are really in danger——

Chairman RODINO. Mr. McClory, I am sorry, we will get to you.

Mr. Adamy, one question that I would like you to comment on is our understanding that the National Association of Food Chains on a biweekly basis is furnishing the Cost of Living Council with the shortages and discontinued items reported by its members, and I would like to ask you how long has the National Association been making such reports and what is the procedure for collecting this information and for making predictions?

Mr. ADAMY. If I remember right, Mr. Rodino, I think we made our first report about a week after the freeze started, and it was about a week later that we fell into this pattern of sending them in on Mondays and Thursdays.

Now, we have submitted six reports in the period of the freeze so far. We collected the data from our members. We sent a communication to all of our members asking them to report to us in specific detail the nature of any shortages or distortions that were created by the freeze so that we could report them and they could be put into the mix of decisionmaking by the COLC authorities.

Chairman RODINO. Thank you very much.

Mr. Adamy, is it not true that you recently testified before the Food Industry Advisory Committee of the Cost of Living Council that if the freeze would continue for 60 days there could be a collapse of large portions of the Nation's food distributing system?

And is it not true that this position was almost entirely based on your concerned apprehension that food chains would not be able to maintain their profit margins this 60-day period?

Mr. ADAMY. That was my statement, and I do support my statement. But, it was based on much more involvement, sir, than the mere concern for the earnings level. Now, there are a great many companies who have——

Chairman RODINO. Was that the basis?

Mr. ADAMY. No; that was not the basis of my concern. The basis of my concern is the inaccuracy in the failure of a free system, by the distortion of the market and the prohibition of products flowing to market. You tend to confuse the mix and the marketing structure and you punish, irreparably, the public, by denying them products now, and by guaranteeing a much higher price in the future.

Already, at this stage of this freeze, a great many products have now been taken off the market. You have now guaranteed that the public will, indeed, pay higher prices by virtue of the freeze alone.

Chairman RODINO. Well, one final question, at this point, Mr. Adamy, and it is a why question. Why did you testify before the Food Industry Advisory Committee that the same controls should be applied to all industries and not more stringent controls on industries where inflation has proved tougher to bring under control, especially considering the situation in prices in the food industry?

Mr. ADAMY. Although I personally believe the first control program enacted in the year 308 A.D. failed, and believing firmly that all con-

trol programs tried since then have failed, I recognize that in the climate of the hysteria of our country at this stage, we are going to have controls.

During phase 3, it became abundantly clear that in an interrelated, interdependent economy in a society such as ours that you cannot control one without distorting the other.

For example,——

Chairman RODINO. Mr. Adamy, that point——

Mr. ADAMY. Excuse me. Let me go on. In phase 3, we were one of three industries controlled. Our transportation costs increased by some 11 percent; our bag costs increased by 24 percent; and, all of the other sectors of the economy went up to encompass these three sectors of the economy controlled. I honestly do not believe you have any chance for any viability if you do not apply it equally across an interrelated and interdependent structure.

Chairman RODINO. That may be so, but then you made reference to the hysteria of the public. Do you not think there is a justification for the public to be concerned and as you called it, the hysteria, when prices are running away as they have been? Would you expect that the public at large would just be complacent and say do nothing?

Mr. ADAMY. No; and I certainly do understand the frustration, and incidentally I join in the frustration. Remember, my prices went up in October 1966, just like yours and every other citizen's.

All of us joined in this. Incidentally, my statement on our declined earnings relates to runaway inflation, but I think we have to recognize the real causes of inflation and move to meet them. The introduction of false, arbitrary, and/or capricious devices that do not have a history of success is not a useful device.

I am really concerned about deceiving the public with hopes that prices can be controlled by the introduction of a quasi-magic formula, when it will not work.

Chairman RODINO. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. You pronounce your name Adamy?

Mr. ADAMY. Adamy, sir.

Mr. HUTCHINSON. Thank you.

Mr. Adamy, in the ordinary supermarket, how many different food items are on the supermarket shelves?

Mr. ADAMY. An average of between 7,500 and 8,000, sir. And by average store we are talking about a store of about 20,000 square feet, selling about $2 million a year.

Mr. HUTCHINSON. 7,500 or 8,000?

Mr. ADAMY. Yes, sir.

Mr. HUTCHINSON. And how many food processors and other suppliers contribute those items?

Mr. ADAMY. In the work we are doing in developing in the Universal Product Code, we discovered we have to provide for 180,000 possible suppliers. That is not to any one store, sir, but in the country for all of the stores, there are 180,000 manufacturers making goods that one or more stores buy.

Mr. HUTCHINSON. That statistic would suggest that in the production and distribution of food the economy is highly competitive.

The fact of the matter is that it probably is the most competitive sector in the economy.

Mr. ADAMY. I believe it could be so, sir, but I recognize you are using a structural measure which I do not think is the whole story, sir.

Mr. HUTCHINSON. Your statement indicates that the returns of food chains——

Mr. ADAMY. Corporate food chains; yes, sir.

Mr. HUTCHINSON [continuing]. Have been going down. But during that same time when the percentages have been going down, there seems to be new people entering the food business all the time.

Mr. ADAMY. Yes, sir; that is true. And it is in view of this fact that earnings have declined constantly since 1966, a surprising fact; but there has continued to be almost the same rate of entry and the same rate of upward mobility as there was in a more profitable period prior to that. Hopefully that is the human capacity for optimism.

Mr. HUTCHINSON. There always has had to be a great deal of optimism in the whole question of production and distribution of food. I will agree with you there. Farmers are eternal optimists.

Mr. ADAMY. Yes, they are.

Mr. HUTCHINSON. Now, is it fair to say that when phase 3 came along the food industry was left in phase 2?

Mr. ADAMY. Yes, sir; for all intents and purposes, that is true, with an added meat freeze on us, so for meat we got put back into phase 1 at that time.

Mr. HUTCHINSON. Yes, meat as of March went back to phase 1. But the rest of the industry really stayed in phase 2?

Mr. ADAMY. Well, no.

Mr. HUTCHINSON. In effect?

Mr. ADAMY. The construction industry and the medical industry and we.

Mr. HUTCHINSON. I am talking about food.

Mr. ADAMY. But the rest went totally free.

Mr. HUTCHINSON. I am talking only about food.

Mr. ADAMY. Yes, that is right.

Mr. HUTCHINSON. And my point is that since the food industry never left phase 2, the great increase in food prices in recent months was brought about because of the law of supply and demand.

Mr. ADAMY. As you know, Mr. Hutchinson, we have had a most fortunate period in American history on the demand side, the increase in the work force and the number of people being supplied. And you know, when you are talking about food demand you are talking about the very poor not becoming quite so poor, and fortunately for people of my income level, an increase in income has no effect on food demand because I have been able to buy the food that I want and need heretofore. But, when you improve the very poor, and 2.4 million people are added to the work force as in 1972, and 260,000 added just this last month alone, this is great social news. But a tremendous increase in demand, food stamps and social security programs the same time as the sharp decline in supply—due to unnatural or natural causes—and the bringing together of these two things, makes for, in my opinion, the cruelest coincidence of history that we have seen in economic terms.

Mr. HUTCHINSON. In view of the time I am not going to use any more time. I thank you very much, Mr. Adamy.

Chairman RODINO. Thank you, Mr. Hutchinson.

Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

I fully understand the causation of supply, Mr. Hutchinson. I attempted to plant a garden in my home in Alabama back in March and April at the latest, and it was about early June before the weather got ripe in Alabama, and I know that we had fortuitous weather compared to some other areas in our country. And I too feel that there are many people in our country that do not understand the interrelationship of the weather of the past year to the supply of foodstuffs across the land. And in fact, the demand and supply in the marketplace and the food industry is still a free enterprise situation. We have increase in demand for food, which raises the prices on food in short supply, and where the farmer might have produced 500 tons or 500 bushels or whatever term you want to use, this year he produced 250 tons, or bushels, or whatever on the same land with the same effort. And so someone has to be compensated similarly for the smaller amount, and then there is the rise in prices, or that is a part of the explanation.

Sir, I would like to be very basic for just one moment if I could. We have heard discussion of profit margins, of equity profits and whatnot.

Would you mind for the record and for me, anyway, describing in short detail the difference between profit on sales and profit on equity?

Mr. ADAMY. Well, profit to sales is the percent of the dollar of the sales that is retained in profit, after taxes.

Mr. FLOWERS. In other words, the market owner buys a dozen eggs from the distributor for 50 cents, and he sells them for 55 cents, and he has got a 5-percent gross profit on at least that dozen eggs?

Mr. ADAMY. Let me be more accurate, sir. Basically speaking, in the grocery industry today we spend 78½ cents for the goods we sell and we retain 21½ cents to pay our operating costs. Of that 21½ cents about 12.98, or 13, just to round it off, goes to labor costs and the remaining costs eat up the rest leaving us with 1.2 cents before taxes. You share that with Uncle Sam and take $^6/_{10}$ of 1 cent to the bank, and that is the return on the dollar of sales.

When you start out with the dollar that the customer gives you, you subtract from it the costs you incur, both internal and external, and you pay them out, and then we get out of that $^6/_{10}$ of 1 percent. And if you multiply that with the sales you have of dollar profits, you compare that to the equity you have in your business on a percentage, or you compare it to your assets, but you are always measuring the same amount of dollars.

In the grocery business for many years we have talked in terms of the percent of return on sales for the purpose that it is the only figure that is valuable to the customer. The customer wants lower prices. We would love to give lower prices to them, but it has got to come out of this chart of costs and include profits and return on investments in that sense, which is valuable to a banker or other people in the world. But, it is not valuable to a customer, and out of a sense of dedication to the customer we have usually used this figure as the most meaningful because it relates to how much.

If you took all of our profit out of the business, therefore, and you would take up Uncle Sam's taxes, we could let them have 1 percent.

Mr. FLOWERS. The customer is paying more for food bought at the retail level than if he were able to buy it wholesale, is that not correct?

Mr. ADAMY. Well, that is correct. But now, Mr. Flowers, you are getting into a longer discussion because the fact is that through the period of the industrial revolution there has been a shifting of agriculture to the areas of most efficient production. And even in my childhood there were a lot of local things produced, a crop or commodity that we could buy at hand. Now, some 70 percent of the fruits and vegetables in the United States are produced in California, so if you were to talk about an individual in this community, then you have to talk about the program of going to California, carrying and getting and transporting, and the time, place, and utilities that we add as a distributor-retailer into this.

Let me give you one more example.

We go to 70 nations of the world to acquire shrimp. This is the nature of the value of the service that we perform.

Mr. FLOWERS. Certainly. I understand that.

Now, the reason your profit margin on sales is so low, but yet your profit margin as to equity or assets is much higher, is based on the tremendous turnover that you have, and volume in the local foodstore, is that correct?

Mr. ADAMY. Well, yes, that is correct, that we do have about 12 turns a year, which is the highest of any industry in the world.

Let me say this, that our return on investment or assets or net worth is much under the national average, corresponding relatively as is our return on sales. There is no great variation in these figures.

Mr. FLOWERS. Right. Now, I am going to give you in my remaining time, which may be 30 second or less, I am not sure, a chance to tell us if you can, sir, quickly, in your judgment, what are the major causes of the rise in food prices in recent months?

Mr. ADAMY. The major causes of the rise in food prices in the last few years has been a sharply declining supply in relation to a sharply increasing demand.

You start with the corn blight of 1970, the unbelievable weather of 1971 and 1972, and when you think about China, Russia, Australia, South America, and the United States, you start to see the complexity of the declining supply. We are actually at the lowest levels of available supplies in the history of the United States.

Now, we really are facing some immediate, dramatic shortages of some commodities in this economy. I do not believe or totally believe, that nobody in this country is or will go hungry. On the other hand, we are not going to have the choice and the variety that we have had heretofore, from now forward till at least until this year's harvest.

Mr. FLOWERS. In other words, we all better get ready to plant that garden?

Mr. ADAMY. It is not a bad idea, sir.

Mr. FLOWERS. Right. Thank you, Mr. Chairman.

Chairman RODINO. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. I asked some questions earlier and I wonder if I might yield to Ms. Jordan so that she could

ask a few questions, and then I do have a couple of questions that I would like to ask after that if time permits.

Chairman RODINO. Ms. Jordan.

Ms. JORDAN. Thank you for yielding.

Mr. Adamy, I want to go back to the discussion which you were having with Mr. Flowers on return on investment, return on equity, profit margins. Could you tell me the average profit margin in the retail industry for the first quarter of 1973?

Mr. ADAMY. Retail food industry?

Ms. JORDAN. Yes.

Mr. ADAMY. According to what we have had to do, unfortunately the reports are not out yet, but when you take all of the companies listed on the American and New York Stock Exchange average them out, it runs to a return of .64 of 1 percent on a dollar of sales which would translate to about—and it is about because I have not had a chance to figure it out—but it would be quite close to 8.8 on return on net worth, about 4.3 return on assets. Those would be comparable measurements for you. Remember they are the same dollars.

Ms. JORDAN. All right. How does that compare with the last quarter of 1972?

Mr. ADAMY. Almost identical with the last quarter of 1972, slightly lower than the full year of 1972.

Ms. JORDAN. Slightly lower?

Mr. ADAMY. Than the full year, yes.

Ms. JORDAN. All right. If you were to propose phase 4 guidelines, looking at the frustration which you admit sharing with all of us about high food prices, what would you recommend in terms of controls or no controls?

Mr. ADAMY. Well, Ms. Jordan, I would recommend first no controls, and as rapid a return to a free market as is humanly possible. If you must have controls, go back to the pattern of phase 2 as rapidly as possible.

Ms. JORDAN. Even with the experience that we had in phase 2, knowing that you were excluded from phase 3, your industry, you would still think—and the food industry being excluded basically—you would still think that no controls would be preferred, that the free competitive market would control itself, and that supply and demand would somehow level out, and that everybody would share the prices that they could afford?

Mr. ADAMY. Ms. Jordan, I honestly believe that with a return to the free market there is a better chance to return supply to an adequate position more rapidly. I believe the free market is the most equitable and decent allocator of resources. If you want to allocate resources, the free market, with its infinite wisdom, is in much better shape than is man with his finite wisdom.

Ms. JORDAN. One final question, Mr. Adamy. You have stated repeatedly that there is no evidence of monopolistic practices, monopolistic overcharges, in the food chain business. Is your statement then, that regardless of the return on assets or investment or profit margin, or cooperative kinds of activities, there is nothing in the entire food industry which should be directed to the attention of the FTC or the Antitrust Division of the Justice Department, which would demonstrate anticompetitive practices?

Mr. ADAMY. Ms. Jordan, I do not ever want to be in a position of denying that somewhere there is a sparrow that has fallen to earth. On the other hand, my statement makes a very strong position for the other side of that coin. I believe that the restrictiveness built into the antitrust laws denies some increased productivity that would make a great contribution to the American people. I would think the FTC, Department of Justice, and your committee could well look at means and methods of making these laws more flexible, without defeating their initial purpose, to permit the growth of efficiency and productivity as the great protector and hope of our people.

Ms. JORDAN. Do you think the antitrust laws are too strict?

Mr. ADAMY. No; not in the sense you are putting it, ma'am. They are restrictive in the sense they prohibit any common action. Some of the great developments to come into our industry depend on uniform methods of identifying products, uniform methods of packaging in wholesale cartons for automatic warehouses, getting people together to discuss these socially desirable goals. However, you can be accused of conspiracy and could spend months, and thousands and millions of dollars in court to defend yourself.

Ms. JORDAN. Now, who is going to accuse you of a conspiracy when you get together to discuss socially desirable goals which would ultimately benefit the consumer?

Mr. ADAMY. I would love to review with you the experience we have had with the Federal Trade Commission in the development of the universal code. We have avoided any antitrust suit so far, and I hope we always do, and it is only because the first person we communicated with was the Federal Trade Commission. There is the opportunity for gain in this arena which has not been explored. The competition laws, Sherman Act, and Robinson-Patman Act are necessary, and they have performed a useful function for our society, but by overnitpicking, you can defeat the very purpose of these laws. This is the point I wanted to bring to your attention.

Ms. JORDAN. Well, Mr. Adamy, I do not think anybody would accuse the FTC or the Department of Justice of nitpicking. If anything, they nitpick in trying to find action to take to enforce a law rather than place an onus or burden on the industry. That is what I think has been the experience in those agencies. I have no further questions.

Chairman RODINO. I would like to interpose one question here, Mr. Adamy. You made reference to the Sherman Act and the Clayton Act, and other antitrust measures that are designed to protect the consuming public and to maintain competitive practices. Do you have any feeling about the Capper-Volstead Act and the suggestion that has been made by the Department to take a look at it, the exemptions that have been obtained here which might be, as it seems they suggest, eliminated?

Mr. ADAMY. I really am not competent to answer that, sir. I am not familiar enough with the Capper-Volstead Act. I would ask you to review other acts, and certainly could not turn around and say do not review this one.

Chairman RODINO. In view of the fact this was an exception that recognized some of the problems and some of the industry cooperatives——

Mr. ADAMY. It occurred so far before our stage of the industry that we do not really see it, feel it, or know it, sir.

Chairman RODINO. Thank you, sir.

Mr. McClory.

Mr. MCCLORY. Thank you.

Let me follow through on the questions that I was asking you earlier. If some of these chains that have experienced losses continue to have losses and go out of business, that is going to promote monopoly and reduce competition in the food retailing business; is it not?

Mr. ADAMY. It could increase concentration. It would take a very long time and a lot of bankruptcies—because of the large number of competitive forces in this industry—for it to produce any form of monopoly. But, it would reduce competition and there is a great possibility that several will go bankrupt.

Mr. MCCLORY. The assumption was made yesterday in testimony that it would be a good idea to expand the practice of grading products to include many, many food products sold at retail other than meat and poultry. What effect would that have on consumer food prices?

Mr. ADAMY. Probably none, sir. Certainly to the degree that grading can give the consumer a better idea of the product they buy, and meet their needs and uses, it would be useful, and I do not oppose it in any way. On the other hand, I do not propose or see how it could in any way reduce prices.

Mr. MCCLORY. No; well——

Mr. ADAMY. No matter how you do it, you have to grade for excellent, ordinary, and not too ordinary. No matter what the formula or terminology, you are going to end up with the same thing. There is going to be a premium price for the best of the crop.

Mr. MCCLORY. It would cost money to grade products, would it not?

Mr. ADAMY. It would cost money to grade them and handle them separately.

Mr. MCCLORY. Who is going to pay the increased cost?

Mr. ADAMY. With six-tenths of 1 percent, there is no place for it to come from except from the consumer.

Mr. MCCLORY. I will just ask one more question.

Do you feel that food prices are too high?

Mr. ADAMY. Certainly food prices are too high. They are higher than they should be, higher than we want them to be; although, let me add this in response to the chairman's first statement. Despite the fact that food prices are high in the United States, it remains true that U.S. food prices today are the lowest in the developed world.

Chairman RODINO. Do you think that is a source of comfort to the housewife?

Mr. ADAMY. No, sir. I said very firmly that despite the fact they are too high and we must bring them down, it is wise to keep some perspective.

Mr. MCCLORY. All right. If they are too high, who is getting too much out of the food dollar?

Mr. ADAMY. Not necessarily anybody. The recipient of more money is the farmer, but he is getting more money for less product, covering his costs and his position. He is not necessarily getting any richer at

all. During the last 8 to 10 years, the farmer lost money. If you take the 10-year period, I do not think you will determine that the farmer has received an irrationally high return on his investment for his labor.

Mr. McCLORY. Then prices are not too high?

Mr. ADAMY. They are too high. They are not too high because of the aggressiveness of people.

Chairman RODINO. Mr. Adamy, would you be kind enough to remain here? We are going to recess for about 15 minutes and get back from answering the quorum, and there are several other questions that we would like to ask.

Mr. ADAMY. Certainly.

Chairman RODINO. Thank you very much.

[Short recess.]

Chairman RODINO. Thank you very much, Mr. Adamy.

Ms. Jordan.

Ms. JORDAN. I have no further questions at this time.

Mr. Mezvinsky?

Mr. MEZVINSKY. Thank you, Mr. Chairman.

Mr. Adamy, you have indicated that it does not look like anyone is getting more than their fair share of the dollar concerning food, and I gather from your testimony, which I have looked at and read, that you do not consider the food retailing industry in this country as being monopolistic, is that correct?

Mr. ADAMY. Yes, sir, that is right.

Mr. MEZVINSKY. Now, you are aware that we have argued the nationwide position, but what about the individual metropolitan areas? Do you know how many metropolitan areas there are where you have a situation of four chains which control over 50 percent of the market?

Mr. ADAMY. I do not, but the answer is very, very few.

Mr. MEZVINSKY. Well, I have figures compiled by the FTC that show that almost 60 percent of the sample of 218 standard metropolitan areas had the four largest food chains controlling over half the markets, and that was just a few years ago. And you are aware of that study, are you not, the 1967 study?

Mr. ADAMY. Yes, I am aware of that study, but they have misled you on it, sir, because the fact is that you said chains. Most of the companies in those groups of four in those markets are local independents and are not chains.

Mr. MEZVINSKY. Well, you have made reference to some surveys yourself in your statement. Could you make them available to the committee?

Mr. ADAMY. Not in the same context. I quoted from the Commission on Food Marketing which made the most valid study in this area, in this country.

Mr. MEZVINSKY. So, you do not accept the FTC report, you do not accept the 1967 report that shows that 60 percent out of the 218 metropolitan areas are controlled by four of the chain companies?

Mr. ADAMY. No.

Mr. MEZVINSKY. You are disagreeing with the FTC?

Mr. ADAMY. Well, that is not what the FTC said, and that is not correct.

Mr. MEZVINSKY. Then you are saying the four largest stores?

Mr. ADAMY. Four largest companies or stores.

Mr. MEZVINSKY. Control 50 percent?

Mr. ADAMY. Could quite possibly.

Mr. MEZVINSKY. Are you aware that economists think that firm market concentration of over 50 percent of the market indicates a monopolistic situation?

Mr. ADAMY. Whose definition of monopoly, sir?

Mr. MEZVINSKY. The FTC.

Mr. ADAMY. No, sir, that is not correct. That is not an accepted definition of monopoly and it is not a valid definition of monopoly.

Mr. MEZVINSKY. What about the oligolopy?

Mr. ADAMY. The Federal Trade Commission, or any court to my knowledge, has ever said that.

Mr. MEZVINSKY. You feel there are good competitive forces at play when four of the largest companies control over 50 percent of the marketplace in an area?

Mr. ADAMY. It very well could be a dramatically positive force. Incidentally, remember that my position is that the food retailing industry of the United States today is the epitome of competition. I would say in most of those cities you are quoting, to have four strong, viable, competitive, companies gives the public the best possible deal.

Mr. MEZVINSKY. Are you aware that in the District of Columbia, as reported in that study, the four largest grocery store companies roughly had 70 percent of the local market in 1967?

Mr. ADAMY. Well, now, are you under any illusion that this is less than a competitive market?

Mr. MEZVINSKY. Well, you are aware of the Shop-Rite case, are you not?

Mr. ADAMY. Totally aware of the Shop-Rite case. What are you trying to prove with that, sir?

The implication you draw is invalid. The Shop-Rite company, a member company of NAFC, came into this market and made an unsuccessful entry. What is so new and different? In this world, people try and fail.

Mr. MEZVINSKY. I would like to insert for the record what the 1969 FTC economic report on food chain selling practices in the District of Columbia and San Francisco says about ease of entry into the D.C. market and what happened to Shop-Rite when it tried to establish a D.C. base. The FTC found that entry barriers into the Washington market also appear to be high. When Shop-Rite tried to open a D.C. store, the stores of two leading Washington areas chains located near the stores of the new entrant cut their prices substantially below those charged in the rest of the metropolitan area. In doing so, these stores operated on abnormally low margins and—for those stores for which data were available—sustained substantial losses.

Now, you indicate there is no correlation between a high market share of a chain and profits, and you are saying in the statement on page 2 there is no correlation between a high market share of a chain and high prices charged the consumer. Are you aware that the FTC study on the National Tea Co., which I will insert in the record, points out that without question there is a high correlation?

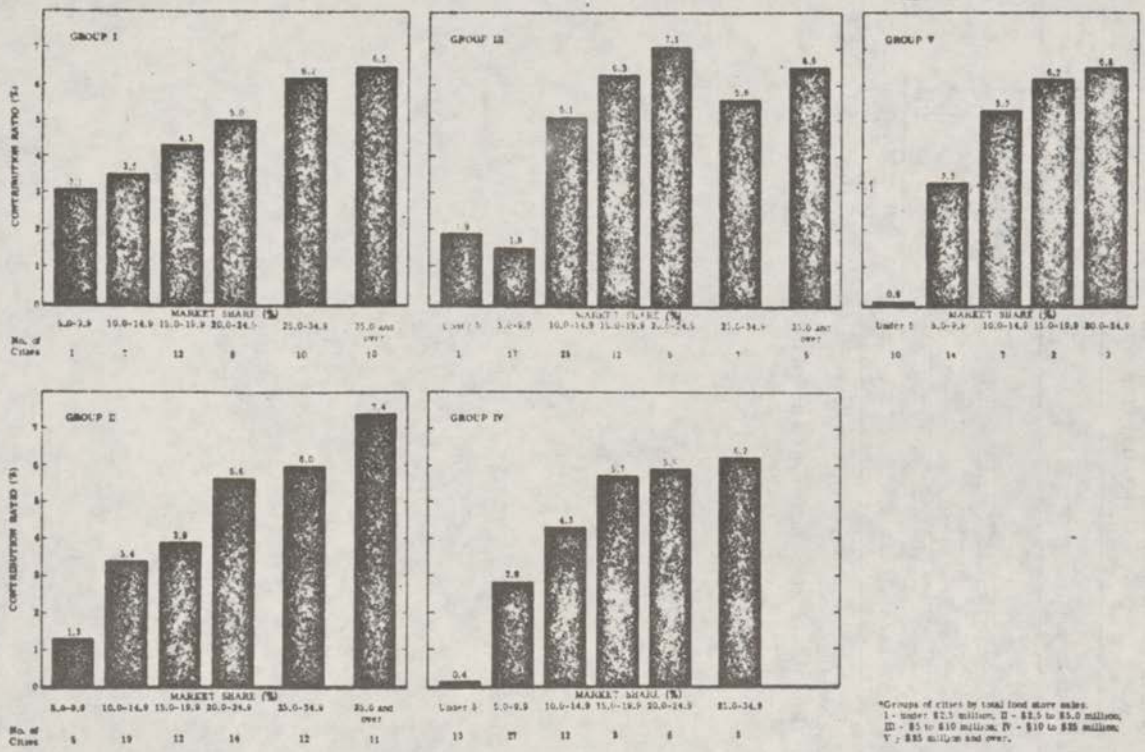
[The study referred to follows:]

TABLE 39.—DISTRIBUTION OF THE MARKET SHARE RATIOS FOR NATIONAL TEA COMPANY'S OPERATION IN 399 CITIES, 1958

Market share, percent	Number of cities	Average gross profit ratio	Average contribution ratio [1]
Under 5	48	14.9	[2] (2.3)
5 to 9.9	93	16.4	1.6
10 to 14.9	83	17.0	3.7
15 to 19.9	55	17.0	4.0
20 to 24.9	47	17.5	5.7
25 to 34.9	44	17.5	5.5
35 and over	29	17.3	6.5
Total	399		

[1] Ratios in percentages. Simple average of the arithmetic means of the cities.
[2] Negative ratio in parentheses.

Source: Federal Trade Commission, in the matter of National Tea, docket No. 7457, CX463.



Source: Appendix Table 24.

NATIONAL TEA CO.—COMPARISON OF MARKET SHARES AND STORE CONTRIBUTIONS TO WAREHOUSE OVERHEAD, BY GROUPS OF CITIES

Mr. ADAMY. Yes. Let me remind you, sir, it was about 1½ years later there was a thing called the National Commission on Food Marketing composed mostly of members of the esteemed Congress, who had a study made of the so-called National Tea findings of Mr. Miller, and found them to be totally invalid. The National Commission on Food Marketing found there was no correlation between share of market and prices, and that is substantiated.

Mr. MEZVINSKY. So, the FTC report is wrong, is that right?

Mr. ADAMY. The National Commission on Food Marketing said so, sir.

Mr. MEZVINSKY. When? When?

Mr. ADAMY. I would be delighted to submit that for you.

Mr. MEZVINSKY. OK; 1966, was it not?

Mr. ADAMY. That is right.

Mr. MEZVINSKY. That is about 7 years ago?

Mr. ADAMY. Right. But Miller's report was prior to that.

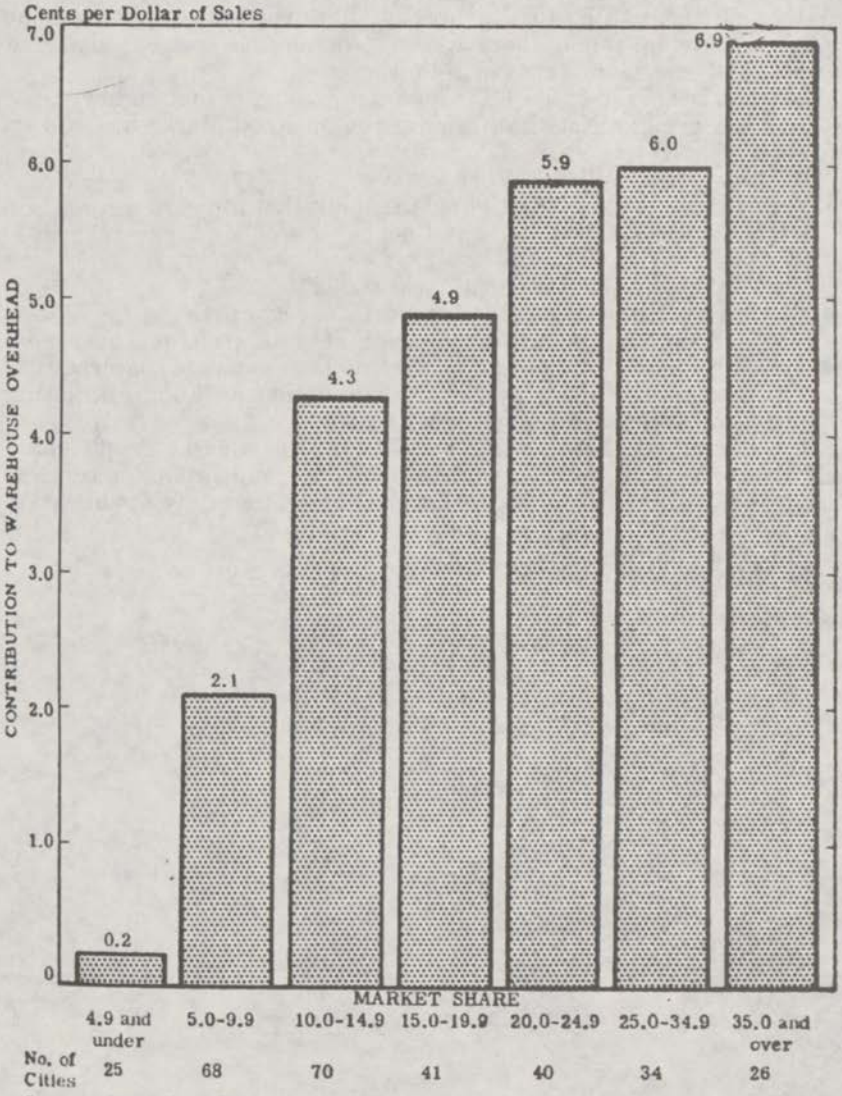
Mr. MEZVINSKY. You are saying the FTC was wrong on this report and the 1967 report on share of market, as far as you are concerned?

Mr. ADAMY. I said the National Commission on Food Marketing found that it is inaccurate, sir.

Mr. MEZVINSKY. I would like to insert for the record a graph showing the correlation between percent of market and profit for the National Tea Co., and to point out that the date of the study's publication was 1966.

[The graph referred to follows:]

THE CONGLOMERATE FIRM IN FOOD RETAILING—COMPARISON OF NATIONAL TEA'S AVERAGE MARKET SHARE AND AVERAGE CONTRIBUTIONS TO WAREHOUSE OVERHEAD IN 304 CITIES



Source: Appendix Table 24.

Now, let us go into testimony you gave before the Subcommittee on Livestock and Grains of the House Agriculture Committee last year on the subject of beef prices. Now, I gather when you appeared before this subcommittee, you were asked to provide it with meat pricing policies of various food chains, starting with meat at the wholesale level and explaining why and when the decisions were made. And it is my understanding, and I have a record of those hearings right here, that you were requested to supply that information, and to this day, I gather that it has not been supplied. Are you aware of that, and if you have that information, would you supply the information as to how that price moves, and the degree of profit in the markup on meat from the wholesale to the retail level? I am referring to the request made of you on pages 140 and 141 of the hearings on beef prices before the Subcommittee on Livestock and Grains in April of 1972. Would you supply that information, and if you have it, why have you not supplied it to the Livestock and Grains Subcommittee?

Mr. ADAMY. Well, as you understand, I can supply information to that question, sir, but the problem being that as you understand, there is no unilateral practice in a highly competitive industry, and so there would be variations. But I could explain to you how and why these things move.

Mr. MEZVINSKY. So you are saying you do not know how much they mark up their meat?

Mr. ADAMY. Oh, Lord, yes.

Mr. MEZVINSKY. Do you not have a record of that, and is that not what Mr. Melcher asked you?

Mr. ADAMY. I do not have——

Mr. MEZVINSKY. You do not have a record of how much you mark up the meat? That is unbelievable.

Mr. ADAMY. I do not own a company. I do not mark up meat. If you remember, sir, I represent an association. Companies have records and companies have figures, no question about it, sir.

Mr. MEZVINSKY. How come you did not supply it to the Agriculture Committee?

Mr. ADAMY. Pardon?

Mr. MEZVINSKY. Last year?

Mr. ADAMY. Well, if I did not respond to a question, I am truly apologetic, and I certainly will check that out because I did not mean to fail to comply with any request. There is no reason to not supply any such data, sir. There is nothing very remarkable or miraculous in this data.

Mr. MEZVINSKY. There is nothing miraculous——

Mr. ADAMY. There is nothing very miraculous in those numbers. I am delighted to supply them. No problem.

Mr. MEZVINSKY. Will you supply for this committee and for the benefit of the members what the markup is on a particular product within the food industry that is in the food chains, and how you figure that markup so we can understand how it moves from wholesale to retail?

Mr. ADAMY. What I would provide would be industry averages, which are very apt to be industry practices which vary from the time of year and things, but yes, I can supply that for you.

Mr. MEZVINSKY. And break it down by products.

Mr. ADAMY. By category, not by products. You do not deal that specifically. There is not such a thing as an item control in the food marketing because of the great number of items, the very low margin on a very low priced item. Remember the average item in a grocery store sells for less than 35 cents so that you do not have that kind of finite control that you envision. But, you would have it by category, by an arena of the store, not by specific product.

Mr. MEZVINSKY. You know, I cannot understand. You have a highly competitive business.

Mr. ADAMY. Right.

Mr. MEZVINSKY. You have pointed that out. You point out the return of earnings to sales, your profits. As you point out, you operate on a slim level of profit, 1.5 percent now down to 0.6 percent, as you pointed out. And for me it is pretty hard to understand that you do not keep a pretty close track of what is gained or lost——

Mr. ADAMY. My members do, sir.

Mr. MEZVINSKY [continuing]. On all of your products, because you operate on a very tight margin.

Mr. ADAMY. No. You do keep very close track of records, and ours is a very sophisticated industry. We are perhaps the most universal utilizers of the computer of any industry. However, the cost of keeping close watch on a very low priced item would outweigh the benefits of doing it so it is not customarily done.

Mr. MEZVINSKY. It is not customary? You are talking about technological change for services, for massive change within the industry, and you are telling us today that you cannot keep these kinds of records as to breakdown on cost of products, and you cannot supply it to this committee. Now come on, Mr. Adamy, you can do that.

Mr. ADAMY. There is a lot of work being done in that area, and we do hope to develop some things in that area in the near future.

Mr. MEZVINSKY. Are you saying you do not have the information?

Mr. ADAMY. Wait a minute. There is no Del Monte pea key on the cash register at the moment. A cash register has five keys. You can break out anything you can classify in five groups. Now, more modern equipment will make that number larger, but to get down to 8,000 items, I would sincerely doubt that anytime in near future this will be done. All those scanning devices may do that for us in the next round of technology, but at the moment, that is not physically possible, sir.

Mr. MEZVINSKY. You do it on meat, right?

Mr. ADAMY. No. You can do it on meat categorically, and we do do it on meat by species, by some rather involved formulations that would really amaze you on a cut-out chart and other such devices because there is no key. All your key on the cash register says is meat, so we know the total amount of meat that comes in, and we know the total amount of meat that was sold. But, we know that by species, what was brought. We know by our cut-out work what we should have gotten out of it. We come to a figure that is very, very useful.

Mr. MEZVINSKY. Does not a meat market manager have to figure a markup as meat comes from the packing house and moves from wholesales to retail?

Mr. ADAMY. Yes, sir.

Mr. MEZVINSKY. And so you certainly have that?

Mr. ADAMY. It is done on cut-out charts, yes, sir.

Mr. MEZVINSKY. You do have a markup from the wholesale level?

Mr. ADAMY. Yes, sir.

Mr. MEZVINSKY. You will be able to figure that on other products, whether it is chickens, milk, dairy products?

Mr. ADAMY. A great many categories, yes, sir.

Mr. MEZVINSKY. From the wholesale up to the particular market manager. Fruit and vegetable markup, you could figure that, could you not?

Mr. ADAMY. As I said, in categories we can. Stay with categories and we can.

Mr. MEZVINSKY. And you have those figures available, do you not?

Mr. ADAMY. I have to obtain them from companies. I do not have them in my office. I have no reason to obtain them normally, and I could get that information for you.

Mr. MEZVINSKY. Would it not be beneficial for this committee, as well as the public at large, to understand how that markup is determined on individual products and that what that markup is?

Mr. ADAMY. There is no reason not to provide it. There is no reason for concealing anything whatsoever. I do not really think it will benefit, you, but if you want it, you may have it, sir.

Mr. MEZVINSKY. I sure do.

Mr. ADAMY. All right. [See app. 7, at p. 531.]

Mr. MEZVINSKY. Now, and I think this is the critical area, what about understanding the metropolitan studies on the concentration that is taking place within the metropolitan areas, whether it is Washington, D.C., Houston, Tex., and what have you? Do you have any studies? You said you have some studies.

Mr. ADAMY. The most recent work of any validity done in this area was done by the marketing commission in 1966, and none has been done since then to my knowledge, sir. There are some reports that newspapers publish from year to year that pretend to show the share of market by individual companies. Because of the collection methodology, however, they tend to understate the role of the independent, but they are a measurement, they are a device. You can use them if you want to.

Mr. MEZVINSKY. Who did these private surveys?

Mr. ADAMY. The only surveys I know about at this time are done individually by market for newspapers, in order to sell advertising.

Mr. MEZVINSKY. Do you think it would be helpful to understand the concentration that takes place by looking at regional markets?

Mr. ADAMY. I really do not, but if you want them, you may have them. There is a publication called the Metro Market Study, which is published by a company that compiles the newspaper studies, that pretend to show what the share of market by company is in an individual market. Supermarket News also publishes one. There are several of these around. They are public documents. Anybody can see them, and anybody can have them.

Mr. MEZVINSKY. In many metropolitan areas, the four largest companies have over 50 percent of the market. Washington, D.C., that is still over 50 percent, would you not say?

Mr. ADAMY. I suspect that is true. Yes, sir.

Mr. MEZVINSKY. New York City?

Mr. ADAMY. I would doubt that.

Mr. MEZVINSKY. Detroit?

Mr. ADAMY. I would doubt that.

Mr. MEZVINSKY. Houston, Tex.?

Mr. ADAMY. I doubt that. I do not believe that you would find four that would make it in any one of the cities you just named. I do not have it at my fingertips, but I doubt it very much.

Mr. MEZVINSKY. Atlanta, Ga.?

Mr. ADAMY. I doubt it.

Mr. MEZVINSKY. 60 percent in 1967. Atlantic City?

Mr. ADAMY. Atlantic what?

Mr. MEZVINSKY. Atlantic City, N.J.?

Mr. ADAMY. I have no idea.

Mr. MEZVINSKY. Cedar Rapids, Iowa?

Mr. ADAMY. I have no idea.

Mr. MEZVINSKY. I might state at that time in 1966, it was 80 percent.

Mr. ADAMY. I do not even know who does business in Cedar Rapids, unfortunately. I would think that you would find that in the majority of the market, that there is a strong, viable, competitive structure.

Mr. MEZVINSKY. Newark, N.J.? You were aware in 1967 four concentration was near the 50 percent bracket?

Mr. ADAMY. Four companies doing 50 percent in Newark, N.J. in 1967?

Mr. MEZVINSKY. You are talking about a situation where you are in the 40-plus percent, near 50 percent. In many other cities, four companies are much over that.

Mr. ADAMY. That would not surprise me, and four companies doing 40 percent would show that you have four strong, viable, relatively equal companies meeting head-to-head, and that is what competition is about, and that is the best way, in my opinion, to assure the public of viable, effective service.

Mr. MEZVINSKY. You said to Ms. Jordan that the food chains had avoided an FTC antitrust case so far, is that right?

Mr. ADAMY. No FTC? I did not say that.

Mr. MEZVINSKY. You said there was no antitrust action filed against anyone.

Mr. ADAMY. I never said that.

Mr. MEZVINSKY. I thought you answered that when you were asked a question.

Mr. ADAMY. I beg your pardon. If I did, I apologize. I certainly did not mean to say that. I do not recall the question or its context, and I beg your pardon, because I certainly did not say that, because that would not be true.

Mr. MEZVINSKY. Well, I will appreciate, as well as the committee, having the breakdown on meat margins you were asked to supply the Livestock and Grains Subcommittee. You said you would supply those markup figures and also give us the markup for other important food categories. Thank you for your comments. [See app. 7, at p. 531.]

Ms. JORDAN [presiding]. Thank you.

There are some questions that need to be asked in order to develop the record, which this committee needs to have to take whatever action it decides to take at the conclusion of these hearings. One such question relates to your testimony on page 15 that many firms are hesitant to participate with their competitors in the development of

industry standards. Now, I understand that food chain companies recently got together to develop a product code, and you talked about that, to be used in automatic checkout systems. Furthermore, there is potential for violation of antitrust laws by cooperative activities in the area of standards or anticompetitive effects, which need never result. The question is, do you really believe that the antitrust laws are unclear in the area of standards, and why can't food chains obtain a business review letter from the Department of Justice when there is some uncertainty about the antitrust status of proposed cooperative activity?

Mr. ADAMY. It is very difficult to get such a letter, Ms. Jordan.

Ms. JORDAN. What is?

Mr. ADAMY. In the case of the universal product code. After much travail, and many years of effort, a committee was finally formed to move toward the development of a universal product code to identify uniquely the items that move in grocery stores. The first thing this committee did was hire an attorney, and the first thing that he did, under the committee's instructions, was to meet with the Federal Trade Commission and keep them constantly informed. Most recently, within the last month, we have received a letter from the Federal Trade Commission which dealt in generalities. I will be glad to send you a copy. It is a masterpiece of legal writing, which said in generalities that so far, we have done nothing wrong they have noted, however, we were not to forget they did not give up the right to keep looking, and if they found something, would come back and take any action deemed proper. In other words, they were saying to the degree that it says we do not give you a license to break the law, we agree with it. To the degree that it dissuades people from moving toward a positive gain essentially for the advancement of society. I disagree with that. There is a lack of clarity because the letter from FTC can be read in either way. If you do not want to participate, or need an excuse to get out, that letter was a beautiful example.

[The letter referred to follows:]

FEDERAL TRADE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., June 27, 1973.

STEPHEN A. BROWN, Esq.,
Kirkland, Ellis and Rowe,
Washington, D.C.

DEAR MR. BROWN: This is to inform you as counsel for the Ad Hoc Committee on a Uniform Grocery Product Code, its Symbol Standardization Subcommittee, and Uniform Grocery Product Code Council, Inc., that the Commission has authorized its staff to provide informal staff advice and to continue informal discussions with you on the proposed Universal Product Code.

You are advised that any such advice does not, in any manner, commit, bind, or estop the Commission in regard to any future action which it may deem to be in the public interest. Your letter of March 15, 1973, to Mr. Halverson indicates that you and your clients fully realize that such advice in no way constitutes an expression of Commission approval of the program or of its implementation and that the Commission is free to challenge the Code in any aspect if it should have reason to believe a violation of law is present.

By direction of the Commission.

VIRGINIA M. HARDING,
Secretary.

Mr. ADAMY. Let me divert your attention to backhauls. The letter from FTC regarding backhauls only says that if you break the law, FTC will get you. The majority of companies in the food industry,

have determined that they cannot grant backhauls because of that letter, so in this regard it does dissuade. Now, they did not intend to declare that backhaul, per se, was illegal, for it certainly is not. On the other hand, they have undeniably increased the cost of food by a figure maybe as high as $750 million by their letter because of its lack of clarity. The people at FTC are good people. They wrote it just as clearly as they thought they could with their interpretation of the laws they enforce, and to be accused of being a detriment to progress offends them. However, that is the result that has occurred.

Ms. JORDAN. Your description of that letter makes it sound like one of the slickest obfuscations.

Mr. ADAMY. Thank you. Yes. I could not pronounce that word. Thank you, ma'am.

Ms. JORDAN. I wonder if you would let this committee have a copy of such letter? It might be helpful to us in trying to help the agencies do a clearer job.

Mr. ADAMY. Delighted to do so, ma'am. We will submit it immediately to you. We have a copy and we will send it up immediately.

Ms. JORDAN. Good.

[The letter referred to follows:]

FEDERAL TRADE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., October 2, 1967.

Re File No. 683 7026.

ALBERT G. PERKINS, Esq.,
Law Department,
General Foods Corp.,
White Plains, N.Y.

DEAR MR. PERKINS: This is with further reference to your request for an advisory opinion with respect to your proposal to grant so-called "back-haul" allowances to customers who pick up their own purchases at General Foods' warehouses.

You state that you presently sell dry (non-frozen) grocery products on a delivered price basis with bracket pricing and do not permit customers to pick up products at warehouses or plants. Customers with trucks returning empty to their warehouses along routes near General Foods' warehouses and plants are now demanding the opportunity ot pick up products and to earn an allowance by so doing. You further state that you are now considering a program whereunder customers would be permitted to pick up products and be paid an allowance equal to the amount you would otherwise have to pay a common carrier to deliver to the customer.

Assuming a favorable opinion as to this question, you further request an opinion as to whether the program may lawfully be offered under conditions which would limit its availability to large (truck-load) orders. This restriction is contemplated because of limited loading dock space at your warehouses and plants and because you intend to load orders on customer equipment. Hence you intend to impose uniform restrictions on the type of equipment that may be used and upon the size of the order that may be picked up.

In the Commission's view, this proposal is governed by the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, which, in brief, provides that it shall be unlawful for a seller to discriminate in price between different purchasers of goods of like grade and quality where the effect may be to substantially lessen competition or to create a monopoly and where none of the defenses afforded by the Act are present. It is the Commission's further view that the proposal is also governed by the provisions of the order under that Section in Docket 6018, issued against your Corporation in 1956.

The Commission has given your first proposal its careful consideration and has concluded that, assuming the presence of all other elements necessary to a determination of a violation of this statute, its implementation would probably result in a violation of the Act and the order in Docket 6018. This result would

seem to necessarily flow from the use of a delivered pricing system, for in such a case the freight factor included within the price is not the actual freight to any given point, but an average of the freight costs for all customers within the zone wherein the delivered price is quoted, or, at least, a figure determined by some formula apart from actual costs. If one customer is then given a "back-haul" allowance for the actual freight saved, it would seem that a serious possibility of discrimination would exist in any delivered pricing system and it is highly doubtful that the defense of cost justification, at least, would be available.

While this conclusion may seem unreasonable from one point of view, since the allowance will be for no more than the actual freight saved, it would seem to be a necessary result of using a delivered pricing system. Whenever such a seller departs from his delivered prices for the benefit of one customer, he leaves himself open to a charge of discriminating against his other competing customers who order in the same quantities and hence fall within the same pricing bracket because he failed to make allowances for the individual cost factors present in their situations. The law does not require that a seller pass on his cost savings to his customers, but where he elects to do so in one instance it does require that he not discriminate between his purchasers where such discrimination has the proscribed adverse effect on competition.

In view of this disposition of your first question, there does not appear to be any need for the Commission to press upon the second.

By direction of the Commission, Commissioner Elman not concurring,

(Signed) JOSEPH W. SHEA
Secretary.

Mr. ADAMY. But my point also being that certainly the laws have to be written well so that they do not permit illegal acts or illegal conspiracies or price fixing, and I am totally in agreement with that.

On the other hand, there must be better ways to move toward things like uniform pallets, or uniform carton sizes, or the uniform identification of items which make possible great technology.

Ms. JORDAN. We had testimony yesterday, Mr. Adamy, that maybe one way that we could bring down the cost of food was to let the consumer shop for grades rather than for brand product names. I am sure you have heard that suggestion before.

Let the Government grade the meat so that this would be the standard for the consumer to view. How do you react to that?

Mr. ADAMY. I do not think that it would do what those nice people think it would do. Some years ago, my association induced a great many members companies to put things in gray packages and grade them A, B, and C. They were put on the shelf, but to make it a fair test they put in competition with branded products. The choice was about 95 percent for branded products. Unit cost is in some measure at least a function of the unit volume, and if you increase the production of A over B, A's cost will go down while B's will go up.

And so the advertising and promotion of an item to centralize sales and, therefore, increase volume per unit, is a very useful device to reduce unit cost and therefore, save consumers more money. And I really think that advertising of an individual product is a better hope for the consumer than the seemingly good idea of individual gradings.

I would be delighted to again participate in any kind of an intelligent experimentation that was academically approved, to demonstrate——

Ms. JORDAN. Academically approved?

Mr. ADAMY. That was quite valid and was involved with people who are truly expert in the marketing field, is what I mean to say, Miss

Jordan. We would be glad to cooperate in any study, and I do not mean to put all of these caveats in here.

We would be glad to cooperate in an effort to prove the point that it is the other way which, in fact, is better for the consumer.

I really believe that the current marketing practice provides more service.

Ms. JORDAN. Product differentiation has always been a source of influencing purchasers. Perhaps we ought to try something else. I know you would like to return to the preceding century, and I do not mean that unkindly. But when you anticipate the marketplace of the farmer tilling the soil, and growing his grain, and elementary principles of supply and demand and economics when we know how complex the entire system is, to anticipate that a return to that system would have the inner controlling powers that the consuming public needs, I think what you want is to return to some century that is impossible for us to reconstruct in 1973.

And it might be that perhaps something new ought to be tried that would allow the maximum degree of freedom possible, in terms of the producer of goods, which would also protect the consumer from the potential of a gouging on the part of the producers of goods.

I know that you do not want to see the public gouged any more than I do, because you are the public just like I am. You have to eat, and I know that perhaps there are steps which could be taken right now which might reduce inordinate costs, we want and provide us with the kind of product at prices that we could afford.

Mr. ADAMY. Ms. Jordan, if any part of my commentary I sounded an appeal for a return to a pastoral society, I apologize, or to any former society. But I must believe that because of the complexity of the economic social structure that we are a party of, that the last 50 years have pretty clearly demonstrated that man's attempts to interject his will and knowledge into this device has been quite unsuccessful.

I would think that we came out of the massive Depression by virtue of a war to go into a period of continued insidiously debilitating inflation which got its eventual achievable goal, it broke out into real inflation. And I would think that unless we allow the elements of the market to demonstrate their own interrelationship we are going to be in very big trouble ahead, and I really propose a return to a freer market.

And the fact of the matter is, I think the market that is ahead is freer than any market in the past because of our greater means of communication and transportation, and that it would have much more benefit for the public than the intercession of man with his failure, including this man.

Ms. JORDAN. Mr. Adamy, thank you.

The counsel for the committee would like to ask two or three questions.

Mr. FALCO. Mr. Adamy, you have indicated a reliance on the National Commission on Food Marketing throughout your statement and in your responses to the committee's questions. One of the conclusions that the National Commission on Food Marketing reached was "several popular 'tests' of whether the food marketing system is working well or poorly are not really very enlightening. For example, the declining

share of consumers' income being spent for food is not evidence of a superior performance by the food industry.

"This share declined from 22.2 percent in 1950 to 18.2 percent in 1965. But, had farm food prices risen as much as the farm retail spread, food would have cost consumers 22.2 percent of their income in 1965. A decline from 22.2 percent to 20.2 percent over a 15-year period could be due entirely to the nearly universal principle that as people's income rises they spend a smaller portion of it on food."

In light of this conclusion by the National Commission on Food Marketing, what evidence do you now give this subcommittee of superior marketing performance of food retailers, and, of course, I am using the word "performance" to include the economic sense of price as a feature of performance?

Mr. ADAMY. Well, first of all, Mr. Falco, let me state that I am more impressed with the percentage of disposable income spent for food figures in the last month than I was in that period of time, because in the last month they have dropped from 12.3 to 12.2 percent of disposable income for food at home, and in this period a very high raw material cost, and I think it is more meaningful. I would think if you took the CPI, which also has its frailties, for the period of the last 10 years or 5 years, or any other extended period of time, you will discover that food costs increased at a rate some 25 percent less than the all-item index.

I would propose that as somewhat compelling evidence, and put it in juxtaposition with the percent of disposable income, and I think it becomes more meaningful. The rate of inflation in the industry, the constant improvement, some of which, of course, is visible in the size and shape of stores and, therefore, the economies of scale are visible to you.

A great deal of it is not visible to you in the development of the methods, controls, and item control like digitonic systems and store reordering systems, and the short interval scheduling systems or the control of manpower, the full cube loading systems for the control of trucks and the distribution system. I think you have evidence of this.

So, if you take the percentage of disposable income, if you take the relative posture of food in the CPI and if you take the rate of innovation in this industry, I think that you come up with a pretty strong case as to the true market contribution of the food retail industry, sir.

Mr. FALCO. Is it not true that a principle of the marketplace is like in the antitrust laws, to promote innovative techniques and technology, know-how and achievement of economies of scale were possible and that once achieved they would be reflected in market performance, and one of the characteristics of market performance is price?

And so I would like to repeat my question. What evidence do we have of superior market performance since the Commission or even at the time of the Commission's report?

Mr. ADAMY. Take the CPI since the time of the Commission and you will find that food prices have been, as I have stated, 25 percent less than the all-item index. We are part of a totally integrated, interrelated, socioeconomic world.

Our prices cannot go down when all other prices go up. Our prices have risen in this period of time, but at a much lesser rate. In fact, we

have the best track record over any 10-year period that you want to take on price of any sector of the economy of the United States.

Now, in saying that, Mr. Falco, let me make an apology for my caveat on farming. The total agribusiness system is interrelated, and at some period in time the contribution was disproportionately that of the farmer, or manufacturer, or retailer, but not all of us equally, but in the end that is a great measurement of our track record of marketing innovation.

Mr. FALCO. I would like to shift topics for a minute and ask a question, Mr. Adamy.

During the freeze, retail outlets were able to discontinue trading stamps if they passed on the value of the stamps to the customers in the form of lower cost merchandise, which retail outlets can do by either two ways, by lowering the price of everything they sell by the value of the stamps, or also by deducting at the cash register the value of the stamps for the price of those items for which trading stamps would have been given.

What chains discontinued the trading stamps during the freeze, and what methods have been chosen by them for lowering prices?

Mr. ADAMY. Unfortunately, I can only remember one company. As you know, it is incidental that I should know who does this, and I remember one of the companies in Minneapolis did this. I suppose that they chose the method of lowering their prices because it would be a lower operating cost. But, if you put the lower price on the can, it would be cheaper than adding the reduction at the cash register, so I am not aware of anyone in any way using the second methodology that you have mentioned. I do know several companies have discontinued stamps, but unfortunately I can only particularly remember one company.

Mr. FALCO. I think we would appreciate receiving information of which stores have reduced their costs because of discontinuing trading stamps. And in this regard, is it not true that prices at the retail levels would be reduced by the market value of the stamps and not the cost of the stamps to the retailer?

Mr. ADAMY. That is what the regulation says. As you understand, any place where anybody would remove stamps our friends in the Internal Revenue Service have been very diligent in their surveys of these markets.

I would suggest you call on Mr. John Johnson or others at IRS to get such a list because they have it much more readily available than I, sir.

Mr. FALCO. Thank you, Mr. Adamy.

Mr. MEZVINSKY. I want to raise one question concerning house brands, Mr. Adamy. A consumer goes into a store and sees a product. It may be a can of peaches. The can may carry a Safeway label or an A&P label or a Giant label. Right next to it is the Del Monte or Libby's label, and there is a difference in price between the house brand and the well advertised brand.

Can you enlighten the committee, and myself in particular, certainly, as to whether or not there is a difference in markup or whether or not you have the same companies actually canning and putting the product together for the particular supermarket involved, whether the quality is the same and if you do have the same company and the same quality, why are the chain stores going into house brands. Only

you can explain for us the advertising practices that apply to house brands versus the well-advertised brands?

Mr. ADAMY. Well, house brands or private labels, as we call them, mostly are not manufactured by the principal, national manufacturers, and in the case of fruits and vegetables, almost never.

Frankly, this is what keeps the small canner and the small freezer in business in this particular arena, and in most arenas this is true. They have bought from other manufacturers, principally people whose principal business is supplying private labels. I will agree readily that there are cases in which national brand manufacturers do manufacture our private labels.

Mr. MEZVINSKY. Do you know what percent is actually working this way or is that a realistic figure for you to supply?

Mr. ADAMY. I just do not have that, sir. I do not know that and I do not know how I would get it.

Mr. MEZVINSKY. You know, whether they are the small canners or whether you have the Libbys and Del Montes doing it both for chains as well as for themselves.

Mr. ADAMY. I would have to make some kind of a survey, and I do not even know how I would structure it to get that information for you.

I assure you, sir, that the Libbys and Del Montes are very small private label factors in this area. Companies like Cal Can, which you have never heard of, is a larger company that does mostly private label manufacturing, but they are comprised of most of the several thousands of small packers and freezers that do the private labeling and packing in this country, basically.

Every chemical company test is made to assure the same quality at the same price level, and, of course, there is the excellent, the very good, and the good.

But at that level there is a definite effort to make them the same. The margins would be generally the same. There might be a minor variation.

Mr. MEZVINSKY. Then why have the private label? Why have the private label?

Mr. ADAMY. The cost is different. As you understand, first of all we take ownership at the time of packing, we are responsible for the product.

We do no advertising. We have no sales force. Our distribution is much more direct, and uninvolved, and there are actual cost savings in the fact that we take ownership at the time of packing and we have to take all responsibility for the product. It is our product. We can it.

We pack it, or we freeze it, or do whatever is done with it. And it is ours, and there are some actual cost removals and they are reflected.

I think the Department of Agriculture report shows about a 16-percent differential in private labels, that you could save as much as 16 percent by buying private labels over national labels.

Mr. MEZVINSKY. All right.

Madam Chairwoman, I will defer any other questions. Thank you.

Ms. JORDAN. All right.

One final question, and then we are going to adjourn this hearing.

Do you feel that the current inflation we are experiencing is psychologically induced?

Mr. ADAMY. Lord, no.

Ms. JORDAN. On the second——

Mr. ADAMY. There is no question that the psychological input is an additive factor. Inflation is augmented by psychological factors, but it is very real. The supply-demand equation that is measurable and identifiable.

Ms. JORDAN. Well, it appears that you have made a statement back on June 20th of this year.

Mr. ADAMY. That is right.

Ms. JORDAN. That that was the case, Mr. Adamy.

Mr. ADAMY. That is a wee bit out of context, ma'am, because I said that if we solved the feed grain problem and brought the prices of meat down incidentally, that were incidental thereto, it would tend to wash out other psychological factors in the market.

Ms. JORDAN. I see.

Mr. Adamy, you do think we need antitrust laws to protect the public?

Mr. ADAMY. Yes, I do, of course, and I have tried to say so and I have been rather strong in that point today.

Ms. JORDAN. And would you apply that same statement to oligopolies?

Mr. ADAMY. I would apply the same statement to oligopolies.

Ms. JORDAN. All right.

Are there any further questions?

Thank you, Mr. Adamy, for appearing before us this morning.

[The prepared statement of Mr. Adamy follows:]

STATEMENT BY CLARENCE G. ADAMY, PRESIDENT, NATIONAL ASSOCIATION OF FOOD CHAINS

My name is Clarence G. Adamy and I am President of the National Association of Food Chains, 1725 Eye Street, N.W., Washington, D.C. NAFC is a trade association representing corporate food retailers which operate from two to approximately 4,000 stores. Its membership is comprised of all of the larger, most of the medium sized and a representative cross-section of smaller chains.

We appear today at the invitation of the Chairman to discuss competitive conditions and the effect of antitrust enforcement in the food industry. NAFC can only presume to address this question as it relates to the distribution sector of the industry. It is our conviction that the food retail industry is extremely competitive and that the benefits of this vigorous competition are realized by the consumer. Further, the trend in the industry is pro-competitive, a result, in part, of a high level of entry and growth of smaller firms and the development of new forms of competition.

I. COMPETITION IN FOOD RETAILING

By every available measure the grocery retail industry is highly competitive. Any hypothesis that increased food prices are the result of monopolistic practices or other antitrust violations at the retail level cannot be sustained. In NAFC's opinion, FTC Bureau Director James Halverson was on target when he advised this Subcommittee that current food price increases reflect a normal and competitive reaction to supply and demand. NAFC would also agree with the statement of Assistant Attorney General Kauper in explaining to the Subcommittee that Section 2 of the Sherman Act had not been widely used in the food industry because ". . . conditions which are necessary to bring the Act to bear—monopoly power, and an abuse of that power—have not been prevalent. Both the retail and the wholesale markets in the food industry are generally served by a number of competitors none of which has sufficient market power to come within Section 2 of the Sherman Act".[1]

[1] Statement of Asst. Atty Gen. Thomas E. Kauper before the Antitrust Subcommittee, House Committee on the Judiciary, 7, 8 (June 27, 1973).

We have consistently pointed out that survey statistical analyses of the structure of an industry are inadequate bases for evaluation of an industry's performance in the public interest. As the staff of the National Commission on Food Marketing observed in 1966, there is no correlation between a high market share of a chain and high prices charged the consumer.

In response to allegations that this correlation exists, the staff found that firms with higher market shares had higher prices in only 16 of 30 comparisons and concluded that, ". . . variation observed in gross margin results more from variation in the sales mix, waste and pilferage than variations in price levels".[2]

Nevertheless, data which are available do point out the existence of effective competition in food retailing. According to recent reports, the approximately 406 food chains (firms operating eleven or more stores) account for 49 percent of all grocery store sales in the United States, and a somewhat lesser percentage of the nation's $108 billion food store sales. Thus the majority of grocery store sales is made by independent retailers. Independent firms which are affiliated with cooperatives or voluntary wholesalers represent 44 percent of all grocery store sales, about the same percentage as the corporate chains.[3] These percentages are also approximately the same as those reported by the National Commission on Food Marketing for 1963.[4]

The success of the independent retailer can be seen in large part in the growth of cooperatives and voluntaries. During the decade between 1954 and 1963, their growth exceeded that of the chains and since then has kept pace. Sales registered by independent stores in 1971–1972 exceeded that of the chains.[5] According to the staff of the National Commission on Food Marketing,

> The development of the affiliated independent successfully duplicates most of the advantages of chain store organizations at wholesale, and retains the small-business aggressiveness and flexibility at retail. It is one of the best examples of the combination of advantages of "big business" and "small business".
>
> The most important competitive advantage of the affiliated independent arrangement is the initiative and aggressiveness of the store owner-managers. These individuals are typically a part of the community they serve, they know their customers personally, and they are able to observe, understand, and respond to their particular environments with much more sensitivity than is typical of chain store organizations.[6]

Analysis of the data underlying the percentage of grocery store sales by firms operating 11 or more stores themselves shows that the greater proportion of growth has been realized by smaller and medium-sized chains. Thus, in 1963 there were reportedly 2,484 firms operating two and three grocery stores, compared with 3,000 firms in 1972; the 1963–1972 figures for the 4–9 store categories were 629 and 898 respectively.

It is evident, therefore, that the population of smaller chains has increased substantially in the past decade. During the same period the number of 10–25 store operators expanded from 200 to 247 and the number of firms operating 26 stores are more increased from 103 to 199. These data demonstrate that new firms steadily appear in the retail food industry and these smaller firms have enjoyed such healthy expansion that a large number have entered the eleven or more store classification in the last 10 years. A large measure of the absolute and relative growth of the larger categories is, therefore, attributable to the expansion of successful smaller competitors rather than the growth of established firms.[7] This observation is corroborated by a relatively level percentage of grocery store sales represented by the 10 largest food retailers, with an actual decline having been experienced by them between 1969 and 1972. The number of stores operated by the 10 largest food chains has remained at virtually the same level for the decade. The Federal Trade Commission has actively pointed out the virtual absence of merger activity of large food chains in recent years. The largest food chain sales growth in 1972 was experienced by firms of a small to medium-sized category, operating between 25–49 stores.[8]

In sum, on a nationwide basis the food retailing industry reflects an effective level of competition even from a purely structural "market share" standpoint.

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[2] National Commission on Food Marketing, Technical Study No. 7, Organization and Competition in Food Marketing, 20 (June 1966).
[3] Progressive Grocer, 40th Annual Report of the Grocery Industry (April 1973).
[4] National Commission on Food Marketing, *supra*, n. 2, at 33.
[5] Progressive Grocer, *supra*, n. 3.
[6] National Commission on Food Marketing, *supra*, n. 2, at 38.
[7] Chain Store Age, 1972 (sales manual), 61 (July 1972).
[8] Progressive Grocer, *supra*, n. 3, at 130.

The approximately 400 firms operating 11 or more stores account for less than 50 percent of total grocery store sales, and the share of this category has remained stable. Independent grocers affiliated with cooperatives or voluntary organizations have continued to reflect a substantial sales growth and a steady percentage of grocery store sales. Finally, within the chain store category, smaller and medium sized chains have enjoyed the highest rate of expansion.

It has been accurately observed that retail sales competition is most intense at the local level. There is, however, a lack of reliable data upon which even to assess "market shares" at these levels. First, there is not general agreement as to the definition of a "local" market, some contending that it would encompass an entire standard metropolitan statistical area, others arguing that narrower perimeters should be drawn. Of course, different "market leaders" and "market shares" will appear depending on the definition adopted.

Some insight into the nature of these markets can, however, be found in the work of the National Commission on Food Marketing's staff. The following observations were made in their technical study.

(1) Smaller firms tend to retain their market position more tenaciously than larger firms;

(2) Firms with "market shares" in excess of 20 percent exhibit substantial instability, and their market position is subject to considerable erosion; and

(3) Increases in local concentration result mainly from the growth of local and regional firms.[9]

As to this last conclusion, the Food Commission staff explained:

> While the largest 20 firms show some growth in the national market, at the local level they have experienced considerable change in both directions. *This has resulted in a net decline of the average share held by these firms in local markets.*[10] [Italics supplied].

No comprehensive government study of local markets in food distribution has been undertaken since the work of the National Commission on Food Marketing. Private surveys which are available, however, tend to confirm the NCFM observations, even though these surveys tend to understate the precentage of sales of independent food retailers.

In any case, as we pointed out at the outset, purely structural analysis is inadequate for a realistic evaluation in any industry in any market. At the outset of this statement we quoted a key finding of the National Commission on Food Marketing staff that there is no correlation between market shares and prices in food retail markets.

Another criterion under even a structural analysis is the pace of entry into the industry under consideration. The ease of entry into the food retail industry is widely recognized. For example, the Federal Trade Commission itself, in the only contested food distribution merger case decided by the agency, relied on the facility of entry in the industry in declining to attempt to require divestiture.[11] Other information previously referred to—the steady increase in 2 and 3 and 4–9 store operators and the expansion of firms operating 11 or more stores—demonstrates the free movement of smaller firms into larger size classifications.

Perhaps the most striking illustration of ease of entry in food retailing is a tabulation, recently published by *Chain Store Age*, which lists more than 300 firms which it describes as "*unknown* 10 years ago" which are currently operating four or more stores.[12] Even in the unlikely event that the 300 figure represents a complete inventory, it would mean that nearly 25 percent of *all* firms operating four or more stores in 1972 were either not in existence or did not operate two or more stores in 1963.

Further evidence of the vitality of competition in food distribution may be derived from the extent to which new forms of competition have appeared and thrived. The number of smaller convenience stores has more than trebled between 1965 and 1972 and sales volume has increased from $720 million to $3.75 billion over the same period.[13] Very few of the firms which have contributed to this expansion also operate supermarkets. The food retail industry also confronts increasing competition from discount department outlets with food departments and, to a striking degree, from restaurants and the relatively recent fast food phenomenon.

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[9] National Commission on Food Marketing, *supra*, n. 2, at 57.
[10] *Id.*
[11] National Tea Co., ——— F.T.C. ——— (1966).
[12] Chain Store Age, *supra*, n. 7, at 64–66.
[13] Progressive Grocer, *supra*, n. 3, at 158.

Thus far, consideration has been related solely to a structural analysis of competition in food distribution. Other relevant evidence underscores the industry's competitive vigor.

The profit perfromance, or rather lack thereof, of food retailers is wholly inconsistent with a monopoly or oligopoly hypothesis. Industry earnings declined sharply from near normal levels of 1.4 percent of sales, after taxes, during the period 1965–66 to .83 percent in late 1971.[14] An analysis of reports of the 35 publicly-held food chains discloses average after tax earnings on sales in the first quarter of 1973 at the even lower level of .64 percent.[15] With the exception of the third quarter of 1972, this most recently reported quarter is the lowest for which NAFC has records. These data are supported by the Supermarket Institute's *Operations Review* which shows the first quarter 1973 *pre-tax* earnings on sales for the typical food retailer of .9 percent.[16] During the period between August 13, 1971 and June 22, 1973, the value of publicly-held food chain stocks has declined by more than $2.1 billion. Part of the industry's profit difficulties may be attributable to the inequities which have arisen under the economic stabilization program. It is generally recognized, however, that price competition, always a crucial factor in food retailing, has been and is now extremely sharp, contributing in large measure to declining industry profits. It is highly significant that during this period, the independents' profits have been sustained better than have those of the chains.[17]

Another indicator of the competitive nature of food retailing is the constant effort of the industry to achieve operating efficiencies through technological innovation. Paramount among these undertakings is the current major commitment to the establishment of a universal product code which in its first phase will greatly facilitate the distribution of food and grocery products. As the program develops further, it will tie *into an electronic store front end* using automatic scanning devices. Enormous potential economies and enhancement of consumer convenience can be realized by this development. Other economic efficiencies are being sought throughout the food industry, particularly in the handling and transportation of merchandise. For example, very recently a grocery pallet council was formed to streamline the handling of grocery products.

II. GOVERNMENTAL IMPEDIMENTS TO FOOD INDUSTRY PRODUCTIVITY

The staff of the National Commission on Productivity has concluded that it is of critical importance for the food industry to accomplish the,

> [R]eduction or elimination of impediments to productivity due to Federal, state and local government regulations.[18]

The Commission's staff has also concluded that there is a need for,

> [c]larification of antitrust regulations to alleviate the climate of uncertainty that inhibits certain productivity improvements in the food industry.[19]

Underlying these general observations are numerous examples of situations in which the industry and the public could be better served were it not for unnecessary governmental barricades.

A few examples will illustrate the manner in which governmental actions have operated to impede industry efficiency.

A. *Backhaul.*—According to reliable estimates, up to 40 percent of the trucks on the nation's highways are running empty and this astounding figure is higher in the food industry. A restrictive interpretation of law by a federal agency is a major contributor to this situation. In the food industry, the effect of a present Federal Trade Commission interpretation ruling is a requirement that food distributors' vehicles return empty from delivering merchandise to stores, passing one or more suppliers' warehouses which at the same time are loading products on suppliers' warehouses where other vehicles are being loaded for the same distributor. This incredible situation stems in large measure from an Advisory Opinion of the Federal Trade Commission, issued in 1966 [Advisory Opinion No. 147 (1966)]. Under the terms of that Opinion, FTC has declared that it would probably be unlawful under the Robinson-Patman Act for a supplier to allow a distributor a discount from the delivered price in the amount of the actual freight costs saved by the supplier as a result of the distributor's performance of the

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[14] NAFC study.
[15] NAFC tabulation.
[16] Supermarket Institute, Operations Review, first quarter 1973 (May 1973).
[17] Progressive Grocer, *supra*, n. 3, at 131, 152.
[18] National Commission on Productivity, Productivity in the Food Industry, 10 (1973).
[19] *Id.*

delivery function. The Commission arrived at this conclusion notwithstanding the absence of any supportive precedent. It is estimated that between $250 million and $750 million additional costs in food distribution result from the lack of generally available backhaul. The Advisory Opinion rests in part on the erroneous assumption that large chains and large distributors would be accorded preferential treatment if backhaul allowances were generally available. The fact is that every distributor must have some means for delivering merchandise from a warehouse to stores, and the vehicles used to perform this function could as readily accept delivery of goods at a suppliers' distribution center if they are operated by an independent wholesale grocer as by a chain. It is noteworthy that the major associations representing independent retailers and wholesalers advocate elimination of an unwarranted interpretation of law which inhibits the realization of the savings that can accrue from more efficient use of vehicles through backhaul.

According to a study by Dr. Gordon F. Bloom of M.I.T.,

> The backhaul concept is too important a factor in productivity in transportation to be eroded by legal casuistry. Considerations of efficiency, practicability, and the intent of Congress . . . all dictate a more liberal view of backhaul allowances than that embodied in the Commission's [advisory] opinion.[20]

B. *Multiple Labeling Requirements.*—Several agencies of the federal government exercise responsibility over the products sold in grocery stores and have promulgated numerous regulations concerning packaging, labeling, storage and handling. Labeling regulations, in particular, are proliferating, with the most recent development being the Food and Drug Administration's nutritional labeling rule. Food chains themselves have widely initiated open dating and unit pricing. With the expansion of federal labeling requirements, there has been a concurrent growth of state and local controls in this area, often at establishing standards in addition to or different from those set at the federal level. Many food chains do business in a number of states and, of course, incur substantial expense in complying with various dissimilar regulations. According to the National Commission on Productivity,

> While the intent is to inform the consumer, protect him from unhealthy food and promote nutrition, it must also be recognized that the variation among Federal, state and local regulations tends to impede efficiency and reduce competition.[21]

The Commission found that a cost of $75,000 was incurred by one out-of-state processor in adjusting his label to a single change in sausage label requirements by a single state.

The answer to this problem may not be full-scale federal pre-emption, but unless the states adopt uniform rules and resist the temptation to use labeling requirements to erect unjustified trade barriers against out-of-state products, there may be no other solution.

C. *Industry standards.*—The Productivity Commission proclaims the need for increasing industry cooperation to take advantage of technological innovations. It cites the benefits which have been realized through such developments as a uniform 12-ounce frozen orange juice can and explains that further developments of this nature are necessary to attainment of maximum productivity in the industry.[22] One example is the effort to create a uniform pallet standard, to which reference has previously been made, and thereby greatly improve handling efficiency.

A number of firms in the industry are, however, extremely hesitant to participate in standard development because of concern with antitrust ramifications. The state of the law is simply not sufficiently clear to provide adequate guidance as to proper conduct. The enforcement agencies, especially the Federal Trade Commission, are however undertaking to furnish informal staff guidance to certain industry groups.

This action is entirely appropriate and should be encouraged until such time as clearer and more flexible rules become apparent.

D. *Transportation.*—Under the current regulatory framework, surface transportation rates and services are set by private groups of carriers who agree as to these matters with a not unnatural self-interest motivation. In his testimony before the Subcommittee, Assistant Attorney General Kauper described the situation in the following terms:

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[20] Bloom, Productivity in the Food Industry, 171 (1972).
[21] National Commission on Productivity, *supra*, n. 18.
[22] National Commission on Productivity, *supra*, n. 18, at 16.

> Under existing statutes as administered by the Interstate Commerce Commission, freight rates are fixed by private cartels which enjoy antitrust immunity, entry of new carriers is restricted to protect carriers in the market, and innovation in services is discouraged. As a result, the nation's resources are seriously misallocated.[23]

NAFC has been a party in adjudication before the ICC in two proceedings which involve carrier tariff provisions affecting food industry productivity. The first involves the sorting and segregating products at receiving docks for efficient receipt and handling. The other involves a refusal by certain meat carriers to unload products and thereby effect delivery.

Transportation costs are high and constantly increasing. Enhanced productivity is essential and government regulations must not prevent or retard progress.

Time does not permit a full discussion of each impediment to productivity and efficiency created by government regulations. The list would, however, include import quotas, marketing orders which restrict available supply, particularly in the fresh fruit and vegetable industry, and local and state milk orders which prevent competition with local firms. Additionally, Dr. Bloom cites unavailability of incremental cost savings, unproductive promotional allowances, and unjustified restrictions on mergers as among governmentally imposed barriers to productivity.

The unfortunate fact is that in too many instances federal, state and local regulations impair food industry efficiency.

III. ANTITRUST ENFORCEMENT IN THE FOOD INDUSTRY

It is not surprising given its size and visibility that the food industry at all levels has been accorded a measure of attention by the antitrust enforcement agencies. Both Assistant Attorney General Kauper and Mr. Halverson reviewed for the Subcommittee some of the agencies' activity in this field.

The antitrust laws are inextricably woven into the economic fabric of the nation. Insofar as they promote competition and eliminate private restraints from the market, they should continue to exact their force throughout the economy, including the food industry.

I am pleased to have appeared and will attempt to answer any questions.

Ms. JORDAN. This hearing is adjourned.

[Whereupon, at 12:10 p.m. the hearing was adjourned subject to the call of the Chair.]

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[23] Statement of Asst. Atty. Gen. Thomas E. Kauper, *supra*, n. 1, at 21.

FOOD PRICE INVESTIGATION

MONDAY, JULY 16, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. [chairman] presiding.

Present: Representatives Rodino, Flowers, Jordan, Mezvinsky, Hutchinson, McClory, and Dennis.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order. Our first witness this morning will be Mr. Charles L. Frazier, director, Washington staff, National Farmers Organization, accompanied by Lee D. Sinclair, general counsel, National Farmers Organization.

Welcome, Mr. Frazier.

TESTIMONY OF CHARLES L. FRAZIER, DIRECTOR, WASHINGTON STAFF, NATIONAL FARMERS ORGANIZATION, ACCOMPANIED BY LEE D. SINCLAIR, GENERAL COUNSEL

Mr. FRAZIER. Good morning, Mr. Chairman. My statement is rather short so, if you would prefer, I will just read it quickly and then submit to questions.

Chairman RODINO. Go right ahead and read the statement.

Mr. FRAZIER. Mr. Chairman and members of the committee, I am Charles L. Frazier, director of the Washington office, National Farmers Organization, and I wish to express our appreciation for this opportunity to be heard. My organization consists entirely of producing ranchers and farmers who have joined together in an effort to bargain collectively for reasonable prices for their products. Efficient, modern-day producers of this type are currently the major suppliers of this Nation's food and they are presently faced with several difficult situations. The first is of an immediate nature while the second is more pervasive and possibly more threatening to their well-being over the long term.

First, although policy decisions of the Cost of Living Council and other Executive Offices acting under the authority of the Economic Stabilization Act recently extended by Congress consistently emphasize that present price controls do not apply to raw agricultural products, it is patently clear that the price restrictions effective in the

food processing industry serve to limit prices that may be paid for those agricultural commodities at the farm level. As a consequence, we find ourselves operating in a difficult situation; our production costs continue to rise with no evidence of relief in the near future, while at the same time the prices paid to the farmer are effectively, if not directly, controlled by the price freeze.

Underlying this situation there is widespread concern that the forces of competition are increasingly tiltled each year in favor of the large corporate structure so that the very existence of individual farm and ranch types of operation are seriously threatened. A large proportion of substantial farmers have come to realize that compared to the individual, independent farm and ranch operator, the corporation has distinct advantages that encourages its headlong plunge into agricultural production. For example, investment capital is available to the corporation at lower interest rates. It is quite clear that corporations and conglomerates who are heavily involved in the ownership and operation of productive land and certainly capable of regarding their farming enterprises as temporary sources of income while they hold the land for future development or real estate speculation. Or, they may operate these land holdings as a means of converting immediate income into long-term gains under the tax laws. It is also evident that these conglomerates are able by controlling essential supplier sources and distribution facilities to compete quite unfairly with our traditional independent operators, regardless of their size.

Whereas they are in position to produce and sell at cost, or even at lower prices for a period of time while accumulating and developing land for long-term capital gain or other uses, the independent producer finds it impossible to compete on these terms. The eventual result is irreversible once competititon has been effectively curbed. The capable management and productivity of the individual operators will have disapepared, the ownership of land will have shifted and there will be higher food prices for the American consumer.

Other witnesses have identified some of the corporate structures who are thus involved in agriculture today. We are convinced by our own experience that the large corporations and conglomerates are capable of processing rapidly in some areas of production as they once did in the case of poultry.

We also have heard testimony from officials of the Department of Justice and the Federal Trade Commission that they do not have access to necessary statistics that would permit them to determine whether competition is thwarted sufficiently to warrant action under current authorities.

Although there may be opportunities for the effective oversight and a push for more aggressive use of the current laws on the part of the subcommittee, we must conclude as producers that current legislation will not be used to protect us from unfair competition.

The problem before us is complicated and it is of tremendous importance to the American people. In times past, the Congress has acted specifically to insure competition in a particular industry, or finding that difficult to accomplish, legislation was designed to control production and pricing. For example, it was recognized that the kind of utility empire that was being structured by Sam Insull and others was unacceptable within the framework of our democracy and the Public

Utilities Holding Act was passed in 1935. The Railroad Act is another example of specific legislation designed to insure competition. In this case, the legislation prohibits an industry from entering into competing lines of business because that approch to limiting competition was found to be inimical to public interests and needs.

We are not advocating specific legislation to regulate the food producing industry. In order to avoid a situation that would call for such regulation, however, we strongly urge that the Congress take up for serious consideration H.R. 4531. This form of structural relief on an industrywide basis would at least demonstrate initiative and a determination to act effectively to protect the sources of food at reasonable prices in this country.

The bill H.R. 4531 would insure continued competition in the production and first sale of agricultural commodities. It provides, by amending the Clayton Act, that any person engaged in commerce and having nonfarm assets of more than $3 million shall not engage in or control agricultural production. A period of 5 years is provided for those now so engaged to divest the farming properties.

This bill is not only specific and well-drawn, if it becomes law it may be enforced by any person who would be injured by unfair competition forbidden by the legislation, through application of the treble damages clause in section 4 of the Clayton Act.

The witnesses representing the Justice Department and the Federal Trade Commission implied that they were handicapped in their efforts to apply the current laws because of certain exemptions. If they were referring to the Capper-Volstead exemption under which the National Farmers Organization and hundreds of traditional farmer-cooperatives are formed, we would like to set the record straight.

The Capper-Volstead Act of 1922 merely made clear that agricultural producers are allowed to organize for purposes of marketing their products in a cooperative manner without being in violation of the antitrust laws. This exemption in no way protects such organizations from the provisions of these laws if they engage in unfair business practices prohibited by the antitrust legislation. In fact, the act specifically provides for action and an order to be issued by the Secretary of Agriculture at any time he has reason to believe a producer association is monopolizing or restraining trade in interstate commerce to such an extent that the price of an agricultural product is unduly enhanced. Thus, we can only surmise that reference to exemptions may be a polite, bureaucratic smokescreen. We would like to see some meaningful investigations of the effects of conglomerate entry into certain lines of agricultural production. This course of action should benefit producers and urban consumers alike.

In summary:

Predatory practices should be challenged wherever they may occur, but the principles of Capper-Volstead should not be compromised;

The consumers of this country, and that certainly includes farm people, have a right to expect rigorous application of the antitrust authority now available;

We believe it would be wise for this committee to move favorably on H.R. 4531, the Family Farm Antitrust Act of 1973, introduced in this 93d Congress by Hon. Robert W. Kastenmeier and several of your colleagues.

Again, we thank you for this opportunity to offer our recommendations.

Chairman RODINO. Thank you.

Mr. FRAZIER. I might add, Mr. Chairman, that Mr. Sinclair, who is with me, is experienced in the administration of the Packers and Stockyards Act of the Department of Agriculture and has had earlier experience with the Federal Trade Commission, so I should think that he may be helpful this morning.

Chairman RODINO. Thank you very much.

Mr. Frazier, in your statements on page 3, you state that you must conclude as producers that current legislation will not be used to protect us from unfair competition.

Just what do you mean by that statement?

Mr. FRAZIER. Well, I hope we are not being unfair, sir, but there are instances of some commodities in which the production is today in the hands of very, very large corporate structures, who are, in turn, parts of conglomerate operations in which they have the benefit of large-scale buying, and have access to reserves made available through the larger corporation structures. They are able, by virtue of their size, and their ability to manage profits and losses among their various subsidiaries, to provide competition that, at least, appears to us to be quite unfair.

I think of lettuce production as an example; there are some very large producers there and in eggs and poultry. I don't mean to cite or particularly criticize the financial accomplishments and the business success of some of these organizations. This is fine. But I think it is a question of whether we want our food production shifted over to that type of corporate control and management, or whether we would prefer to have a large number of individually owned operating units continue in this country.

Chairman RODINO. Do I understand from what you say that there is legislation on the books which would be protective of your industry, but it isn't being used to protect your industry or are you suggesting that we go into other areas, such as you make reference to when you suggest Congress consider H.R. 4531?

Mr. FRAZIER. Mr. Chairman, my statement may appear a little confusing. We believe current legislation could and should be used, but in view of the record, in view of the fact that some of these commodities have been rather well taken over without any action under the current laws, we recommend action on Mr. Kastenmeier's bill, which would be specific and would provide immediate accomplishment. Perhaps Mr. Sinclair could comment more effectively on the question for you.

Chairman RODINO. Mr. Sinclair?

Mr. SINCLAIR. Well, of course, I agree with what he has said here that current legislation, I believe, is sufficient if enforced to do the job that we need to have done in the food industry but, unfortunately in these areas it is my belief that they have not been administered in that manner and that is why this bill is supported by Mr. Frazier.

For instance, he mentioned the lettuce industry. I think I might add there are two corporations that are conglomerates in that industry, Tenneco and Purex, and it seems to me that the laws that we have at the present time are applicable to them without question. Justice has

the authority to go after such corporations if they are in violation of the laws.

I think Assistant Attorney General McClaren said he believed the present laws were sufficient to govern the activities of conglomerates and we certainly are of that view also.

Chairman RODINO. Well, then, if that is the case, are you stating that if those laws that are on the books today were enforced, that that would be sufficient protection without need to go into other areas, such as you suggest?

Mr. SINCLAIR. Well, I am saying that if they enforce the laws that we have on the books today, it would go a long ways toward protecting farmers and also consumers.

Now, we still do favor this act that Mr. Frazier mentioned because it is more specific and goes further than the present laws would provide.

Chairman RODINO. Well, in other words, you are saying, Mr. Sinclair, if I follow you, that while you are contending that the present laws are not enforced as you would like to see them enforced, that if they were, it would be protective of the industry, and that there would be competition, but you say that they still do not go far enough?

Mr. SINCLAIR. As far as agriculture goes, if we are to have the family farmers as the basis for agriculture, I believe you would have to go further than you are now. In the enforcement of the antitrust laws, you first have to have something that has already happened before they can go after them, which is, in a way, rather unfortunate, but it is true that you must have a violation first.

Chairman RODINO. Well, you would want to have—I mean, you wouldn't have someone gone after, as you say, and to use your terminology if they had done nothing?

Mr. SINCLAIR. Of course not.

Chairman RODINO. If they were not in violation of the law?

Mr. SINCLAIR. Of course not. I wasn't suggesting that.

The thought behind this bill Mr. Frazier mentioned, H.R. 4531, is one that would prevent the thing happening before it became a major problem. That is the thought behind that.

Mr. FRAZIER. I might add, sir, I think one very important phase of this whole matter is the lack of adequate information. I believe the representatives of both Justice and FTC, in appearing before the committee, and in other discussions in which we have engaged, that we find that the data from IRS or Agriculture or the Census Bureau are inadequate to describe exactly what is going on in the production areas under some of these corporate managements.

Chairman RODINO. Mr. Frazier, would you have any comments regarding the Capper-Volstead Act, concerning its removal in a limited manner in order to provide for the present circumstances?

We have had testimony concerning hard core antitrust offenses for bread and milk and other high-turnover, essentially fungible products. Do you think in view of this that there might be some reason for taking some remedial action concerning the Capper-Volstead Act?

Mr. FRAZIER. Mr. Chairman, I believe that the basic exemption embodied in the Capper-Volstead Act is quite sound and we should not monkey with it. Now, it is quite possible that there are segments of the food industry that are undertaking to utilize that authority in a way

that involves serious legal question. In other words, there may be some people who are involved who truly are not agricultural producers. I cannot go very much further on that, but I think that the more immediate question regarding Capper-Volstead——

Chairman RODINO. Would you say, Mr. Frazier, that, at least recently, food prices have been unduly enhanced? Could you draw that from the conclusion of the present data available to us on the question of food prices?

Mr. FRAZIER. Are you speaking of prices at the retail level, sir?

Chairman RODINO. Yes.

Mr. FRAZIER. Perhaps some of them are overpriced. My own experience over a number of years deals more closely, of course, with the producer price levels and it is only in the last couple of years that prices of cattle and hogs and some of our major sources of protein, like milk, and also the poultry industry—have reached profitable levels. To be specific, for example, hogs in 1970 and 1971 were a money-losing proposition for producers and they did not breed a sufficient number of sows; production fell off. This contributed along with many other factors to the shortage that we faced in 1972 so perhaps some commodities at the producer level have popped up in price, but the great majority of our desirable food products come from grain and livestock, poultry and dairy operation—they are not too high at the producer level.

Chairman RODINO. Well, you say they are not too high. If you take the guidelines set out in the Capper-Volstead Act, would you say that the Secretary of Agriculture, who has jurisdiction and authority to act in this area has failed to take the proper kind of action since it appears that food prices have been unduly enhanced?

Mr. FRAZIER. To be responsive, sir, I do not know the exact pricing schemes involved in all of the specialty crops. There may be a few specialty food items that are produced and marketed under a cooperative structure in which the price has risen swiftly, but the major concerns of the consumer today center on grain, dairy, beef, and hogs—certainly there is no cooperative structure under Capper-Volstead that is controlling the price of any one of those major products.

Chairman RODINO. Thank you.

Mr. Hutchinson?

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. Sinclair, I believe you made reference to the activities of some conglomerates in the production of food and I believe that when you mentioned lettuce, you mentioned a couple of conglomerates. Can you state on the record what percentage of lettuce production those conglomerates control?

Mr. SINCLAIR. Well, I don't have the statistics available but I believe in the case of lettuce, there are three major producers that have somewhat like 75 percent of all production.

Mr. HUTCHINSON. Then this is nationwide? These three control 75 percent of all of the lettuce produced in the country?

Mr. SINCLAIR. This is right. The lettuce production is mainly centered in California.

Mr. HUTCHINSON. Yes.

Mr. SINCLAIR. And this is where they are the major producers, and they control that much.

Mr. HUTCHINSON. I appreciate very much that statistic. I wasn't aware that it was so high.

Now, with regard to the Capper-Volstead Act, I think Mr. Frazier made a point very clearly that what we are concerned about in the Capper-Volstead Act is the undue enhancement of prices. For there to be a violation there must be an undue enhancement of prices brought about by reason of cooperative activity. As you pointed out, in these basic major food areas there isn't a great deal of cooperative activity; is that not correct?

Mr. FRAZIER. Well, we make our best efforts, sir, but we don't control pricing.

Mr. HUTCHINSON. I understand.

Mr. FRAZIER. For example, we bargain on grain and livestock and, of course, there are other marketing cooperatives that deal with hogs, the cattle and grain, but certainly, there is no collusion among them and no one of them that is large enough to control the market——

Mr. HUTCHINSON. In other words, they are all competing with each other?

Mr. FRAZIER. That is correct.

Mr. HUTCHINSON. Are there a good many cooperative elevators in the country?

Mr. FRAZIER. Yes, sir. I have forgotten the statistics but among country elevators, in other words, local elevators, a substantial portion of the grain moves through co-op houses in the Great Plains and Corn Belt; perhaps one-half. That is only an off-the-record guess, sir.

Mr. HUTCHINSON. But all of them are independent of each other and all of them are comparatively small?

Mr. FRAZIER. Yes, sir; each of them is responsible to its own board of directors.

Mr. HUTCHINSON. In other words, there has been no evidence that there has been any kind of a restraint to trade?

Mr. FRAZIER. No; in fact——

Mr. HUTCHINSON. What would you say about the milk industry? Is that a different situation?

Mr. FRAZIER. It is different in that milk marketing must occur daily; it is highly complicated with testing, grading, moving, and all of the divergent uses that may be made of milk, but here, too, most of the local cooperatives and marketing arrangements are independently organized. In both our own organization and some of the other cooperatives, there are efforts to coordinate the flow and movement of this milk, in order to move excess production in one area to a shortage area, or to move, for example, milk that cannot go in the bottle market toward processor use but certainly there is no evidence that I have encountered indicating that there is collusion or undue control.

Mr. HUTCHINSON. Is there any single milk cooperative organization that——

Mr. FRAZIER. Pardon?

Mr. HUTCHINSON. That controls the majority of the milk production?

Mr. FRAZIER. In some market areas, I believe a small number of the central milk marketing cooperative structures have been challenged by the Justice Department. I would again call on Mr. Sinclair for a little help here. This gets immediately into the technicalities of

market order administration and I think he is more familiar with the cases.

Mr. HUTCHINSON. Has the Justice Department taken antitrust action against the milk industry?

Mr. SINCLAIR. Yes, Mr. Hutchinson. Justice has taken action against AMPI, Associated Milk Producers Association, and also DI, which is Dairymen, Inc., of Nashville, Tenn., I believe; I believe that is where their headquarters are. Both of these cooperatives are rather large and control a great amount of dairy products and Justice has taken action against both of those cooperatives for violation of the antitrust laws. Certain actions are pending.

Mr. HUTCHINSON. Do those cooperatives fall within the scope of the Capper-Volstead Act.

Mr. SINCLAIR. Yes, both of them.

Mr. HUTCHINSON. In other words, notwithstanding the Capper-Volstead Act, which provides certain exemptions for farmer cooperatives and places in the Secretary of Agriculture a certain responsibility for determining whether there has been an undue enhancement of prices and so on, due to that activity the Justice Department thinks it does have power to move in that area?

Mr. SINCLAIR. Yes, sir, Mr. Hutchinson. The Capper-Volstead Act does not exclude Justice at all from taking action. It gives the Secretary of Agriculture certain powers but doesn't exclude Justice from going into any cooperative for any antitrust violation. There is no restriction whatsoever. All the Act does is authorize the farmers to form together into one organization for marketing and that kind of activity but it doesn't give them any exemption whatsoever from antitrust violations. The Secretary of Agriculture has certain powers to go after them for undue enhancement of prices. Now, in this particular instance, there is no allegation of undue enhancement, as I understand it. It is the unfair practices, the business practices, that Justice went after in these two cooperatives.

Mr. HUTCHINSON. Under the traditional concepts of the antitrust laws, if businessmen would sit down together and talk about how to work together to achieve certain improvements in their economic condition, that would be a violation of the antitrust laws. But under Capper-Volstead, if a group of farmers sit down together to talk about those things, that in and of itself does not constitute a violation?

Mr. SINCLAIR. That is correct.

Mr. HUTCHINSON. But that is as far as the Capper-Volstead exemption actually goes?

Mr. SINCLAIR. That is as far as it goes.

Mr. HUTCHINSON. I thank you, sir.

Mr. RODINO. Ms. Jordan.

Ms. JORDAN. Mr. Sinclair, in terms of the Justice Department looking into possible violations of the antitrust laws by cooperatives, are there only two instances of Justice Department taking action in this regard?

Mr. SINCLAIR. There is one other case in addition to those two. Justice Department has filed an action against the poultry processors who have formed a cooperative organization and they are attempting to pass themselves off as farm producers. Justice has challenged, and rightfully so in my estimation, the right of those producers to get

together and call themselves a cooperative—in my estimation they probably do come within Capper-Volstead Act provisions as farmer producers. Justice has challenged that one and they should be successful.

Ms. JORDAN. Mr. Frazier indicated that the immediate question, under the Capper-Volstead Act, is whether persons are involving themselves in a cooperative who, in essence, have no right to be so involved because they do not meet the definition of a cooperative. Now, if I understand the example you just gave, that is an instance of Justice Department intervention in persons who are holding themselves out as being a cooperative, but I am more concerned or as concerned about Justice or FTC or the Secretary of Agriculture pinpointing anticompetitive practices of cooperatives in violation of even the limits set by Capper-Volstead. Do we have examples of that?

Mr. SINCLAIR. As far as applying the provisions of the Capper-Volstead Act to a cooperative. I can't cite an instance where that has been done. The Secretary of Agriculture has not taken action under the Capper-Volstead Act, to my knowledge. Now, Justice has taken the action I mentioned, which is not under the Capper-Volstead Act but rather a direct action challenging the right to be within the provisions of the Capper-Volstead Act.

Ms. JORDAN. Is it not possible that cooperatives could engage in anticompetitive practices in violation of the antitrust laws even in the face of the Capper-Volstead exemption?

Mr. SINCLAIR. Well, yes, and there is provision where Justice can take action at any time. The fact that the Capper-Volstead Act exists doesn't stop Justice at all from going after antitrust violations by cooperatives.

Ms. JORDAN. All right; but Justice has not gone after antitrust violations where cooperatives were involved; is that correct?

Mr. SINCLAIR. No; Justice has taken action against the two milk cooperatives that I mentioned and I think Mr. Frazier's point is that the cooperatives are not the big problem in the food industry because the big—well, they are not the big buyers and they do not control the food industry; the cooperatives don't. So, Mr. Frazier's point, as I understood it, is that if there is to be action, they should take action where the control is and the cooperatives do not, as he was pointing out, have control over the food industry. So, the actions that, if there are any to be taken, would have to be against those corporations who do have the control and have the ability to violate the antitrust laws.

Ms. JORDAN. Right; but, if we were concerned about the activities of a cooperative and those activities were monopolistic, Justice would have no power to act in that regard; is that correct?

Mr. SINCLAIR. Well, Justice would have action over any such monopoly if it were improperly gained. As I understand it, farmer groups could get together in a cooperative that resulted in a monopoly in the sense that it is controlling in that particular industry. However, if they are able by unfair means or unfair business practices, to acquire that monopoly, Justice can go after them. They are only protected if they establish and conduct the organization of a cooperative in a legal and proper manner. Then, Justice could not go after them simply for becoming a monopoly.

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Ms. JORDAN. It isn't the judgment of the Secretary of Agriculture then?

Mr. SINCLAIR. No, it would have to be Justice who would go after them for the unfair business practices. The Federal Trade Commission also has jurisdiction in this same area but the Secretary of Agriculture doesn't have jurisdiction over the monopolistic practices; he has authority only to the extent that it might unduly enhance prices and then he has jurisdiction over that particular factor or phase of it. But Justice has jurisdiction over the unfair business practices of cooperatives throughout.

Ms. JORDAN. Thank you, Mr. Chairman.

Chairman RODINO. Thank you.

Mr. Dennis?

Mr. DENNIS. I appreciate the gentleman being here. You have quite a good reputation in my part of the world.

One point you mentioned in your statement, Mr. Frazier, which I thought might be elaborated upon, occurs on the top of page 3, where you referred to the lack of access to necessary statistics, which would permit the Department of Justice and the Federal Trade Commission to determine whether competition was thwarted and so on.

Now, more specifically, what kind of data did you have in mind that is not available that might be made available and who do you think ought to collect it if the Federal Trade Commission and Justice, in effect, do not have the ability to do so now?

Mr. FRAZIER. Well, in preparation to appear before this committee in the last Congress, sir, I went to the Census Bureau and I went to IRS and a couple of other places in Washington undertaking to determine the actual extent of corporate involvement in ownership and management of land, farm production and so on. And just to illustrate the point, I found that the only publication of data freely available from the IRS, in this field, lumped together agriculture, forestry, and fishing. It gave some broad categories by income levels, percentage of income payable in taxes, a few things of that sort. But I believe the representatives of Justice and FTC, in appearing before the committee in this series of hearings, made their own statements verifying the same concern that we encountered a year ago; namely, that it is very, very difficult for the public or for organizations such as ours to learn the extent of involvement of the conglomerates in any particular field of production, whether it be hogs, cattle, lettuce, citrus, or what-have-you.

It simply is not freely available and I think it should be. I think the data regarding individual farm operations are gathered by the Department of Agriculture and published in a thousand ways. You can practically learn all about our farming enterprises, but we cannot learn how far the advances of the conglomerates really have moved and what their accomplishment really is.

Mr. DENNIS. Well, I was just wondering what type of legislation, if legislation is needed, you would advocate, and to whom you would assign the duty of gathering information if it is lacking? It seems to me that the Department of Justice, at least, with respect to a lawsuit, could probably get a lot of this information.

Mr. FRAZIER. I presume they could go to the courts and do it in a very time-consuming manner, sir, but because of these frustrations

and loss of time we advocate the more specific legislation which would simply separate ownership of land and agricultural production from other phases of the industry.

We think it is justified to take this course rather than wait for changing the laws, reporting and having access to data from the corporate structures to be able to build the case on a case-by-case legal approach.

Mr. DENNIS. You are talking now about H.R. 4531?

Mr. FRAZIER. Yes, sir.

Mr. DENNIS. I can understand the feeling behind that legislation. I think it must be conceded, however, that it would make a great change in our society. If we started down the road of telling people how much they can own and what business they can go into, I am not sure where we would stop once we started.

Mr. FRAZIER. Well, of course, this bill, though, does not control size; it does not limit. If a separate corporation, for example, wishes to engage in beef production alone and act as a producer, we are willing to compete with them. We don't worry about that. What we do worry about is the conglomerate or the large corporation that is in a position to take profits derived from other forms of industry and use them to compete unfairly with farmers and ranchers who do not have those advantages available.

We think, frankly, it is detrimental to the future of the country.

Mr. DENNIS. Well, I understand the feeling and I haven't studied the bill. But I am somewhat concerned with this large philosophical question.

Mr. FRAZIER. Yes, sir.

Mr. DENNIS. I am sure we can't answer it this morning.

The other question I would like to ask you concerns a matter I don't think you testified about, but which is important to my part of the world and a lot of your people, I am sure. What is your view as to recent restrictions on the exporting of soybeans?

Mr. FRAZIER. Well, as farm producers, of course, we are concerned about controls that tend to limit our markets; but in view of the situation in which we find ourselves today with the dollar devalued, droughts, bad weather, bad producing conditions in other countries of the world and the very substantial efforts on the part of other nations to obtain proteins, oils, and feed supplements from this country, I can understand why the action was taken.

I hope that it is only a temporary arrangement. We have, as you know, such a large proportion of our wheat crop, our soybean crop, and many other commodities now moving abroad, that if we cannot continue to export there will have to be a terrible scaledown on farm production in this country. So, there are tremendous factors involved here and we have producers of soybeans and grains who do not wish to see anything torpedo those relatively stable markets that they have waited 20 or 30 years to gain. In contrast with that, some of our members who are dairymen, poultry producers, and livestock feeders, are concerned about rising costs of soybean meal and the other protein supplements. We find ourselves, so to speak, facing all of the problems that are faced by the consumers in the Nation as a whole.

Mr. DENNIS. Well, I thank you, Mr. Chairman. And I thank you, gentlemen, for what you have to say.

Chairman RODINO. Thank you.

Mr. Mezvinsky?

Mr. MEZVINSKY. Thank you, Mr. Chairman. Mr. Frazier and Mr. Sinclair, I would like to say that prior to your testimony, we have heard statement from several witnesses that there are no anticompetitive forces operating at the farm level, but it seems that they are talking about small farmers and not about the large conglomerates that you have been talking about. Don't you think we have to really make that distinction between the small family farm and the large conglomerates which I gather you are talking about in the form of the Tennecos and the United Brands and the Boeings, Occidental Petroleums and others. And if that is the case, have you reason to believe that these giant corporations are a threat to free-farm competition and would you care to expand on that?

Mr. SINCLAIR. Those giant corporations if allowed to continue, we believe, are a very definite threat to the average family farm. If they are in violation of the antitrust laws, they should be looked at today under the present laws, but we are proposing that Congress go further than that. There should be certain rules beyond which they cannot go or rather certain areas into which they can't go, so as not to have the problem thrust on us and then attempt to do something after it is an accomplished fact. Therefore, we have supported the Family Farm Antitrust Act, which would put some limitations on conglomerates rather than to have them go on into more agricultural production and——

Mr. MEZVINSKY. Do you have evidence that the so-called anticompetitive effect is a contributing factor to the skyrocketing food prices that we had in the past year?

Mr. FRAZIER. We would suggest, sir, that the members of your staff or other technical capabilities available to you might profit by looking into some of the specialty commodities. We have mentioned lettuce. Perhaps some of the other products that are produced in relatively small geographic areas are so marketed and handled that their profit margins have become exorbitant. We cannot gather the evidence and bring it to you. We do not have the legal capability or the staff to proceed as you suggest by your question. We would like to see it done, though. We are concerned that production of livestock in this country may follow the route of broilers and egg production. We are quite concerned that the scattered contracts that are now made for hog production by some companies may be greatly expanded to establish a so-called integrated production scheme there, comparable to what we have witnessed is broilers that developed in a very short time in this country.

Mr. MEZVINSKY. I have the hearings where you testified, or rather Mr. Staley, the president of your organization, testified in March 1972. In that hearing, he said

> Experience indicates that we may not expect vigorous action in the Department of Justice or the Federal Trade Commission to stop the takeover of agricultural production by large integrators.

That was 1972. Do you feel that way now in 1973 and, if so, would you care to expand on that?

Mr. FRAZIER. Yes, sir, we do. This is why we continue to advocate the bill introduced by Mr. Kastenmeier and others; we are unable as a nongovernment group to gather data to examine these forces or even

to come to the Government and learn the truth of it. We—well, I won't say we have given up but at least we are quite frustrated about the possibility of decisive action coming from FTC and Justice. That is why we turn to more specific legislation.

Mr. MEZVINSKY. Can we advise the Department of Agriculture concerning the Commodity Exchange and what is happening on the grain market as well?

Mr. FRAZIER. It is a pretty large question. I presume it is only fair to ask it and the answer is "Yes."

Mr. MEZVINSKY. Thank you.

Chairman RODINO. Mr. McClory?

Mr. MCCLORY. Thank you, Mr. Chairman. I would just like to observe that we had a fair amount of testimony on the Family Farm Act in the 1972 session. The measure was sponsored by, primarily, Mr. Abourezk, then the Representative of South Dakota, and I suspect that this may have contributed to his election to the Senate from the State of South Dakota. However, it didn't seem to me that the hearings, outside of the charges that were made by Senator Abourezk and a few others, tended to bear out the wisdom of this legislation, and the committee took no action on it. I am curious about your statements, Mr. Frazier's statement particularly, that the Congress must give its attention to those large conglomerates engaged in a practice of encouraging losses in farm activities, which are offset by their presumably exorbitant profits elsewhere.

Is it a fact? Do you have any concrete evidence that large corporations actually engage in a practice of encouraging losses, even moderate losses, in trying to capture a market or to get some foothold in agriculture?

Mr. FRAZIER. Mr. McClory, I believe my statement and those of President Staley a year ago, have all been made in undertaking to point out our concern and to invite some responsible agency of government that has the capability to look into these matters. If you have a conglomerate who owns their own trucklines, their own docks, their own fishing fleet, their own processing facilities and ability to market in cities throughout this country, they obviously have talents available to them that are not available to other producers. All we are doing is trying to bring this to your attention and ask that the Congress, or some Government agency who might report back to you, look into these matters.

To the best of our knowledge, it has not been done.

Mr. MCCLORY. Well, I assume you are not talking about the few large corporations that are held up as being so evil? As I understand it, they don't like the losses and some of them have abandoned their agricultural activities for the simple reason that they did experience losses or that their were not what they had anticipated them to be. Now, isn't that quite contradictory to this other charge that they are willing to absorb losses in order to drive out competition unfairly?

Mr. FRAZIER. I don't think so, sir. I think as we have all understood business in this country, you must expect a certain fallout or a certain percentage of failures in business undertakings? Ralston-Purina sold out their broiler operation, that is correct. One or two other companies in the Midwest did so. One of them was a rubber company——

Mr. McCLORY. How about one or more of these companies in California that has gone out of business? You know, not Tenneco or Occidental Petroleum but—what is the name of the other one?

Mr. FRAZIER. I don't know.

Mr. McCLORY. You mentioned it——

Mr. FRAZIER. I am not familiar with all of them, of course.

Mr. McCLORY. Now it seems to me the most convincing case that was made was with respect to the large processors who made contracts to buy out all, or substantially all, of the farmers' production. But in those cases, these large corporations were dealing with the small family farmer, were they not?

Mr. FRAZIER. They were when they started, but there are certainly not very many small family farmers that are in control of their own destiny in broiler production today.

Mr. McCLORY. Well, then, the serious adverse situation with the broiler production today is more the result of price controls, is it not, than it is the operation of individuals or corporations that are in the business?

Mr. FRAZIER. Obviously, they are squeezed by the cost of soybean meal and other grains.

Mr. McCLORY. And some of them are closed down, are they not? I know they are right in Illinois; the State which I come from.

Mr. FRAZIER. Yes, sir.

Mr. McCLORY. Well, I will be seriously interested in seeing what our staff may produce regarding what raised your suspicions. However, as I understand it, the staff has been endeavoring to find out what possible violations of the antitrust laws may be contributing to the high price of food; something in which we are all interested. But it would also be helpful for any witness or anyone who appeared before this committee to bring forward whatever evidence he may have because, I think, these hearings have revealed very little.

Could I ask one more question about this?

Chairman RODINO. Make it the last question, Mr. McClory.

Mr. McCLORY. How about the subject of spinach? Is that in the same area as lettuce? When we boycott lettuce, don't we play into the hands of another monopoly? Do you know?

Mr. FRAZIER. I must confess I am not a spinach expert, sir. I don't know who is producing it, or how much.

Chairman RODINO. Well, thank you very much Mr. Frazier and Mr. Sinclair. We appreciate your testimony before this committee.

Our next witness is Mr. Jerry Bookey, president, United Egg Producers, accompanied by John Pedersen, director of marketing and statistical analysis, United Egg Producers, and Irving Isaacson, general counsel, United Egg Producers.

I find myself in a dilemma here. We have a statement and I have taken the time to read it, which is a very good statement, and I recognize the need to have you read it. However, at the same time, we must expedite these proceedings by trying to summarize this and then submit to questions by the committee since we are going to go to the floor at 12 o'clock. I wonder if that is all right with you? We will, of course, insert your statement in its entirety in the record. [See p. 202.]

TESTIMONY OF JERRY BOOKEY, PRESIDENT, UNITED EGG PRODUCERS; ACCOMPANIED BY JOHN PEDERSEN, DIRECTOR OF MARKETING AND STATISTICAL ANALYSIS, AND IRVING ISAACSON, GENERAL COUNSEL

Mr. BOOKEY. That will be fine, Mr. Chairman, if I could just refer to certain parts of the statement that are more pertinent?

Chairman RODINO. Go right ahead.

Mr. BOOKEY. I refer to page 2 of our statement which is entitled "Feed Cost Issue" and I would like to read the first paragraph of that part of the statement:

> World demand for livestock feed, particularly soybeans and soybean meal, has been a major contributor to the skyrocketing prices of feed and feed ingredients in the United States. Other factors, such as poor crops in major feed grain producing countries, the devaluation of the U.S. dollar abroad, severe weather conditions in the United States during harvest last Fall, and subsidized foreign purchases, have all contributed to the sharply increased prices. Since the Export Moratorium June 27, the price of soybean meal has declined sharply but the price today remains at over $200 per ton, an increase of more than 100 percent over prices of 1972. The decline in price was a welcome relief for livestock feeders who depend upon soybean meal as a basic protein ingredient for livestock feeds. In mid-June, to illustrate the contrast in prices of before and after the moratorium, prices for soybeans were traded at about $11 per bushel, up 65 percent from the April level and more than 200 percent above a year earlier. Prices for soybean meal by mid-June had climbed to over $400 per ton at Decatur, Illinois, up 90 percent from the April level, and 328 percent above that of June 1972. Attachment "A" illustrates the three-year price patterns for soybean meal prices and it is obvious that 1973 prices are unlike any in history.

I would like to state that the relief we refer to here was rather short lived, as we have had the price move upward on the soybean futures market for the last 5 days, and we are currently at about $260. The grain futures market controls the cash market and is driving it up along with futures.

We won't refer to these drafts. You have all looked at them, I guess. I would like to comment on page 3, from the last paragraph. It is distressing to the American egg producer, as I am sure it is to the American consumer, to learn that American companies had apparently overbooked the available supplies of soybeans and soybean meal for export. Only the export moratorium declared by the Department of Commerce salvaged the domestic livestock industries which depend upon this essential protein ingredient. It is also discouraging to learn that our Government was keeping very inadequate records which, if handled properly, should have indicated the seriousness of this problem long before we reached the critical point. The recent report of the General Accounting Office pointed to this deficiency and we hope the GAO recommendations for closer surveillance will be implemented in the future.

We refer in our statement on page 4 to these inflationary factors in the soybean area, and I think that is very pertinent. I would like to make some statements out of there. Five or six large grain companies in the United States control the vast majority of soybeans and a substantial amount of corn and other grains after harvest. These companies took advantage, we think, of the artificial fear in the market which was created by the combination of factors already mentioned. These companies are in a position to control the market by their own-

ership of the product. The concentration of available supply in such few hands obviously raises serious question as to the validity of these unreasonable price increases.

We have referred to companies by name. We have their financial statements attached to the statement indicating that our statement is correct. I think perhaps I would like to briefly comment on the last part of our statement, "The Food Store Entry Into Egg Production." I might go prior to that and give you a current picture of what our supply situation is to the consumer, which is on page 7. We find ourselves in the egg production business faced with a loss due to the economic freeze put on by our President of approximately 4 cents a dozen and this has accelerated the hen slaughter as documented by the USDA slaughter figures, dramatically. We are short of products at this very moment to supply the needs of this country in shell eggs. I refer to my own company's operations; we are approximately 10 percent short of filling our retail demand. Only Friday, I was in the State of California which is the largest egg-producing State in the Nation, and I find those people down there, who have had huge surpluses of eggs are now short of their retail orders.

I will comment on the food store industry's entry into egg production. In recent years, independent egg producers have witnessed a steady rise in the number of "outside" capital being invested in egg production. Part of this has come from investors seeking diversification of investments, some has come from conglomerate-type investment firms seeking to spread risks, some has come from high income-type investors seeking tax shelters, but the most alarming to the egg industry is the actual entry into egg production by certain major and minor food store chains.

We refer to two food store chains that are very large in the industry, Safeway and Kroger, who have already entered the business of production of eggs for their own retail outlets. The meat industry, at one time, found themselves facing the same problem and they were covered by the Packers and Stockyards Act and were able to get some relief but, unfortunately, we are not covered by the Packers and Stockyards Act and we consider this a very serious threat to our industry and to the consumers of the Nation.

I will leave it at that.

If you want to ask some questions?

Chairman RODINO. Thank you, Mr. Bookey.

Mr. Bookey, would you say that the price of soybeans has been unduly enhanced?

Mr. BOOKEY. By a given factor?

Chairman RODINO. Yes.

Mr. BOOKEY. Yes, we think the price of soybeans and soybean meal has been unduly enhanced by our Government's activities in its export sales and the lack of knowledge of what those export sales actually were. As early as last November, we had meetings with the Secretary of Agriculture indicating to the Secretary what our numbers told us. At that time, we, as an industry, were telling the Department of Agriculture at the present rate of disappearance, domestically and in the export market, we do not have enough soybeans to take care of the demands at home.

Chairman RODINO. Do you feel that, as a result, there should have been some action taken by the Department of Agriculture?

Mr. BOOKEY. We very definitely feel that.

Chairman RODINO. You mention in your statement: "It is distressing to the American egg producer, as I am sure it is to the American consumer to learn that American companies had apparently overbooked the available supplies of soybeans and soybean meal for export."

Isn't that pretty much the same situation that occurred in the grain deal, Mr. Bookey?

Mr. BOOKEY. You are referring to the wheat deal?

Chairman RODINO. Yes.

Mr. BOOKEY. Exactly the same thing, yes.

Chairman RODINO. What company, insofar as you know, was involved in the overbooking of supplies of soybeans and what?

Mr. BOOKEY. I am going to refer that to Mr. Pedersen, if I may.

Mr. PEDERSEN. We can't pin it to any specific company. We do know that there are six or eight firms that are very large in soybean processing. We do know that they generally buy their supplies early in the harvest period. We know that individually they contracted with foreign exporters to export the meal and soybeans and when you get their numbers together it comes up to more than was available to the exporter.

Chairman RODINO. Was Continental Grain which you identified one of those companies?

Mr. PEDERSEN. They are one of the major ones, yes, sir.

Chairman RODINO. Tell me, Mr. Bookey, you place a great deal of emphasis on the fact that this information apparently, which was available to you, or at least there were some indications that there was not enough for the market and yet this overbooking took place and the result, generally, at least at first resulted in some kind of profit to the farmers, generally, but principally to six of the largest dealers in the country who reaped huge profits.

Now, has this had an effect on the industry, the egg industry?

Mr. BOOKEY. A very definite effect. I indicated that we were caught in a loss position with our economic freeze. There are some figures in here, some graphs, indicating what the cost increase per dozen eggs is, in feed, and that is all directly related to the increase of soybeans and feed grains exported. It is a very dramatic increase.

Chairman RODINO. The situation insofar as the wheat deal was concerned was such that it resulted in huge profits which, frankly, didn't filter down to the American wheat farmers. Was it a comparable situation insofar as the soybean deal was concerned?

Mr. BOOKEY. Well, yes. Our counterparts, the producers of the soybeans, on the whole, have not received these high prices.

Chairman RODINO. Thank you very much.

Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Bookey, I wonder if, for the benefit of the record, you would describe your organization, the United Egg Producers? Is it a cooperative organization of egg producers?

Mr. BOOKEY. Yes. It is explained on page 1 which I did not read.

Mr. HUTCHINSON. I see.

Mr. BOOKEY. It is a cooperative organization, a federated organization, made up of five regional cooperatives. We do operate under the Capper-Volstead Act.

Mr. HUTCHINSON. Well, there are five regional egg marketing cooperatives affiliated with the United Egg Producers.

Mr. BOOKEY. Yes.

Mr. HUTCHINSON. Now, do most of the egg producers belong to these cooperatives, making them dominant within their producing area?

Mr. BOOKEY. Our best estimate is that approximately 15 percent of the egg production is under our cooperative.

Mr. HUTCHINSON. Fifteen percent?

Mr. BOOKEY. About 15.

Mr. HUTCHINSON. Nationwide?

Mr. BOOKEY. Nationwide. It varies from region to region, but that is about an average and it also varies with economic conditions. We tend to have less during tough times. They have less money to pay their dues with and so on.

Mr. HUTCHINSON. And do you operate behind the shield of the Capper-Volstead Act?

Mr. BOOKEY. Yes, sir; we do.

Mr. HUTCHINSON. And I take it you don't think that act should be changed in any way; do you?

Mr. BOOKEY. No, sir; we don't.

I would like to yield to our legal staff, Mr. Isaacson, to handle that one.

Mr. ISAACSON. That is a rather broad statement. We feel that the Capper-Volstead Act does give agriculture a necessary tool to act cooperatively together. I echo Mr. Sinclair's statements that Capper-Volstead Act does not give any cooperative immunity from improper and illegal practices and there are numbers of cases in which cooperatives have been sued by the Justice Department and predatory practices prohibited. That is the way it should be.

Mr. HUTCHINSON. I thank you very much. I am not going to pursue my questioning, Mr. Chairman, because the time period is so short and I think other members may have questions.

Mr. FLOWERS. You say in your statement the egg industry is not covered by the Packers and Stockyards Act and, further, that there is no Federal agency effectively monitoring this type of activity. What would be your recommendation in that regard, sir?

Mr. BOOKEY. We seem to have a rather split opinion in our industry on that. There is a move among the industry now that we should be moved back into the Packers and Stockyards Act, but other segments feel we should stay under the FTC.

Mr. FLOWERS. You sort of have a split there?

Mr. BOOKEY. Yes, it is a split question among the industry.

Mr. FLOWERS. That is what we have found out more than anything in these hearings, I think.

Mr. Dennis, do you have some questions?

Mr. DENNIS. Not knowing very much about the field, concededly, I am a little bit surprised, though, at your feeling that even today the egg industry is made up largely of independent egg producers because everything I heard around, just general talk, is to the contrary. For example, I know that most of the farmers don't bother to keep

chickens any more. You people yourselves have 15 percent of the business according to your testimony. So when you hear all of the time the chicken and egg industry is integrated and corporized and so on, that isn't true? Most of them are independent?

Mr. BOOKEY. Yes, I think we need to clarify here the fact we represent 15 percent of the industry but that does not mean that we market 15 percent of the industry products. We all compete—the members of the cooperatives compete with one another for marketing space. We are highly integrated. This is in contrast to what you were referring to with the last witnesses on conglomerates. We feel that our industry has had to integrate both forward and backward in order to bring the American consumer a product, our product, eggs, at a competitive price. If you will make a study of the prices of eggs, you will find that we are producing the eggs on a percentage basis more competitively than hardly any other food in the Nation. If you go back to the depression years, you will find out you were paying almost as much for eggs as you are now and there are very few foods that can make that statement. So this integration has become necessary in order to get the costs down where they are.

Mr. DENNIS. Well, the integration has become necessary, you say, yet even today the egg market is made up largely of independent egg producers. Is there any conflict with these two statements you make?

Mr. BOOKEY. No, I think it depends on your clarification of independent egg producers. I consider myself an independent egg producer, yet I do many of the functions of the whole industry.

Mr. DENNIS. I suppose the big dairy cooperatives that we hear so much about are also made up of independent milk producers.

Mr. BOOKEY. As far as I know, that statement would be correct, yes. However, I think the difference is the dairy cooperatives are doing the marketing. We each independently market ourselves.

Mr. DENNIS. I see. I will shift ground for a moment. You are not suggesting, are you, that the current high prices for soybeans are not going to be of any benefit to the individual farmer producing soybeans?

Mr. BOOKEY. I would suggest that the current crop year, that, obviously, there was no benefit to the producer. It would appear obvious that the upcoming 1973–74 crop year, that there would be some benefits to the producers.

Mr. DENNIS. The market, as you say, has reached such heights that if I am growing soybeans now, it is certainly going to benefit me as a grower.

Mr. BOOKEY. Yes, the reference was made to the old crop.

Mr. DENNIS. And, likewise, with wheat. You see we have been talking for years about getting an export market for agriculture, now we have it. We have been talking about the balance of payments and so on. Now we have something to export. You have prices on the farm up for the first time in 20 years and everybody now comes in here and says what we have been doing is all wrong.

Mr. BOOKEY. We don't disagree with the export program. We think the export of agricultural products is necessary and we must do this in order to do the things that you are talking about; that is, increase the benefits, the margins back to the farmers and also to help with the balance of trade. But we think it should be done in an orderly way.

We think that this crash program we were in this past year has created much chaos and has cost the American public millions of dollars by lack of organization. We support exports but we think it should and can be done orderly.

Mr. DENNIS. Well, when we are talking about orderliness, would you favor price controls on production levels for instance?

Mr. BOOKEY. No, we do not favor that; we favor free interprise.

Mr. DENNIS. Well, I do too. But it strikes me that every time you begin placing governmental restrictions and regulations in one place of the system, you put it out of kilter someplace else.

Mr. BOOKEY. That is our problem right today. We are regulated and frozen on our raw products. The grains we buy are not. It is a pretty serious problem.

Mr. DENNIS. But you are not suggesting we should put a price control on the raw product, are you?

Mr. BOOKEY. No; our feeling is that the agriculture should flow free, to the market, by supply and demand in the market.

Mr. DENNIS. So you, too, should be free of controls so that we would have them both free. Would that be a better solution?

Mr. BOOKEY. Absolutely.

Mr. DENNIS. Thank you, Mr. Chairman.

Mr. FLOWERS. Ms. Jordan?

Ms. JORDAN. In your written statement, you have indicated that the egg industry has lost money for the past 2 years. Is that a fair statement?

Mr. BOOKEY. That is absolutely true.

Ms. JORDAN. Now, how do you compare the loss for the past 2 years with your gains for the preceding 2 years? How do you compare that with your profits for the preceding 2 years?

Mr. BOOKEY. I am going to yield to Mr. Pedersen on that. He is our statistician.

Mr. PEDERSEN. That is a rough question. Basically, our industry is an industry that is cyclical in nature. We have our ups and downs and this has been known for years. When you average out the last 10 to 12 years of income and losses to the egg producer, the incentive has continued to decline as was indicated by the number of producers that are still in business, and the family flocks of 100 to 500 layers are not there any more. If the incentive was great enough, they would continue to be there.

So that I would say on an average, income for industry has been declining and only those that are the most efficient are the ones that are in business today.

Ms. JORDAN. Are you affected by the current price freeze?

Mr. PEDERSEN. Yes, ma'am.

Ms. JORDAN. Your industry is affected by that? We are told by consumers that the prices, including the prices of eggs, is still higher than the other products and they are also criticizing the freeze by saying that the prices were frozen at the highest level experienced in x number of years. Well, did not your price escalate along with the prices of every other commodity purchased by the consumer during that prefreeze period?

Mr. PEDERSEN. Yes, ma'am, it did. Basically, because our costs escalated and we had a cost push and also a demand pull for protein

foods. And when you get both of those working together, they go up together, but the price of eggs follows the increase in production costs.

Ms. JORDAN. Well, is what you are experiencing more cost push than demand pull?

Mr. PEDERSEN. Jerry, do you want to answer that?

Mr. BOOKEY. We are experiencing both actually.

Ms. JORDAN. To equal degrees?

Mr. BOOKEY. The cost push more than the demand pull.

During the 3-year period, well, it was actually about a 2½-year period, we had a severe depression, we called it in our industry. We peaked out at around 329 million laying hens in the Nation. This is documented by USDA figures. At the present time, we are at about 285 million.

Ms. JORDAN. You know, I agree with you and Mr. Dennis that free competition is the ideal, but when you look at the price results of phase 3, when we have some voluntary noncontrols, we saw that this tremendous escalation in prices, which brought on the current 60-day freeze took place. Now, do you have any evidence which would suggest that if all controls were removed the consumer would receive goods, his eggs, at a fair price?

Mr. BOOKEY. Yes; over time the supply-demand equation would take over. Very likely, eggs would move up in price if they were free to float. This would entice more production. We would be back up to 310 or 320 million chickens and this would again bring our price down. One of our objectives is to come up with stabilization of prices that are fair to both the producer and the consumer. We don't like high prices any more than the consumer likes them because it brings on overproduction and puts us back in a loss place.

Ms. JORDAN. What worries me is that you say over a period of time that the factors of supply and demand would have an effect; would reduce the costs of the products to the consumer. Do you have any idea about how much time we are talking about? In all of the talk that is going on, once this 60-day freeze is over, we are going to see a 15-percent increase in the price of food across-the-board, with all of that, do you have any idea how much time we are talking about? Is this something that you can put into time frame context?

Mr. BOOKEY. Well, I think every industry would be different but I would say in our industry 1 year, that in about 1 to 1½ years that we would be on the downside.

Ms. JORDAN. It would level out?

Mr. BOOKEY. Yes, sir.

Mr. FLOWERS. Mr. McClory?

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. Bookey, I just have a few questions. I am trying to get a better understanding of the production business and perhaps you would help me a little if you would tell me a little bit about how your own operation works; how many acres do you have, how many layers do you have, how many eggs do you produce? I am not trying to get into the financial aspect, but how big an operation do you have?

Mr. BOOKEY. We own approximately 1 million hens in the Northwest section of the country, Washington, Oregon, and Montana. The acreage, well, this is put on nine different farms, 300 acres, or 400 per-

haps. The average rate of production in the United States, with the efficiency factor is about 64 percent so that will tell you about how many eggs we produced.

Mr. McCLORY. Sixty-four percent of what?

Mr. BOOKEY. Of 1 million would be 640,000 eggs per day.

Mr. McCLORY. I understand mathematics, but I am not very knowledgeable about the reproduction cycles of chickens.

Mr. BOOKEY. Well, they lay about six-tenths of an egg a day. [Laughter.]

Mr. McCLORY. That is hard to do, I guess.

Mr. BOOKEY. We, in our own operation, do our own marketing, as I stated. It is generally within the industry, well, our marketing area is in the Northwest region of the country and Alaska.

Mr. McCLORY. Do you grow a substantial amount of your own feed for chickens?

Mr. BOOKEY. No; we do not grow any of our feed in that area of the country.

Mr. McCLORY. That is not a general practice?

Mr. BOOKEY. Not a large practice; no. There is a very small degree of it done.

Mr. McCLORY. Tell me. You mentioned Kroger and Safeway——

Mr. BOOKEY. Yes.

Mr. McCLORY [continuing]. As going into production and vertically integrating their operations?

Mr. BOOKEY. Yes.

Mr. McCLORY. Do you feel that they have any understanding or any agreement, implied or otherwise, between themselves as far as going into production?

Mr. BOOKEY. Between Kroger and Safeway?

Mr. McCLORY. Yes.

Mr. BOOKEY. Oh, I would say absolutely none.

Mr. McCLORY. Just one other question. I think it was touched on perhaps by Mr. Hutchinson, but I come from an area which has substantial dairy production. Such produce is sold under marketing agreements. Would it assist the egg production business to have similar authority?

Mr. BOOKEY. I don't feel qualified to answer that because I don't totally understand the dairy marketing concept. Do you?

Mr. ISAACSON. No.

Mr. PEDERSEN. No.

Mr. BOOKEY. No.

Mr. HUTCHINSON. Are you talking about marketing?

Mr. McCLORY. Yes; marketing agreements that would establish price levels for eggs; and I suppose there are two levels for the price of eggs: the consumer eggs and those that go into the manufacturing industry, right?

Mr. BOOKEY. The baking industry, yes; that is correct.

Mr. McCLORY. Well, it would be interesting to know the answer to that. Do give some thought to that and give us a recommendation.

Mr. BOOKEY. Yes; there is talk among the industry about marketing orders and controls. However, this is another issue that the industry is well split on, and I don't think we could agree on anything there.

Mr. FLOWERS. If Mr. Bookey's chickens could go to a 5-day workweek as opposed to the present 4-day workweek, we would solve the problem.

Mr. Mezvinsky?

Mr. MEZVINSKY. Thank you. I was interested in the percentage of all of the eggs that your organization and your members produce. The news accounts in my home State, the Des Moines Register, points out that the United Egg Producers produce more than 55 percent of the eggs in the United States; is that a valid figure?

Mr. BOOKEY. That is not a valid figure.

Mr. MEZVINSKY. What percentage of all eggs in the United States do you produce?

Mr. BOOKEY. Approximately 15 percent.

Mr. MEZVINSKY. Fifteen percent of all eggs?

Mr. BOOKEY. Yes, sir.

Mr. MEZVINSKY. Fifteen percent of the eggs produced in the United States?

Mr. BOOKEY. Yes.

Mr. MEZVINSKY. OK. What about regions or territories in the marketplace? Maybe that is where the 55 comes from.

Mr. BOOKEY. That varies. I stated that those vary from region to region and I would not be qualified without some study to tell what each region does.

Mr. MEZVINSKY. The reason I raised that, I would like to get that clear. I am concerned, as you are, about control of the marketplace and certainly that goes for the grain companies. It is my understanding that a report done by the Inspector General of the USDA, somehow puts you in the same category as Continental Grain and Cargill concerning control of the egg futures and indicated that as much as a 10-percent price rise in retail eggs was attributed to your control of the market. Would you care to make a comment on that?

Mr. BOOKEY. That is very complimentary to be put in that class, but we have a policy that we are not involved in futures trading whatsoever.

Mr. MEZVINSKY. Do you, as egg producers, want a futures market?

Mr. BOOKEY. Yes; that is a whole other ballgame. We feel the present futures market is a liability to the industry and not an asset, but a properly operated egg futures market is a tool the industry could use. It is not properly operated today.

Mr. MEZVINSKY. So you would favor the futures market?

Mr. BOOKEY. Yes; different from the one we have today.

Mr. MEZVINSKY. Would you explain to the committee how the futures market works today and what marketing alternative for egg producers there would be if there were no futures market so we can get a clear picture of what it means?

Mr. BOOKEY. I don't profess to be an expert in the futures area so I will give you what I understand about it. If the futures market is a place where we can hedge our production in months ahead, if the price looks favorable to us, we can sell our production short on the board and we can lock in our feed on the other side, and we can lock in profit there. It is a very useful tool to use. It is a known profit. If we were to stay with the cash market, we very well might have had

a larger market but, at least, the other way we have a known profit. That is, basically, on the futures side of it.

If you are without a futures market, you are strictly working on a cash market and you are taking your chances.

Mr. MEZVINSKY. I was very much interested in your statement on page 9 where you reiterated your concern that supermarkets might be "able to eliminate independent competitive offers of supplies by independent producers and that the foodstore chains might very well exert a monopolistic influence in the market."

We have, of course, testimony by the food chain people that they feel they don't have a monopolistic concern in the marketplace even with that supermarket integration that you are pointing out. I am interested in looking into that and also the effects on independent producers of the tax loss investment to which you refer. I understand, for instance, there is a group called Cal-Maine, Inc., which is a holding company whose subsidiaries conduct a fully integrated commercial egg business they call National Farming Program 1972, which offers potential investors about $6 million interest in the egg business.

Now, can you explain the advantages that are taking place regarding that tax loss to wealthy investors and why farmers and independent porducers don't receive the same advantages?

Mr. BOOKEY. Well, independent producers can receive the same advantage. It is a tax dodge. Cal-Mine Foods will openly state that it is a cash accounting reporting system. However, at the same time, they openly admit it is a tax advantage for them. They openly admit that the tax laws should very definitely be changed to stop this sort of practice but this same thing is available to each and every one of us.

Mr. MEZVINSKY. Now, in regard to the practices that are taking place, I was interested in your remark that pretty much said that Government policy, rather than enhancing the marketplace for free pricing competition, has actually adversely affected the price. Is that a fair analysis? Would you say it was a contributing factor?

Mr. BOOKEY. It was very definitely a contributing factor in raising the cost of food. It is into the billions of dollars.

Mr. MEZVINSKY. So I have the record clear on another point, you feel without question the food chains in this country very well could have a monopolistic control of the marketplace, certainly in regard to eggs?

Mr. BOOKEY. If they continue this entry into the egg-production business, yes.

Mr. FLOWERS. Thank you, gentlemen.

[The prepared statement of Mr. Bookey follows:]

STATEMENT BY JERRY BOOKEY, PRESIDENT, UNITED EGG PRODUCERS

Mr. Chairman; members of the Committee. My name is Jerry Bookey. I am President of United Egg Producers, a national federation of egg marketing cooperatives. I have with me John Pedersen, Director of Marketing and Statistical Analysis for United Egg Producers, and Irving Isaacson, our General Counsel. I am also an independent egg producer from Seattle, Washington.

United Egg Producers represents commercial, shell egg producer members in every state of the United States except Alaska and Hawaii. There are five regional egg marketing cooperatives affiliated with United Egg Producers, whose members are grass-root egg producers. Our purpose is to work on problems of

our shell egg producer members as they relate to improved efficiencies in production, pricing, and marketing of shell eggs in every state in the United States, except Alaska and Hawaii. Our headquarters offices are located in Atlanta, Georgia, and we maintain a governmental liaison office here in Washington, D.C. Our member cooperative offices are located in Norcross, Georgia; Durham, New Hampshire; Davenport, Iowa; Bellevue, Washington; and Sacramento, California.

On behalf of our members, we would like to commend you for this hearing into the basic issues of higher food prices and we are particularly happy that this Subcommittee is showning a desire to review the farmer's side of the cost-price story. Your constituents, upon whom we depend as customers of our products, have raised a loud cry over the steadily rising costs of food. Egg producers are not happy over higher prices to consumers because it means that our costs have risen, also. In fact, I hope to be able to point out to you here today that our costs have exceeded our income continually for the past two years and today's losses are rapidly driving many egg producers away from the farm. As this exodus continues, it becomes more and more apparent that America's consumers are going to face both higher food prices and shortages of desired products. I am sure it is for this reason this Subcommittee has called for these hearings, and I hope, as a result of these hearings, recommendations will be forthcoming which will be beneficial to both the consumer and the farmer.

FEED COST ISSUE

World demand for livestock feed, particularly soybeans and soybean meal, has been a major contributor to the skyrocketing prices of feed and feed ingredients in the United States. Other factors, such as poor crops in major feed grain producing countries, the devaluation of the U.S. dollar abroad, severe weather conditions in the United States during harvest last Fall, and subsidized foreign purchases, have all contributed to the sharply increased prices. Since the Export Moratorium June 27, the price of soybean meal has declined sharply but the price today remains at over $200 per ton, an increase of more than 100 percent over prices of 1972. The decline in price was a welcome relief for livestock feeders who depend upon soybean meal as a basic protein ingredient for livestock feeds. In mid-June, to illustrate the contrast in prices of before and after the moratorium, prices for soybeans were traded at about $11 per bushel, up 65 percent from the April level and more than 200 percent above a year earlier. Prices for soybean meal by mid-June had climbed to over $400 per ton at Decatur, Ill., up 90 percent from the April level, and 328 percent above that of June 1972. Attachment "A" illustrates the three-year price patterns for soybean meal prices and it is obvious that 1973 prices are unlike any in history.

Attachment "B" illustrates the fact that other feed grains have escalated in price in what appears to be a reaction to soybeans and soybean meal prices. For instance, corn was quoted at $2.32 per bushel on May 30 (F.O.B. Chicago, #2 Corn), compared to $1.28 on the same day of 1972. Corn is basic to poultry and livestock feed, representing as much as 70 percent of the total formula. Except for the corn blight scare of 1971, corn has never approached such high prices. As you can see on the chart, which represents prices of soybean meal, fish meal, corn and milo during the January-March quarters of 1970, 1971, 1972, and 1973, feed prices this year are unlike any in recent years.

The American egg producer—and any other user of soybean meal—is placed at other, equally distressing disadvantages in producing food for the American consumer. While we were forced just recently, to pay more than 300 percent more this year than last for soybean meal, livestock producers in some European countries were getting American soybeans and soybean meal at one-third our costs. Some countries, such as Spain subsidize the purchase of feed for their domestic livestock industries. The subsidy, of course, contributed to driving up the world market price, which, in turn, affected the domestic market prices paid by livestock feeders in the United States. An example of the adverse effect can be easily seen by viewing market prices. Spain is reported to have recently increased the subsidy on soybean meal some $63 per ton, to a total of $234 per ton on the world market. At the time the increase was made, the world average price for soybean meal was $359 per ton.. In practice, therefore livestock producers in Spain are getting American-produced soybean meal for only $125 per ton.

It is distressing to the American egg producer, as I am sure it is to the American consumer, to learn that American companies had apparently over-booked

the available supplies of soybeans and soybean meal for export. Only the Export Moratorium declared by the Department of Commerce salvaged the domestic livestock industries which depend upon this essential protein ingredient. It is also discouraging to learn that our government was keeping very inadequate records which, if handled properly should have indicated the seriousness of this problem long before we reached the critical point. The recent report of the General Accounting Office pointed to this deficiency and we hope the GAO recommendations for closer surveillance will be implemented in the future.

Notwithstanding the obvious inflationary factors that we have previously discussed, United Egg Producers believes that there is another extremely significant factor which may have very well contributed to the excessive inflationary spiral of feed prices. We believe the concentrated control of available supplies of feed grains in the hands of a few giant corporations also contributed to these abnormal feed prices. U.S. Department of Agriculture figures indicated there was only a five percent decline in supplies of soybeans in the United States and that domestic utilization was not significantly increased. Yet prices increased over 300 percent. Five or six large grain companies in the United States control the vast majority of soybeans and a substantial amount of corn and other grains after harvest. These companies took advantage, we think, of the artificial fear in the market which was created by the combination of factors already mentioned. These companies are in a position to control the market by their ownership of the product. The concentration of available supply in such few hands obviously raises serious question as to the validity of these unreasonable price increases.

The quarterly financial reports of some of these companies appear to bear out our assumptions. Attached to this statement are standard New York Stock Exchange Stock Reports for four public companies which deal measurably in the grain business. Archer-Daniels-Midland, described in the report as "the largest domestic soybean processor," reported for the nine months ended March 31, 1973, net income advanced 45.5 percent, year-to-year. Central Soya described as the second-largest domestic processor of soybeans, reported "earnings before provisions for income taxes advanced 59.0 percent" for the six month period ended February 28, 1973. Staley Manufacturing, described as "a leeading producer of corn and soybean-based products" reported pretax income rose 63.3 percent during the six months period ended March 31, 1973. Ralston Purina, reported to be the world's leading producer of commercial feeds for livestock and poultry and of dry dog and cat food, reported overall pretax income increased 15.6 percent for the six months ended March 31, 1973. Two of the larger grain companies are private companies and, therefore, a current public report on their sales and incomes is not available. These companies are Continental Grain and Cargill.

Let me point out that contrary to implications of many news media reports, the majority of the producers of feed grains did not receive the enormously high prices quoted by the commodity markets. The largest portion of the inflated prices came after most producers had sold their soybean production. Most grains, particularly soybeans, are sold at harvest and a small portion is stored by farmers for later sales. Most of that which is stored is sold shortly after the first of the year. Therefore, the high prices of feed grains which we have witnessed most of this year does not represent increased farm incomes.

We respectfully request this Subcommittee to use its congressional powers to investigate the question as to whether or not this concentration of feed grain supplies in the hands of a few major companies during this abnormal period has, in any way, produced an anti-competitive effect and thereby adversely affected agricultural producers and the general public.

An examination of what the high feed prices are doing to the cost of producing a dozen eggs will reveal why the egg industry is so concerned over the feed price situation. Our industry, like other food producing industries, has been under increasing criticism from consumer groups and others because of relatively high egg prices late last year and, more particularly, since January of 1973. Exhibit "C" graphically portrays a comparison of egg production cost for the first three months of each year since 1970. It is easy to see that higher wholesale egg prices for the January-March 1973 period did not match the rise in production cost during the period and the egg industry suffered a net loss of approximately 0.7¢ per dozen eggs produced.

Our statistical department indicated the egg industry needed a 56.4¢ New York, wholesale, large egg market price in the April-June quarter just to break

even! The April-June egg price realized was only 51.9¢, or an estimated loss position of 4.5¢ per dozen eggs produced. When President Nixon announced the new Economic Stabilization Program on June 13, the egg industry was frozen into a loss position. The effective New York wholesale market quotation of 59¢ during the base period could not be used for pricing eggs during the freeze because of industry marketing practices. Most producers price current week deliveries on the previous week's quotation. This is done because major food stores need at least a week to plan their specials, etc., and must know what their costs will be prior to planning sales. Therefore, in reality, the freeze base price for many egg producers is the highest price of the week prior to the June 1–8 base period. The highest price that week was 55¢ (New York).

Looking into the July-September quarter, we project that the egg producer must realize a 56¢ wholesale market in order to meet his cost of production.

Attachment "C," referred to previously, indicates the average cost of producing a dozen eggs during the January-March period of 1973 rose 10.6¢ per dozen in feed costs alone over the previous year. If projections are accurate, feed costs will add about 14¢ per dozen over last year to the cost of egg production in the July-September quarter. It is interesting to note that the total costs of producing eggs during the January-March period of 1972 was only 26.8¢ per dozen.

Feed costs in previous years represented 60 percent of the total cost of producing a dozen eggs. Since December 1972, the proportion of production costs due to feed has risen steadily to about 71 percent today.

As a result of these factors—high feed cost and the Economic Stabilization Program—egg producers have severely cut production by reducing layer numbers and by canceling production plans. The U.S. Department of Agriculture recently announced that the nation's laying flock totalled 287.5 million—the smallest flock size since 1961. In recent weeks, producers have accelerated fowl slaughter to further reduce losses. USDA's fowl slaughter report for the week ending June 27 showed egg producers sent to slaughter 3,255,000 hens, an increase of 10 percent above the previous week's slaughter and 25 percent greater than the same week in 1972. Such action indicates a severe shortage of eggs in the supermarkets of the nation in the weeks and months ahead. My own operation has had to short all orders approximately 10 percent in recent weeks. We fear that soon, if this trend isn't reversed, consumers will not be asking the prices of eggs, but will be asking whether or not a supermarket has eggs for sale.

FOOD STORE ENTRY INTO EGG PRODUCTION

Although not directly related to the current egg production problems outlined already, I would like to introduce another problem facing independent egg producers which may have present and future impact on the price of eggs to the consuming public. In recent years, independent egg producers have witnessed a steady rise in the number of "outside" capital being invested in egg production. Part of this has come from investors seeking diversification of investments, some has come from conglomerate-type investment firms seeking to spread risks, some has come from high income-type investors seeking tax shelters, but the most alarming to the egg industry is the actual entry into egg production by certain major and minor food store chains.

Traditionally, egg production has been controlled by independent farmers who chose this segment of agriculture for their livelihoods. Modernization, technology, and consumer demands for quality and finite standards has brought about local, concentrated production units among independent producers. Such changes require major financial investments and great economic risks. Also, traditionally, the egg industry suffers cyclical price patterns, which have tested even the most securely financed producers. Yet, even today, the egg industry is made up largely of independent egg producers. Egg production is among the few agricultural interests common to every state in the nation.

Large food store chains have apparently found investments in egg production a two-fold advantage. First, cash accounting in agriculture permits losses to be written off and profits, which are normally taxable, to be plowed back, tax free, into greater production. Therefore, from a tax and investment standpoint, a diversified food chain which controls both production and retail sales of a given product is in a relatively sound position. Secondly, even in times of depressed prices which drive some independent egg producers out of business, these food store chains are able to withstand the financial burden by their utilization of superior financial resources and they can maintain adequate egg supplies without

undue concern about the highs or lows of the market on which independent egg producers must compete. Such an attitude may even contribute to the longevity of many economic problems confronting the independent egg producer. It is obvious that a food store chain which owns all or a portion of its egg production can exert tremendous influence on both the price and marketings of independent egg producers who compete in the same market area. By virtue of the fact that food stores control all the shelf-space, they can determine the amount of eggs which will be displayed and by whom. Eggs are among the most profitable items in a food store, according to reports published by the food industry, and it is readily known that eggs are high on each households food needs. To the extent that a food store chain can influence the price paid producers, the food chain can influence the profit derived from egg sales.

Concrete data on the extent of food store entry into egg production is difficult to obtain because the stores are not required to report their production affiliations to any regulating agency of the federal government and those egg producers, who are either working for the food store chains, or are in partnership with them, are unwilling to talk about their situations. We do know of certain major food store chains which are directly and substantially involved in egg production, such as Kroger and Safeway food store chains, and, to a lesser extent, some smaller food store companies.

Independent egg producers consider the entry of food store chains into egg production among the most alarming developments in our industry in recent years and we believe it will have considerable impact on the future of the industry. It is evident that as independent producers are eliminated and food store chains take over production in a given area, the stores can exert tremendous leverage on other independent egg producers in the area. A store that buys eggs from independent egg producers must compete with stores which own their own production so the leverage can even be extended to egg producers who are not suppliers of stores which own part, or all, of their own needs. To the extent they are able to eliminate independent, competitive offerings of supplies by independent producers, the food store chains may very well exert a monopolistic influence in the market. They may very well use their economic advantage to exert unreasonable pressures on other food store chains in the same market area.

Two things the major food chains have that independent egg producers do not have are solid financial bases and a guaranteed market. They can pour whatever resources they need into egg production and place the investment on their books as capital expansions. The cash system of accounting in agriculture allows the company to reinvest whatever profits from egg production back into further expansion, or to write-off losses. Such practices allow them to build up production units very rapidly at a very low cost to themselves. This gives a chain store, with its superior financial resources a tremendous advantage over independent producers who normally have only minimal financial resources.

Finally, it is obvious there is a limited market for eggs. The market is not expandable except as the population grows or other gradual influences which might bring about a need for more eggs. When a food store chain takes away the marketing space of its own stores from an independent producer and replaces the producer's supplies with its own production, there is no place for the independent egg producer to go with his production. He can either go out of business or attempt to capture some other independent egg producer's market. Such practice deteriorates the egg market in a given area, and if substantially large, can affect the market price for eggs in much of the United States.

The egg industry is not covered by the Packers and Stockyards Act which was utilized many years ago to bring about a divestment of meat packers from production interests. No federal agency effectively monitors this type of activity. The Packers and Stockyards Administration does not have jurisdiction over the egg industry and the Federal Trade Commission has, in the past, taken little interest in such agricultural matters. Therefore, there is no effective method for the procurement of accurate data on this problem. There is no effective means of preventing the increase of this type of unfair investment practice because monopolistic practices are difficult to prove. From the information we have available, we are greatly concerned, as apparently the meat industry was concerned when meat packers entered the meat production field, several years ago.

This trend is both alarming to independent egg producers and, we believe, dangerous to the future price and supply of eggs which the American consumer demands. To the extent food store chains can exert control over the market by their ownership of the product, they will be able to dictate the prices consumer

will pay in the supermarket. The competitive influence of numerous independent egg producers will then be effectively eliminated.

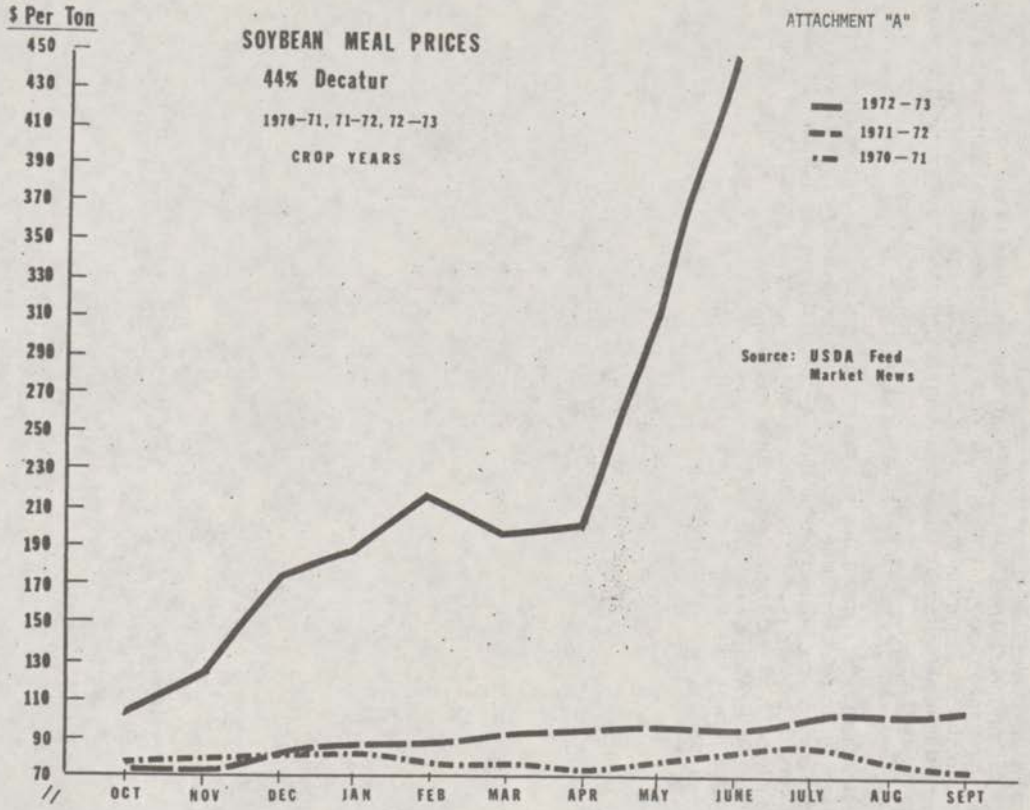
We, therefore, respectfully request this Subcommittee to use its congressional powers to investigate this problem to determine if food store chains' entry into egg production is not an unreasonable, monopolistic practice which affects the marketing of shell eggs and poses serious threat to the future competitiveness of the egg industry.

CONCLUSION

Mr. Chairman, I would like to again thank you and this Subcommittee of the House Judiciary Committee for giving us this opportunity to testify concerning these serious egg industry problems. We hope this Subcommittee will use its powers to further investigate these issues in order to prevent such economic situations from confronting the American egg producer, and ultimately, the American consumer, in the future.

Respectfully submitted.

JERRY BOOKEY,
President.


$ Per Ton
SOYBEAN MEAL PRICES
44% Decatur
1970-71, 71-72, 72-73
CROP YEARS
ATTACHMENT "A"
1972-73
1971-72
1970-71
Source: USDA Feed Market News
450
430
410
390
370
350
330
310
290
270
250
230
210
190
170
150
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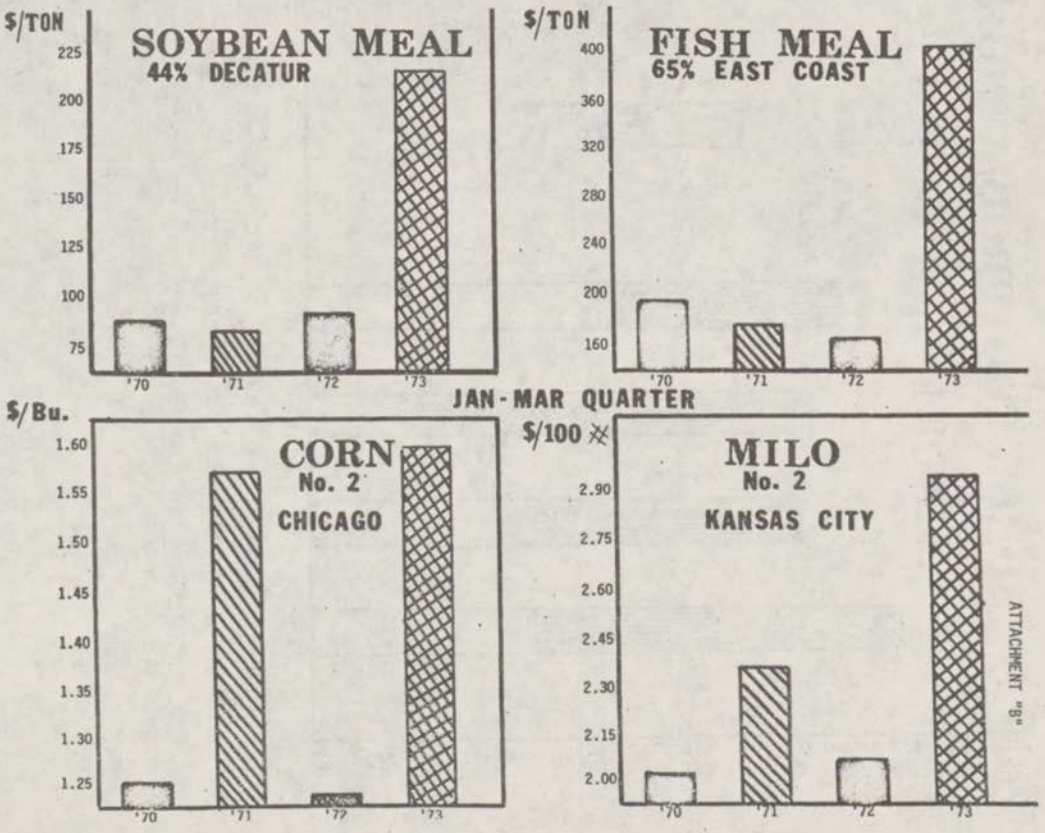
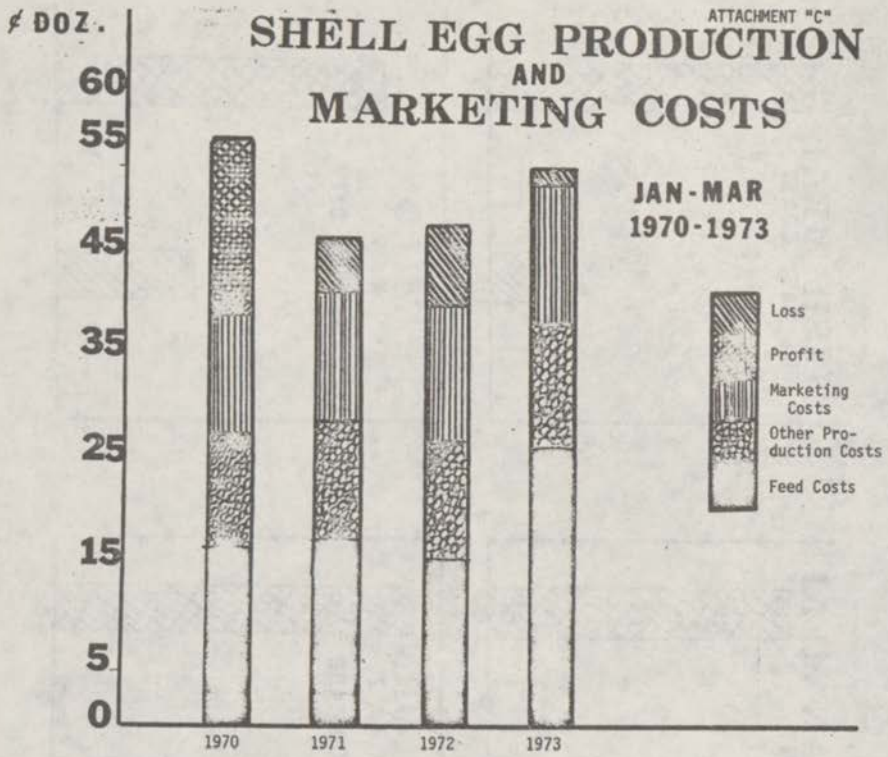


ATTACHMENT "B"

ATTACHMENT "C"

SHELL EGG PRODUCTION AND MARKETING COSTS

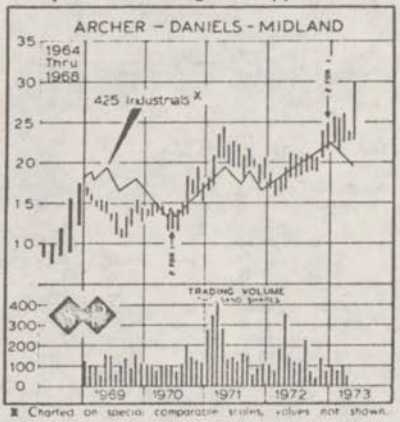


	Production Costs For All Eggs Sold From Farm			Marketing Cost From Farm To Wholesale Mkt.	USDA Wholesale Large Shell Egg Prices - N.Y.	Producer Profit Or Loss
	Feed Costs	Other Costs	Total			
	Cents Per Dozen					
1970	16.3	10.9	27.2	11.0	54.1	+16.1
1971	17.5	11.1	28.6	12.0	36.1	- 4.5
1972	15.4	11.4	26.8	12.5	31.9	- 7.4
1973	26.0	11.8	37.8	13.0	50.1	- 0.7
Actual Apr/June	31.5	11.9	43.4	13.0	57.9	- 4.5
Estimated Jul/Sep	30.0	13.0	43.0	13.0	56.0	- 0.0

ADM[1] Archer-Daniels-Midland 206

Stock—	Price May 31'73	Dividend	Yield
COMMON	30⅛	[2]$0.50	[2]1.7%

RECOMMENDATION: This company is the largest domestic soybean processor and is an important flour miller. Prospective continuation of strong worldwide demand for soybean- and grain-based products, further expansion and upgrading of facilities, and increasing emphasis on further processed products enhance long-term prospects. On this basis, the shares have some potential for long-term appreciation.



X Charted on special comparative scales, values not shown.

[3]COMMON SHARE EARNINGS ($)

Quarter:	1972-3	1971-2	1970-1	1969-70
Sept.	0.41	0.38	0.52	0.15
Dec.	0.46	0.33	0.53	0.40
March	0.82	0.51	0.52	0.51
June		0.48	0.33	0.32

Sales and other operating income for the fiscal year ended June 30, 1972 advanced 2.4% from those of the preceding year, reflecting improved demand for soybean-based products including TVP textured vegetable proteins. Margins were restricted by less favorable soybean processing spreads owing to higher costs of soybeans and soft demand for soybean oil, and lower wheat milling spreads; operating income was down 12%. Greater depreciation charges extended the decline in pretax income to 13%. After taxes at 45.6% against 49.4%, and equity in the net income of the unconsolidated bank subsidiary ($981,703 versus $1,112,118), net income was down 7.0%. Share earnings for the respective years were reported at $1.70 and $1.92, both as adjusted for the November, 1972 2-for-1 stock split.

For the nine months ended March 31, 1973, net income advanced 45.5%, year to year. Share earnings were $1.69, up from $1.22, as adjusted for the subsequent 2-for-1 split. (Sales are not reported on an interim basis.)

PROSPECTS

Near Term—Sales for the fiscal year to June 30, 1973 should easily exceed the $675.9 million of the prior year. Share earnings are estimated at $2.25, compared with the $1.70 (adjusted) of 1971-2.

Sales for 1973-4 should exceed those expected for the previous year. A large soybean crop is anticipated and, assuming the prices received for soybean based products do not deteriorate materially, revenues from the large soybean processing division should show some improvement. Gooch Foods, aided by recent price increases, and barge grain shipping operations, boosted by an enlargement of the fleet, should contribute to any gain achieved.

Results will largely be determined by the soybean processing spreads and flour milling margins experienced during the year, although expected improvement in profitability from specialty products and operations should have a positive effect. At this time, it appears that earnings for 1973-4 could exceed those anticipated for the prior year. Dividends at $0.12½ quarterly should be maintained.

Long Term—Despite variations in the supply of agricultural commodities, the potential increase in demand for high-nutritive food ingredients and the enlarged capacity are favorable factors.

RECENT DEVELOPMENTS

In February, 1973 the company announced that it had acquired 27 grain elevators located in the west and the mid-west for about 447,560 shares of common stock.

The company said in April that it had formed a new company, ADM Food Oils, to process, package and market edible vegetable oil products.

DIVIDEND DATA

Dividends in the past 12 months were:

Amt. of Divd. $	Date Decl.	Ex-divd. Date	Stock of Record	Payment Date
0.25...	Aug. 8	Aug. 15	Aug. 21	Sep. 1'72
0.25...	Nov. 2	Nov. 13	Nov. 17	Dec. 1'72
*.....	..... Dec. 4	Nov. 17	Dec. 1'72	

*2-for-1 split.

--After 2-for-1 split--

0.12½.	Feb. 8	Feb. 13	Feb. 20	Mar. 1'73
0.12½.	May 8	May 15	May 21	Jun. 1'73

[1]Listed N.Y.S.E. [2]Indicated rate. [3]Adj. for 2-for-1 splits in Dec. 1972 & June 1970. [4]Deficit.

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Vol. 40, No. 108 Wednesday, June 6, 1973 Sec. 3

[4]INCOME STATISTICS (Million $) AND PER SHARE ($) DATA

Year Ended June 30	Net Sales & Oper. Revs.	%Oper. Inc. of Sales	Oper. Inc.	Depr. & Amort.	Net bef. Taxes	[2]Net Inc.	—[3]Common Share ($) Data— [3]Earns.	*Funds Generated	Divs. Paid	[1]Price Range	Price-Earns. Ratios HI LO
1973--	-----	--	----	---	----	----	---	---	0.50	32 -21¼	-----
1972--	675.86	4.7	31.75	9.63	18.99	11.31	1.70	3.33	0.50	24¾-15⅞	15- 9
1971--	659.80	5.4	35.95	7.98	21.82	12.16	1.92	3.23	0.50	24¾-16½	13- 9
1970--	443.38	6.1	27.10	5.42	17.85	8.74	1.38	2.50	0.42½	19½-11½	14- 8
1969--	320.79	2.6	8.30	3.93	4.22	3.14	0.49	1.19	0.40	17 -10⅝	35-22
1968--	280.77	2.8	7.95	2.48	5.15	3.24	0.59	0.98	0.40	17½-12¼	28-21
1967--	371.63	5.0	18.59	9.66	5.34	3.22	0.53	2.08	0.40	15½- 8⅝	30-17
1966--	361.52	4.5	16.34	5.35	7.88	4.95	0.79	1.73	0.40	11⅞- 8⅜	15-11
1965--	323.22	4.0	12.85	5.24	4.54	2.77	0.44	1.38	0.50	10 - 7½	23-17
1964--	291.71	3.9	11.38	4.93	4.36	3.28	0.52	1.32	0.50	10 - 8⅜	20-17
1963--	271.29	4.7	12.83	3.93	6.53	3.85	0.61	1.08	0.50	11⅛- 9¾	18-16

[4]PERTINENT BALANCE SHEET STATISTICS (Million $)

June 30	Gross Prop.	Capital Expend.	Cash Items	Inventories	Receivables	——Current—— Assets	Liabs.	Net Workg. Cap.	Cur. Ratio Assets to Liabs.	Long Term Debt	[3]($) Book Val. Com. Sh.
1972--	132.86	15.37	21.01	94.61	44.87	164.80	41.81	122.99	3.9-1	86.43	18.07
1971--	111.20	15.64	12.17	79.83	48.29	146.02	77.66	68.35	1.9-1	37.07	17.07
1970--	102.74	18.81	11.14	65.04	53.07	132.77	60.62	72.14	2.2-1	44.39	15.63
1969--	87.23	15.71	17.83	46.02	27.98	94.17	26.67	67.49	3.5-1	37.66	14.77
1968--	65.83	13.34	8.65	46.26	38.63	96.78	27.51	69.26	3.5-1	28.85	16.25
1967--	62.26	8.15	12.91	52.96	24.63	91.13	29.24	61.88	3.1-1	26.41	15.78
1966--	101.41	5.53	11.51	91.47	37.89	142.07	84.59	57.48	1.7-1	25.00	15.08
1965--	96.01	4.95	5.22	80.64	30.06	117.19	62.92	54.27	1.9-1	25.00	14.71
1964--	89.43	4.11	3.94	53.79	28.10	86.53	30.54	55.99	2.8-1	25.00	14.66
1963--	91.91	6.27	5.37	52.53	27.03	85.80	31.54	54.26	2.7-1	25.00	14.65

[1]Cal. yrs. [2]Bef. spec. cr. of $0.21 a sh. in 1968 & $1.54 in 1967; aft. spec. cr. of $0.13 a sh. in 1964. [3]Adj. for 2-for-1 splits in Dec. 1972 & June 1970. [4]Incl. First Interoceanic Corp. after 1968.

*As computed by Standard & Poor's.

Fundamental Position

Archer-Daniels-Midland is the largest domestic soybean processor and the third largest flour miller in the U. S. Soybean processing accounts for 59% of sales, flour milling for 26%, and other activities 15%.

Ten soybean processing plants have the capacity to process 150 million bushels of soybeans annually. ADM also produces soybean and linseed meals and millfeeds for animal feed as well as Gooch brand formulated livestock, poultry and pet feeds. Other products include TVP textured vegetable protein, soy flours and grits, and Ardex, a protein supplement.

The milling division produces bakery and family flours, corn flour, bulgur, and semolina from which spaghetti and macaroni products are made.

The company also ranks among the ten leading grain merchandising companies and is the largest barge shipper of grain and grain products on the Mississippi River and its tributaries. All of its grain purchases are hedged. In addition, a growing export trade is conducted in agricultural products and foreign manufacturers are licensed to produce its products. Subsidiaries are located in 14 countries.

ADM also has a 79% interest in Fleischmann Malting Co., a producer of malt products for the food and beverage industry.

The Gooch Foods subsidiary manufactures macaroni, spaghetti and egg noodles.

Independent Bancorporation (formerly First Interoceanic Corp.) owns 85% of National City Bank of Minneapolis. In order to comply with the amendments to the Bank Holding Company Act, ADM in 1971 filed an irrevocable declaration to divest itself of its banking interests by December 31, 1980.

British Arkady Co., England, produces improvers and additives used in bakery products, meats, and other foods. A subsidiary makes food processing and institutional equipment.

In April, 1971 ADM purchased a 50% interest in Corn Sweeteners, Inc. which it subsequently increased to 83%. The subsidiary produces corn syrup, corn starch, gluten feed, gluten meal, corn oil and caramel color.

Dividends, paid since 1927, averaged 37% of earnings in the five years through June 30, 1972.

Employees: 3,347. Shareholders: 5,647.

Finances

National City Bank of Minneapolis (85% owned) had assets as of June 30, 1972 of $113,938,221 and operating earnings of $835,397 for the year ended June 30, 1972.

Income taxes were reduced by an investment tax credit of $686,489 in 1971-2 and $392,827 in 1970-1.

Long-term bank borrowings totaled $50 million at June 30, 1972.

CAPITALIZATION

LONG TERM DEBT: $86,433,927, incl. $8,185,000 of capitalized lease obligations.
MINORITY INTEREST: $1,147,804.
COMMON STOCK: 7,346,356 shs. (no par); about 25% controlled by directors.

Incorporated in Del. in 1923. **Office**—4666 Faries Pkway., Decatur, Ill. 62525. **Pres**—D. Walker. **VP-Secy**—R. L. Erickson. **Treas**—D. P. Poboinik. **Dirs**—D. O. Andreas (Chrmn), A. M. Andreas, L. W. Andreas, S. M. Archer, Jr., C. Baker, J. H. Daniels, H. D. Hale, E. A. Olson, J. E. Uihlein, Jr., J. J. Vanier. **Transfer Agents**—National City Bank of Minneapolis; Chase Manhattan Bank, NYC. **Registrars**—Northwestern National Bank of Minneapolis; Morgan Guaranty Trust Co., NYC.

Information has been obtained from sources believed to be reliable, but its accuracy and completeness, and that of the opinions based thereon, are not guaranteed. Printed in U. S. A.

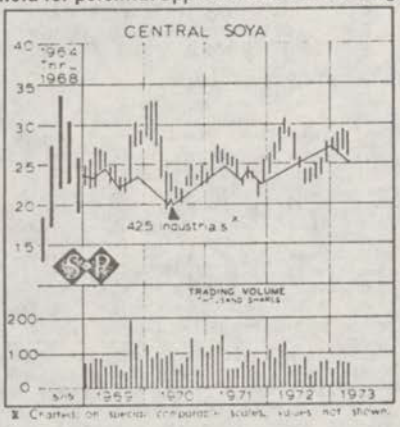
CSY[1]

Central Soya

483

Stock—	Price May 9'73	Dividend	Yield
CAPITAL	27[1]/8	[2]$1.00	[2]3.7%

RECOMMENDATION: This company is the second largest domestic processor of soybeans. It produces soybean-based products, poultry and eggs, processed foods, and is engaged in grain merchandising activities. Aided by improved poultry operations and strong demand for soybean and grain products, earnings for fiscal 1973 should be well above the year-earlier level. Rising worldwide demand for protein-rich products and an expansion of non-commodity operations suggest a generally upward course in earnings. The shares may be held for potential appreciation over the long term.



X Cranked on special composite scales, values not shown.

[3]NET SALES (Million $)

Quarter:	1972-3	1971-2	1970-1	1969-70
Nov.....	259.26	198.11	.....	148.67
Feb.....	306.31	223.05	[4]05.38	170.78
May.....		223.19	211.27	176.14
Aug.....		266.87	213.92	183.03

Sales for the six months ended February 28, 1973 rose 34.3% from those of the corresponding year-earlier period. The improvement largely reflected increased demand and higher prices for soybean meal, grain, and livestock and poultry feeds. The inclusion of the Provimi subsidiary for the full six months aided the comparison. Margins benefited from the higher volume in commodity-oriented operations and improved profitability in the poultry division. Earnings before provision for income taxes advanced 59.0%. After taxes at 49.0% against 47.4%, and reduced minority interests in the earnings of subsidiaries, net income increased 56.6%. Share earnings were $1.59, compared with $1.02.

[3]CAPITAL SHARE EARNINGS ($)

Quarter:	1972-3	1971-2	1970-1	1969-70
Nov.....	0.59	0.47	.....	0.70
Feb.....	1.00	0.54	[4]0.98	0.74
May.....		0.45	0.45	0.64
Aug.....		0.64	0.56	0.68

PROSPECTS

Near Term—Sales for the fiscal year ending August 31, 1973 should easily exceed the $911.2 million reported for fiscal 1972. The gain would be derived from full year inclusion of the Bonda-Provimi companies, an increased level of grain merchandising activities, and continued strong foreign demand for livestock and poultry feeds. Domestic feed demand should improve.

Margins should favorably reflect some prospective improvement in soybean processing spreads. Poultry operations should benefit from an improvement in average broiler prices, but higher feeding costs and expenses connected with the expansion of Filbert into western U. S, markets may be partially restrictive. On balance, earnings for fiscal 1973 should easily exceed the $2.10 a share of the prior year. Dividends should continue at $0.25 quarterly.

Long Term—Rising worldwide demand for soybean-based products and efforts to upgrade the product line are favorable factors.

RECENT DEVELOPMENTS

On April 26, 1972 the company acquired J. H. Filbert, Inc. for 750,000 common shares. Filbert, a producer and marketer of margarine, salad oil and puddings, had sales of $62.6 million and net income of $956,000 (including a special credit of $127,000) in 1971.

Effective December 31, 1971, Central Soya purchased Bonda Industrial Corp. (Bonda-Provimi companies) for $11.1 million. Bonda is a Rotterdam-based holding company with interests in livestock and poultry feed manufacturing in 26 foreign countries and had sales of $102.3 million and a net loss of $183,000 in 1971.

DIVIDEND DATA

Some $18,605,853 of retained earnings at August 31, 1972 was unrestricted.

Amt. of Dvd. $	Date Decl.	Ex-divd. Date	Stock of Record	Payment Date
0.25..	Jul. 13	Jul. 24	Jul. 28	Aug. 21'72
0.25...	Oct. 12	Oct. 20	Oct. 27	Nov. 20'72
0.25..	Jan. 11	Jan. 16	Jan. 22	Feb. 20'73
0.25...	Mar. 22	Apr. 13	Apr. 19	May 20'73

[1]Listed N.Y.S.E. [2]Indicated rate. [3]Incl. cos. acquired in 1971-2 on a pooling of interests basis aft. 1969-70. [4]6 mos.

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483 CENTRAL SOYA COMPANY, INC.

[2]INCOME STATISTICS (Million $) AND PER SHARE ($) DATA

Year Ended Aug. 31	Net Sales	% Op. Inc. of Sales	Oper. Inc.	Depr. & Amort.	Net Bef. Taxes	Net Inc.	—[1]Capital Share ($) Data— Earns.	Divs. Paid	Price Range	Price-Earns. Ratios HI LO
1973--	-----	--	----	---	----	----	---	0.75	29½ -25⅝	-----
1972--	911.22	5.0	45.55	9.05	30.43	16.15	2.10	1.00	30¾ -22⅛	15-11
1971--	830.57	5.2	43.06	7.92	30.03	15.35	1.99	1.00	27¼ -20⅞	14-10
1970--	678.62	6.9	47.15	6.70	36.97	18.47	2.76	0.80	33 -19⅜	12- 7
1969--	556.69	5.5	30.71	6.33	21.63	11.06	1.71	0.80	30½ -21	18-12
1968--	516.67	4.6	23.72	5.86	14.44	7.64	1.20	0.80	25¾ -19	21- 9
1967--	578.03	4.2	24.52	5.40	16.87	9.25	1.47	0.80	30⅜ -22¼	21-15
1966--	519.87	6.5	33.60	5.54	26.53	14.48	2.35	0.70	33¾ -22	14- 9
1965--	467.38	5.4	25.10	4.36	17.72	9.47	1.56	0.65	27⅛ -17⅛	17-11
1964--	394.82	5.6	22.00	4.16	15.23	7.93	1.32	0.60	18½ -13	13-10
1963--	342.75	5.6	19.10	4.03	13.18	6.78	1.13	0.54	16 -13	14-12

[2]PERTINENT BALANCE SHEET STATISTICS (Million $)

Aug. 31	Gross Prop.	Capital Expend.	Cash Items	Inventories	Receivables	——Current—— Assets	Liabs.	Net Workg. Cap.	Cur. Ratio Assets to Liabs.	Long Term Debt	[1]($) Book Val. Cap. Sh.
1972--	184.78	19.81	11.56	89.23	88.56	199.49	72.63	126.86	2.7-1	77.55	19.38
1971--	155.80	17.08	9.59	63.72	70.73	153.22	54.31	98.92	2.8-1	34.95	18.59
1970--	129.66	9.85	8.20	58.94	54.28	130.88	34.11	96.76	3.8-1	36.11	18.27
1969--	120.45	10.39	18.38	37.70	46.56	107.25	20.97	86.28	5.1-1	37.75	16.55
1968--	110.29	5.85	7.13	50.25	41.24	101.08	16.53	84.55	6.1-1	38.49	16.33
1967--	103.13	8.94	5.64	46.23	39.32	97.02	33.12	63.89	2.9-1	20.93	15.89
1966--	91.62	11.43	7.65	47.60	26.74	90.07	24.68	65.39	3.6-1	23.37	15.15
1965--	84.76	6.07	10.10	31.49	28.43	74.68	17.72	56.96	4.2-1	22.95	13.51
1964--	79.13	5.62	5.70	40.42	24.72	73.68	19.48	54.19	3.8-1	24.65	12.62
1963--	73.91	4.05	5.60	36.13	22.42	69.72	21.46	48.26	3.2-1	21.90	12.24

[1]Adj. for stk. div. of 2% in 1963 & 2-for-1 split in Sept. 1966. [2]Incls. six cos. acquired in 1972 aft. 1970.

Fundamental Position

Central Soya is engaged in the acquisition of agricultural products and the resale of such products in both raw and processed form to the agricultural, industrial and food markets. In fiscal 1972 livestock and poultry feeds accounted for 29% of sales, soybean meal and crude oil for 23%, grain merchandising for 20%, refined soya and processed food products for 17%, and poultry and eggs for 11%.

Livestock and poultry feeds are manufactured and sold in either concentrate or complete form in the U.S. under the Master Mix name. Livestock and poultry feeds are manufactured for international markets from mills in Western Europe, Canada, Brazil, the Caribbean and North Africa. In addition to the feeds, the company markets a line of farm supplies under the Master Mix name and a line disease and insect control products.

Soybean meal and crude oil are produced by employing the solvent extraction process to separate the oil from the soybean. The meal is used as a component in the livestock and poultry feeds and is sold to other feed manufacturers. The crude oil is used by the company in its refined and edible oil products and is sold to other manufacturers.

The company purchases such grains as corn, oats and wheat for use in its own feeds and for storage and sale to others. Sales are made primarily to grain deficient areas and to the export market. Much of the grain to be sold is carried by a fleet of barges owned by the company.

The company refines and sells edible and industrial grade soybean oil. The edible oil is used for salad oil, cooking oil and as the base for margarine and other related food items. The industrial oil is sold to manufacturers of paint, resins, and plastics. Refined soybean meal products, processed poultry and beef, portion-controlled frozen foods for institutional use, and a processing by-product called lecithin are also produced. A line of margarines, salad dressings and other consumer food products are marketed in the eastern U.S. under the Mrs Filberts name and private labels.

Broiler chickens, turkeys and eggs are produced and processed by the company. The raising of poultry and production of eggs is contracted to local farmers. Poultry is sold principally in dressed form to retail food chains and in other forms to institutions and food processors. Eggs are graded and packaged for sale to the same markets.

Dividends, paid without interruption since fiscal 1942, averaged 45% of net in the five years through fiscal 1972. Stock extras were paid each fiscal year from 1957 through 1963.

Employees: 10,209. Shareholders: 12,145.

Finances

In July, 1972 the company publicly sold $30 million of 7.5% sinking fund debentures due August 1, 1997. Net proceeds were applied initially to the reduction of seasonal short-term borrowings.

Capital expenditures for fiscal 1973 are budgeted at $14 million, down from the $19.8 million (excluding acquisitions) of fiscal 1972.

CAPITALIZATION

LONG TERM DEBT: $74,277,811.
CAPITAL STOCK: 7,694,182 shares (no par).

Incorporated in Ind. in 1934. **Office**—1300 Fort Wayne National Bank Bldg., Fort Wayne, Ind. 46802. **Pres**—J. F. Jones. **VP-Secy**—R. N. Allen. **Treas**—R. J. Sager. **Dirs**—D. W. McMillen, Jr., (Chrmn), J. L. Andreas, A. B. Filbert, D. G. Fleming, J. F. Jones, H. W. McMillen, R. B. Porrott, R. C. Rostetter, J. D. Schaaff, B. A. Townsend. **Transfer Agents**—Chase Manhattan Bank, NYC; Fort Wayne National Bank, Fort Wayne, Ind. **Registrars**—Morgan Guaranty Trust Co., NYC; Lincoln National Bank & Trust Co., Fort Wayne, Ind.

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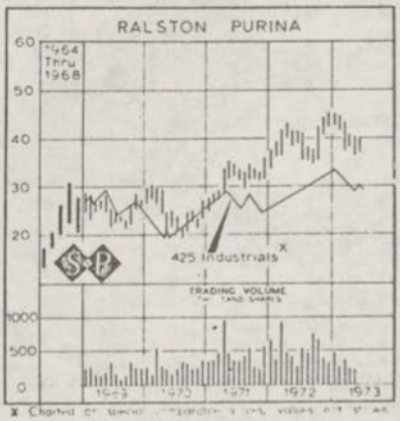
RAL[1] **Ralston Purina** 1892K

Stock—	Price Jun. 27'73	Dividend	Yield
COMMON	35¾	[2]$0.75	[2]2.1%

RECOMMENDATION: This company is the world's leading producer of commercial feeds for livestock and poultry and of dry dog and cat food. Other leading products include canned tuna and cereals. Restaurants, primarily the fast foods type, are also operated. The shift toward a more consumer-oriented product mix suggests a continuation of the profits uptrend over the longer term. The shares have appeal for those with long-pull objectives.



x Charted on special comparative scales, values not shown.

NET SALES (Million $)

Quarter:	1972-3	1971-2	1970-1	1969-70
Dec.	516.5	451.2	430.7	380.2
Mar.	570.6	443.4	428.5	375.1
June		422.8	439.1	375.2
Sept.		516.0	447.8	436.5

Sales for the six months ended March 31, 1973 advanced 21.5% from those of the corresponding period of the preceding year. The improvement reflected increased volume in pet foods, seafood and restaurant operations, and commodity-related products. In the agricultural division, rising soybean and grain costs were largely passed on in the form of higher prices. Despite favorable soybean crushing spreads, margins came under some pressure in the consumer products group from higher ingredient prices that were inadequately offset by price relief. The pet food division reported lower earnings, year to year. Overall pretax income increased 15.6%. After taxes at 47.1%, against 47.9%, net income rose 17.3%. Share earnings were $1.08 and $0.97 in the respective periods.

[3]COMMON SHARE EARNINGS ($)

Quarter:	1972-3	1971-2	1970-1	1969-70
Dec.	0.55	0.51	0.47	0.50
Mar.	0.53	0.46	0.43	0.51
June		0.40	0.38	0.41
Sept.		0.50	0.44	0.36

PROSPECTS

Near Term—Sales for the fiscal year ending September 30, 1973 should easily exceed the record $1.83 billion of fiscal 1971-2. The gain would reflect a continuation of strong growth in pet foods, and emphasis on increasing sales of existing restaurant units as well as expansion of restaurant operations. International animal feed volume should continue to improve. Domestic feed volume should show some recovery, helped by higher average selling prices and some expected improvement in animal numbers.

Despite an indicated widening of soybean processing spreads and the full-year absence of poultry losses, margins will be hampered by difficulties in passing on higher raw materials costs under Government pricing regulations. Nevertheless, share earnings for fiscal 1972-3 should moderately exceed the $1.87 ($1.79 fully diluted) of the prior year, which was before $0.14 special charges. Further progress is anticipated for fiscal 1973-4. The quarterly dividend was raised to $0.18¾, from $0.17½, with the March, 1973 payment.

Long Term—Expansion of consumer product areas and restaurant operations should lessen the cyclical effects of commodity-based operations.

RECENT DEVELOPMENTS

In June, 1973 RAL announced that its Van Camp Sea Food division had received approval for the development of a San Diego, Calif. seafood processing facility costing more than $18 million. The approval required the satisfaction of appropriate environmental regulations. Completion of the project is scheduled for late 1974.

The company in June also commenced marketing fresh mushrooms from its new 12,000-square-foot 5,000,000-lb. annual capacity facility in Zellwood, Fla.

DIVIDEND DATA

Payments in the past 12 months were:

Amt. of Divd. $	Date Decl.	Ex-divd. Date	Stock of Record	Payment Date
0.17½	Sep. 22	Oct. 26	Nov. 1	Dec. 8'72
0.18¾	Jan. 18	Jan. 26	Feb. 1	Mar. 9'73
0.18¾	Mar. 23	Apr. 25	May 1	Jun. 8'73
0.18¾	May 25	Jul. 26	Aug. 1	Sep. 7'73

[1]Listed N.Y.S.E.; also listed Midwest & Pacific S.Es. & traded PBW S.E. [2]Indicated rate. [3]Primary earns. (based on avge. shs.).

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1892K RALSTON PURINA COMPANY

[2]INCOME STATISTICS (Million $) AND PER SHARE ($) DATA

Year Ended Sep. 30	Net Sales	%Oper. Inc. of Sales	[3]Oper. Inc.	Depr.	Net bef. Taxes	[4]Net Inc.	—[1]Common Share ($) Data— [4]Earns.	Divs. Paid	[4]Price Range	Price-Earns. Ratios HI LO
1973--	-----	---	-----	-----	-----	-----	----	0.73¾	45 -36½	------
1972--	1,833.4	9.5	174.37	32.49	120.25	62.75	[5]1.87	0.70	45 -33⅜	24-18
1971--	1,746.1	9.2	161.40	29.89	109.93	55.73	[5]1.72	0.70	35¾ -24⅞	21-14
1970--	1,567.0	10.2	160.08	28.29	116.17	56.77	[5]1.78	0.65	30⅝ -19¼	17-11
1969--	1,386.3	9.8	136.23	24.04	98.70	46.90	[5]1.47	0.60	28½ -21⅜	19-15
1968--	1,281.5	8.5	109.36	22.22	73.96	37.16	[5]1.16	0.60	27¾ -20½	24-18
1967--	1,301.2	6.8	88.55	20.16	58.42	31.82	[5]0.99	0.60	31 -22⅝	31-23
1966--	1,154.0	9.4	107.88	17.30	84.80	44.93	1.49	0.50	26 -20	17-13
1965--	954.8	8.0	76.75	15.94	55.37	29.54	0.98	0.50	20¾ -17⅜	21-18
1964--	864.8	7.0	60.63	13.72	45.95	24.35	0.81	0.50	17⅜ -13⅛	22-16
1963--	848.6	6.7	57.11	12.89	44.57	23.32	0.77	0.40	20 -15⅛	26-21

[2]PERTINENT BALANCE SHEET STATISTICS (Million $)

Sept. 30	Gross Prop.	Capital Expend.	Cash Items	Inventories	Receivables	—Current— Assets	Liabs	Net Workg. Cap.	Cur. Ratio Assets to Liabs.	Long Term Debt	[1]($) Book Val. Com. Sh.
1972--	648.60	80.48	13.85	207.54	212.10	442.45	209.63	232.82	2.1-1	208.73	12.90
1971--	615.46	92.05	19.45	212.11	204.48	446.70	205.79	240.90	2.2-1	264.27	11.14
1970--	547.05	95.13	5.01	182.53	174.25	370.52	200.23	170.29	1.9-1	178.85	10.08
1969--	470.21	83.17	13.41	155.26	156.20	333.01	157.72	175.29	2.1-1	162.06	9.00
1968--	413.37	61.18	13.10	162.37	151.91	337.09	161.49	175.61	2.1-1	140.32	7.92
1967--	362.61	59.46	5.55	159.40	146.50	318.89	182.84	136.05	1.7-1	89.75	7.24
1966--	294.37	37.51	10.82	148.11	115.30	279.26	136.69	142.56	2.0-1	67.34	8.68
1965--	265.57	33.19	12.45	103.57	94.95	215.65	77.20	138.45	2.8-1	68.64	7.76
1964--	240.35	17.33	10.09	102.73	82.90	200.98	64.90	136.08	3.1-1	65.82	7.30
1963--	228.63	31.41	6.77	93.44	80.48	184.16	84.68	99.48	2.2-1	29.82	7.31

[1]Adj. for 2-for-1 split in 1967. [2]Incl. Foodmaker Inc. aft. 1966. [3]Total inc. in 1965 & subsequently. [4]Cal. yrs. [5]Primary earns. (based on avge. shs.); fully diluted sh. earns. were $1.79 in 1972, $1.63 in 1971, $1.67 in 1970, $1.39 in 1969, $1.12 in 1968 & $0.98 in 1967. [6]Bef. spec. chgs. of $0.14 a sh. in 1972 & $0.15 in 1971.

Fundamental Position

This agriculturally based company's sales and pretax earnings (before unallocated corporate and interest expenses) for fiscal 1971-2 broke down as follows: agricultural 42.5% and 27.8%, respectively; consumer 26.8% and 45.7%; international 22.5% and 14.7%; and restaurants 8.2% and 11.8%.

The agribusiness portion of the company consists of the production and marketing of some 350 basic formulations of commercial mixed animal and poultry feeds. The division also processes soybeans for soybean meal which is used in its feeds; other soybean products are sold to outside users. In early 1972 the company disposed of much of its domestic poultry and egg operation.

Consumer products manufactured and sold by the company include Purina pet foods, Chicken of the Sea and Van Camp tuna, Chex brand cereals, and Ralston hot cereals. Food products are sold also to institutional users.

International operations are primarily oriented toward agricultural products, but also include other major product lines. Plants and marketing organizations are in 26 countries and products are exported to an additional 36 countries.

Restaurant operations were undertaken with the fiscal 1968-9 acquisition of Foodmaker, Inc., which operates about 714 Jack-in-the-Box fast-food restaurants in 18 states. Other chains include Hamburger House and Oscar's. Foodmaker processes, prepares and packages foods used by its restaurant chains. In late 1970, most restaurant operations were changed from lessee-operated to employee-operated. Another subsidiary of the company operates a group of specialty dinner houses.

Dividends, paid each year since 1934, averaged 41% of primary share earnings in the five years through September 30, 1972.

Shareholders: 23,450. Employees: 36,870.

Finances

Capital expenditures for fiscal 1972-3 are budgeted at about $100 million, up from $92 million on a comparable basis in the prior year. Major allocations for 1972-3 include $37 million to the consumer products group, $21 million for new venture management, $15 million for restaurants, $12 million for agricultural products and $11 million for international.

In April, 1973 Ralston privately placed $100,000,000 of 7.75% notes, due 1998.

In May, 1973 RAL called for payment July 5, 1973 at $36.75 and accrued dividends of $0.07 all of its $1.20 convertible preferred stock. Each share was convertible into 1.4 common shares through June 29, 1973.

CAPITALIZATION

LONG TERM DEBT: $308,533,000.
MINORITY INTEREST: $7,748,000.
COMMON STOCK: 35,148,005 shares ($1.25 par), assuming full conversion of $1.20 Preferred (see Finances).

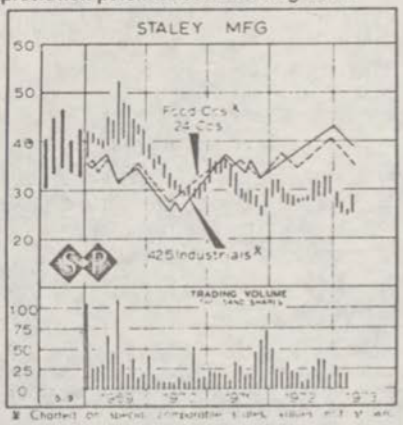
Incorporated in Missouri in 1894. **Offices**—835 South 8th St., St Louis, Mo. 63188. **Pres**—W. M. Shapleigh. **VP-Secy**—J. P. Baird. **VP-Treas**—W. D. Nusbaum. **Dirs**—R. H. Dean (Chrmn), F. L. Byrom, P. F. Cornelsen, D. Danforth, D. Danforth, Jr., W. H. Danforth, F. E. Ferguson, C. M. Hardin, W. E. McLaughlin, R. E. Rowland, W. M. Shapleigh, D. B. Smiley, E. H. Stein, E. A. Stuebner, W. C. Weaver, Jr. **Transfer Agents**—Company's office, Chemical Bank, NYC. **Registrars**—St. Louis Union Trust Co., St. Louis, First Natl. City Bank, NYC.

Information has been obtained from sources believed to be reliable but its accuracy and completeness and that of the opinions based thereon are not guaranteed. Printed in U. S. A.

STA[1] **Staley Mfg.** 2097

Stock—	Price May 3'73	Dividend	Yield
COMMON	28¾	[2]$1.40	[2]4.9%

RECOMMENDATION: This company is a leading producer of corn and soybean based products. To minimize cyclical swings in the commodity area and to improve operating margins, recent emphasis has been placed on specialty products and on expansion of consumer product operations. Nevertheless, earnings will continue to be strongly influenced by any changes in the commodity outlook. Improved corn and soybean processing spreads should make for higher earnings in fiscal 1972–3, but the shares are considered to have only moderate appreciation potential over the long term.



X Charted on special comparable scales, values not shown.

SALES (Million $)

Quarter:	1972-3	1971-2	1970-1	1969-70
Dec.	94.1	75.4	74.5	73.1
March	112.4	82.7	82.6	81.1
June		87.2	85.2	81.3
Sept.		90.8	91.6	71.1

Sales for the six months ended March 31, 1973 advanced 30.6% from those of the corresponding period of the previous year. The gain reflected improved demand for refined soybean products, corn sweeteners and starches, as well as increased demand for chemicals and higher international volume. Higher selling prices significantly aided the comparison. Margins widened as the company experienced improved processing spreads for both soybeans and corn (margins had been squeezed in the 1971-2 period by industry overcapacity, which led to depressed bulk corn syrup and starch prices). Pretax income rose 63.3%. After taxes at 45.5%, against 46.6%, net income increased 66.8%. Share earnings were $1.19, compared with $0.71.

COMMON SHARE EARNINGS ($)

Quarter:	1972-3	1971-2	1970-1	1969-70
Dec.	0.36	0.35	0.65	0.59
March	0.83	0.36	0.89	0.93
June		0.54	0.41	0.85
Sept.		1.16	0.07	0.80

PROSPECTS

Near Term—Sales for the fiscal year to end September 30, 1973 should easily exceed the record $336 million of 1971-2. The improvement would stem from better demand for corn sweeteners, starches and soybean products, as well as continuing growth in the chemical and international groups. Steadily increasing production of a new high fructose corn sweetener at the Morrisville, Pa. plant will aid the comparison, as will an industry-wide price increase for bulk corn syrup announced in April. Some improvement in consumer and specialty lines is possible.

Despite higher costs of corn and soybeans, processing margins are expected to compare favorably with those of 1971-2. Margins should benefit also from the absence of start-up costs at the Morrisville plant. Thus, even with an expected sharp reduction in the investment tax credit, earnings for fiscal 1972-3 should be significantly above the $2.41 a share of the prior year. Dividends should continue at $0.35 quarterly.

Long Term—Increasing emphasis on specialty and consumer items, aided by new product introductions, are expected to add to sales and earnings potentials.

RECENT DEVELOPMENTS

In April, 1973 an industry-wide price increase to $5 per hundredweight from $4.65 was announced for bulk corn syrup. The decision followed increases in the price of corn.

Also in April the company said that it was contemplating the construction of additional plants to meet the anticipated demand for IsoSweet, its corn based sweetener that is claimed to have the same sweetness as sugar.

DIVIDEND DATA

At September 30, 1972 $12,166,000 of retained earnings was unrestricted as to dividends. Payments in the past 12 months were:

Amt of Divd $	Date Decl.	Ex-divd Date	Stock of Record	Payment Date
0.35...	May 9	May 16	May 22	Jun. 6'72
0.35...	Aug. 8	Aug. 15	Aug. 21	Sep. 6'72
0.35...	Nov. 14	Nov. 20	Nov. 27	Dec. 7'72
0.35...	Feb. 13	Feb. 16	Feb. 23	Mar. 7'73

[1]Listed N.Y.S.E. [2]Indicated rate

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2097 STALEY (A. E.) MANUFACTURING COMPANY

[2]INCOME STATISTICS (Million $) AND PER SHARE ($) DATA

Year Ended Sept. 30	Net Sales	% Oper. Inc. of Sales	Oper. Inc.	Depr. & Amort.	Net bef. Taxes	Net Inc.	—Common Share ($) Data— Earns.	Divs. Paid	[1]Price Range	Price-Earns. Ratios HI LO
1973--	-----	--	----	---	----	----	---	0.70	29½ -24⅜	-----
1972--	336.09	5.9	19.69	8.40	9.19	6.44	2.41	1.40	32¾ -26¾	14-11
1971--	333.95	5.6	18.57	6.96	10.49	5.39	2.02	1.40	37 -24¾	18-12
1970--	306.65	8.0	24.66	6.43	16.03	8.40	3.17	1.40	39⅛ -28¼	12- 9
1969--	297.58	8.0	23.95	6.28	16.67	8.25	3.12	1.40	52⅜ -36⅛	17-12
1968--	280.37	6.2	17.52	5.84	12.40	6.57	2.50	1.40	42¾ -32⅞	17-13
1967--	274.25	6.1	16.34	5.48	12.34	6.80	2.52	1.65	40⅛ -33¾	16-13
1966--	252.08	8.9	22.33	5.07	19.61	10.76	4.65	1.75	46⅝ -34½	10- 7
1965--	220.95	7.7	16.92	4.66	13.94	8.38	3.64	1.60	44⅞ -33¼	12- 9
1964--	178.01	5.8	10.38	4.60	7.17	4.27	1.85	1.50	40⅝ -30½	22-16
1963--	185.14	8.0	14.80	5.45	10.75	5.51	2.40	1.49	44 -30¼	18-13

[3]PERTINENT BALANCE SHEET STATISTICS (Million $)

Sept. 30	Gross Prop.	Capital Expend.	Cash Items	Inventories	Receivables	——Current—— Assets	Liab.	Net Workg. Cap.	Cur. Ratio Assets to Liab.	Long Term Debt	[1]($) Book Val. Com. Sh.
1972--	227.61	14.01	5.20	40.43	33.73	82.14	42.79	39.35	1.9-1	45.13	39.78
1971--	215.82	32.25	4.66	40.84	33.07	81.40	44.62	36.79	1.8-1	46.18	38.76
1970--	184.48	21.44	3.19	37.82	35.86	77.48	40.31	37.17	1.9-1	22.48	38.31
1969--	167.52	14.67	3.88	31.81	28.67	64.79	29.03	35.76	2.2-1	14.90	36.52
1968--	154.01	11.73	4.23	33.22	27.08	64.96	34.87	30.09	1.9-1	7.62	35.71
1967--	141.89	9.72	3.49	33.89	23.13	61.02	27.64	33.37	2.2-1	6.57	34.44
1966--	129.07	6.39	3.26	27.26	23.92	54.96	19.29	35.67	2.8-1	5.63	38.44
1965--	124.03	9.94	6.15	23.11	16.18	46.10	14.38	31.72	3.2-1	7.40	35.61
1964--	115.34	10.67	3.69	22.36	14.89	41.47	13.79	26.67	3.0-1	7.43	34.71
1963--	105.75	6.33	8.49	24.63	14.43	48.06	13.83	34.23	3.5-1	7.43	34.08

[1]Cal. yr. [3]Incl. Wagner Industries and Newark Leather Finish Co. aft. 1966.

Fundamental Position

For fiscal 1971-2, sales of this commodity-oriented manufacturer broke down as follows: food ingredients 41.7%, agriproducts 21.7%, consumer products 15.1%, chemical and other industrial products 11.7%, and foreign operations 9.8%. Distribution of each sales dollar was as follows: raw materials 57.6%, employee benefits 15.0%, supplies and services 11.0%, transportation 10.3%, depreciation 2.5%, taxes 1.7%, dividends 1.1%, and earnings reinvested 0.8%.

About 80% of sales is derived from corn and soybean based products. In the three years ended September 30, 1972, raw materials costs averaged about 59% of sales.

Food ingredients include sweeteners, starches, spices, seasonings, proteins, and oils. The company is one of the major corn refiners in the United States, and the greatest part of its plant facilities is employed in that activity, from which such food ingredients as starches, dextrose, and corn syrup are derived. Products derived from soybean refining, including specialty soy proteins, constitute the second major category in the food ingredient area, with spices, seasonings, and extracts the remaining products in the group.

The consumer products area encompasses fabric finishes, spray and liquid starches, and fabric softeners, mostly sold under the "Sta-Flo" brand name. "Staley" brand waffle and pancake syrups, and other foods are also marketed. Of increasing importance to the consumer products area is the Wagner line of soft drinks, which are primarily fruit flavored beverages aimed at the breakfast drink market.

Industrial products are those starches and chemicals formulated for non-food purposes, primarily from corn and soybean derivatives. These lines are marketed chiefly to the paper and textile industries.

The agriproducts area produces corn- and soybean-based animal feeds, including bulk lines, and high-nutrient and disease-control specialty feeds.

Principal products in the international segment include a full range of corn starches, syrups, dextrose, vegetable oils and corn feeds; soybean oil and protein meal; and specialty chemicals. Subsidiaries overseas are located in Argentina, Canada, England, West Germany, Mexico, Spain and Switzerland. Affiliates are located in Belgium and England.

Common cash dividends, reported in all years since 1930 except 1932-4, averaged 53% of available earnings in the five years through September 30, 1972.

Employees: 3,791. Shareholders: 5,568.

Finances

In December, 1970 the company sold $25 million of 8⅛% debentures due December, 1995. Proceeds were used to reduce short-term borrowings.

CAPITALIZATION

LONG TERM DEBT: $45,126,000.
MINORITY INTEREST: $3,774,000.
$3.75 CUM. PREFERENCE STOCK: 6,554 shs. (no par); red. at $105.
COMMON STOCK: 2,658,351 shs. ($10 par); about 53% closely held.

Incorporated in Delaware in 1906. **Office**—Decatur, Ill. 62525. **Pres**—D. E. Nordlund. **Secy**—E. R. Stonhope. **Treas**—H. M. Staley. **Dirs**—A. E. Staley, Jr. (Chrmn), G. L. Bieger, L. E. Doxsie, T. V. Fischer, J. W. Joanis, N. Kessler, W. E. McGurk, Jr., D. E. Nordlund, H. H. Pevler, E. K. Scheiter, R. K. Schell, H. M. Staley, F. H. Wagner. **Transfer Agents**—Chase Manhattan Bank, NYC; First National Bank, Chicago. **Registrars**—First National City Bank, NYC; Continental Illinois National Bank & Trust Co., Chicago.

Information has been obtained from sources believed to be reliable, but its accuracy and completeness, and that of the opinions based thereon, are not guaranteed. Printed in U. S. A.

UNITED EGG PRODUCERS,
Atlanta, Ga., July 18, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Russell House Office Building, Washington, D.C.

DEAR REPRESENTATIVE RODINO: Mr. Harry Fortes appeared before your committee on July 17 and stated that United Egg Producers did trade in egg futures in 1971.

U.E.P. has not traded in egg futures since September 14, 1971. At that time, the U.E.P. Board adopted the policy of not engaging in futures trading as a corporate entity and reconfirmed this policy on November 10, 1972.

Please add this letter to our statement filed with you on July 16.

Also, we would appreciate the addition to our statement, the enclosed unaudited comparative income statement for the period ending June 30, 1973 of the A. E. Staley Manufacturing Company.

Again, we wish to express our appreciation for your invitation to appear before the Subcommittee on Monopolies and Commercial Law on July 16, to present the thoughts of the egg industry regarding anticompetitive practices.

Very truly yours,

UNITED EGG PRODUCERS,
JERRY BOOKEY,
President.

[Staley news release]

Contact: Dave Satterfield.

Decatur, Ill. (Tuesday, July 10, 1973)—A. E. Staley Mfg. Co. reports net income of $2,067,000 or 77 cents per share on sales of $120,037,000 for the third quarter ended June 30, 1973.

This compares with net income of $1,447,000 or 54 cents per share on sales of $87,154,000 for the prior year.

For the nine months, income standards at $5,229,000 or $1.96 a share compared with $3,343,000 or $1.25 per share a year ago. Sales through the third quarter total $326,529,000, up from the previous year's level of $245,272,000.

President D. E. Nordlund said that heavy demand from food and beverage manufacturers for the company's line of corn sweeteners and starches was a primary reason for the improvement over last year.

He noted that the company's corn refining plant at Morrisville, Pa., operated at near production capacity during the third quarter and is now making a positive contribution to earnings.

Mr. Nordlund also cited results from the company's Agri-Products and International Groups as important to the year-to-date improved earnings.

While pointing out that the current 60-day price freeze has already had adverse effects on operating profits in June, Mr. Nordlund said that year-end figures are still expected to show improvement over the previous year's results.

He cautioned, however, that the company's fourth quarter results depend upon the severity of projected grain shortages and the manner in which price and export controls are resolved.

The comparative summaries:

A. E. STALEY MANUFACTURING CO., COMPARATIVE INCOME STATEMENT

	9 months ended	
	June 30, 1973	June 30, 1972
Net sales	$326,529,000	$245,272,000
Depreciation and noncash charges	7,934,000	7,016,000
Earnings before taxes	9,964,000	6,047,000
Income taxes—estimated	4,735,000	2,704,000
Net earnings	5,229,000	3,343,000
Net earnings per common share	1.96	1.25
Average shares of common stock	2,657,381	2,658,614

	3 months ended	
	June 30, 1973	June 30, 1972
Net sales	120,037 000	87,154,000
Depreciation and noncash charges	2,563,000	2,632,000
Earnings before taxes	4,164,000	2,496,000
Income taxes—estimated	2,097,000	1,049,000
Net earnings	2,067,000	1,447,000
Net earnings per common share	.77	5 4

Note: This is an unaudited interim statement.

UNITED EGG PRODUCERS,
Atlanta, Ga., July 27, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Russell House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE RODINO. United Egg Producers presented testimony on July 16 before the Subcommittee on Monopolies and Commercial Law.

On July 18, UEP President, Jerry Bookey wrote you regarding testimony given July 17 by Mr. Harry Fortes, in which Mr. Fortes stated UEP did engage in egg futures trading. Also enclosed with this letter was an unaudited comparative income statement from the A. E. Staley Manufacturing Company. We were assured this letter would become part of our testimony and be included in the Hearing Record.

As further enclosure to be added to our statement, we would like to add the following:

(1) 7/12/73—News Release—Central Soya Declares Quarterly Cash Dividend (which includes net earnings for the quarter ended 5/31/73).

(2) 7/17/73—News Release—Allied Mills, Inc.—Stock Dividend Declared.

(3) 7/17/73—News Release—Allied Mil's, Inc.—Report of sales and earnings for first quarter ended 6/30/73 (which shows an increase from $86,172,000 in that quarter 1972 to $147,107,000 for quarter ended 6/30.)

United Egg Producers respectfully requests that these enclosures be part of the Committee Hearing Record.

Sincerely,

CAROLYN O. GRAVELY,
Assistant Director,
Governmental Relations.

NEWS CENTRAL SOYA

CENTRAL SOYA DECLARES QUARTERLY CASH DIVIDEND

FORT WAYNE, Ind., July 12, 1973—A 25-cent per share quarterly cash dividend was declared today by the board of directors of Central Soya Company, Inc. (NYSE).

The dividend is payable August 20, 1973, to shareholders of record at the close of business July 27, 1973, according to Board Chairman Dale W. McMillen, Jr. Central Soya has been paying quarterly dividends continuously since 1942.

During the quarter ended May 31, 1973, the company reported net earnings of $6,762,689, or 88 cents per share, on net sales of $341,159,492. Net earnings for the first nine months of the 1973 fiscal year were $19,042,761, or $2.47 per share, on net sales of $906,728,692.

Contact:
RONALD H. GREENFIELD,
1300 Fort Wayne National Bank Bldg.,
Fort Wayne, Ind. 46802,
Phone: (219) 422-8541.

ALLIED MILLS, INC.,
Chicago, Ill., July 17, 1973.

Chicago, Ill.—At a meeting of the Board of Directors of Allied Mills, Inc., held today, a dividend of 18¾¢ per share was authorized to be paid on August 31, 1973 to shareholders of record at the close of business on August 15, 1973.

EMIL F. HUBKA, Jr.,
Director of Public Relations.

ALLIED MILLS, INC.,
Chicago, Ill., July 17, 1973.

Chicago, Ill.—ALLIED MILLS, INC. today reported sales and earnings for the first quarter period ended June 30, 1973 at record levels according to Roy E. Folck Jr., President and Chairman of the Board of the Chicago-based agribusiness firm.

Earnings amounted to $6,985,186 or $2.57 per share versus a loss of $124,839 or a loss of 5¢ per share for the same period of last year. Sales were $147,107,000 for the first quarter period versus $86,172,000 for the same period of last year.

"While we look forward to good sales and earnings for the next quarter, we do not expect them to continue at this record pace," Folck concluded.

EMIL F. HUBKA, Jr.,
Director of Public Relations.

Mr. FLOWERS. We stand adjourned for today and will reconvene at 10 o'clock tomorrow morning. Our witnesses will be Ralph Nader, Beverly Moore, and Harry Fortes.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, July 17, 1973.]

FOOD PRICE INVESTIGATION

TUESDAY, JULY 17, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. [chairman] presiding.

Present: Representatives Rodino, Flowers, Seiberling, Jordan, Mezvinsky, McClory, and Sandman.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The subcommittee will come to order.

Our first witness this morning is Mr. Harry Fortes, former member of the Chicago Mercantile Exchange.

Mr. Nader was scheduled to be here as our first witness, but apparently he has been unduly delayed, and according to Mr. Moore, who was expected to accompany him, Mr. Nader will be here later.

You may proceed, Mr. Fortes.

TESTIMONY OF HARRY H. FORTES, ATTORNEY, AND FORMER MEMBER OF THE CHICAGO MERCANTILE EXCHANGE

Mr. FORTES. Mr. Chairman, members of the committee, my name is Harry H. Fortes. I am a graduate of the University of Chicago Law School and have been practicing law since 1935. My clients in the main are people and business firms engaged in the trading of agricultural commodities on the Chicago Mercantile Exchange and the Chicago Board of Trade. I also represent persons and firms in the poultry and egg industry. As a natural consequence, my practice has been focused almost entirely on commodities and commodity futures.

In 1947, I became a member of the Chicago Mercantile Exchange and in addition to my law practice became an active trader and floor broker of commodities. Prior to selling my membership in 1970, I was elected to the board of governors for a consecutive period of 12 years and was the first vice chairman of the board. I was chairman of the rules committee and in that capacity was one of the principal authors of several contracts—trading and commodity specifications—specifically the egg, potato, cattle, and pork bellies contracts. I was also a member of the executive, warehouse, shell egg, potato, and frozen egg committees.

Although millions of people have been enticed, to their sorrow, into the trading of commodity futures, only a bare handful of commercial

interests and professional pit traders really have the sophistication and know-how to successfully trade in commodities. When properly employed, this expertise serves a valuable function in the competitive structure of our commodity markets. However, in many instances, this sophistication and know-how simply are utilized by certain commercial interests and professional traders acting in concert with sufficient group power and money to squeeze and manipulate a market. The abuses of such groups are, I believe, within the purview of the antitrust laws and can be stopped if the antitrust laws are strictly enforced in the commodities markets.

Trading in commodities is unique and esoteric. The feverish excessive speculation and the expansion of futures trading that has been rampant for the last 5 years has hurt the public not only in higher food prices, but has resulted in the shearing of the sheep in futures transactions. My files are replete with cases wherein legitimate traders and hedgers have been "squeezed" for substantial losses as a result of manipulative practices. Moreover, I am convinced that there is a direct relationship between the futures trading and the unconscionable runup in cash prices of food products that the American housewife buys for her table.

A very cogent and dramatic clue to this entire problem is found in the wording of the Commodity Exchange Act as set forth by Congress, and I quote from section 3:

> That the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

I cannot impress upon you gentlemen how actually this statement really focuses attention on what occurs in the commodities market.

You gentlemen are particularly interested in the application of antitrust procedures in the situation that I have indicated above. Interestingly enough, the application of antitrust to commodity manipulation is nothing new. As early as 1912, the government brought a successful antitrust suit against persons who cornered a commodities market. See *U.S.* v. *Patten*, 226 U.S. 525—(1921). There is no question in my mind that the Department of Justice has the authority to proceed against market manipulators, however, there is a slight rub. There are very few so-called "outsiders," be they knowledgeable and highly qualified lawyers, who have the expertise that is required to understand what goes on in a futures commodity market. And this is in no way a denigration of their ability, simply a question of the knowledge of what goes on.

Although the Commodity Exchange Authority has supervisory and disciplinary jurisdiction over the boards of trade, I believe that the manipulative practices that I have indicated above can be more effectively deterred and handled by the Department of Justice in antitrust proceedings. We are all aware of the scarcity of feed grains and the exacerbated futures and cash price increases resulting from the Russian export deal. That situation in itself is, I believe, a proper subject for antitrust investigation. The run-up of July soybeans from

$3.31 to $12.90 could not have occurred without the operation of a handful of commercial houses. It is my opinion that the last $5 or $6 of the increase in the July soybeans was the result of the manipulative practices. It is significant that, when the embargo was placed on exports, the price of soybeans dropped to below $7. This occurred despite the fact that there was no significant increase in the supply because July soybeans were an "old crop" already harvested and nothing could have so increased the available supply as to explain this drastic price decrease, except for the speculation that occurred. The only explanation for this phenomenon is that the $12.90 price was artificial, created by highly concentrated buying without regard for the actual value of soybeans. This concentration of buying power in the hands of a few powerful grain companies may be beyond the reach of the Commodity Exchange Authority, because in itself, this concentration of buying power may not violate any specific section of the act. The antitrust prohibitions on monopolization and attempts to monopolize are however well suited to this situation.

There are also situations where traders group together to create buying power beyond the position limits established by the Secretary of Agriculture. Squeezing a market unfortunately is a fairly simple affair, all it requires is a great deal of money and brokers who are willing to look the other way. Moreover, commodity brokers frequently not only trade for themselves but also for customers whom they put in the market. The control and direction of their own accounts as well as their customers' accounts is frequently part and parcel of a manipulated market. The time old question of whether the dog wags the tail or the tail wags the dog is applicable to the relationship between commodity futures trading and the price of the cash product. The commercial houses and their customers can exert a profound upward pressure on the price of the commodity over and beyond what it would be in a free and open market. The detrimental action of the grain market in the past months could have been controlled and deterred by injunctive proceedings under the antitrust laws. Such decisive action could have saved the American housewife hundreds of millions of dollars. During the past several years, I have filed private antitrust suits against the manipulators of commodity markets seeking treble damages on behalf of traders and hedgers injured in market squeezes. While such actions compensate the victims of a manipulation and provide some deterrent, I believe that decisive action by the Antitrust Division of the Department of Justice in these situations would be more effective and deterring. Emergency injunctive actions or criminal actions with jail sentences and heavy fines will go farther to prevent manipulations than all the private actions that I could bring.

There are many other facets and ramifications of commodity futures, particularly the growth of commodity options trading. During the past year, this byproduct of futures trading resulted in a massive swindle of the trading public to the extent of over $100 million and while this fiasco was going on, many people in the commodities market—that is, the professionals—were aware of this swindle, but no action was forthcoming from the Government because, frankly, very few people are knowledgeable in trading procedures and trading contracts. I would be very happy to go into further details into this latter situation if the committee so desires.

Chairman RODINO. Thank you very much, Mr. Fortes. Mr. Fortes, you make much of the knowledgeability and the expertise of certain people who are highly qualified lawyers, I might say, who understand what goes on in the futures commodity market. Would you say that such a situation was prevalent, and that this possibly led to the ability of the people who were engaged in the Russian export deal to take advantage of the market at that time?

Mr. FORTES. Definitely, Mr. Chairman. Off the top of my head, I could pick out probably five or six commercial houses, the Central Soya, Staley, Continental Grain, ADM, Cargill, among some of the others. Now, these people are highly knowledgeable of what is going on in the cash markets. As you are aware, Mr. Chairman, trading in commodities generally is a year in advance of the fruition month; that is, the delivery month. It is like we are trading from July soybeans at present. Now, that contract has been traded for a period of 12 months. What happens is that many of these commercial houses take a position in the market, an early position in the market, and if the market looks like it is going to be a so-called bull market after they have taken their position, these houses also have the public who they have as customers, and they then put these customers in the market, so we build up a tremendous amount of power, market power in a sense. They are fully aware of what the available supply of, say, soybeans is, when we are nearing the delivery month, not only the available supply; but there is a situation where the rules of the Board of Trade on soybeans are only deliverable, say, in Chicago. Now, there may be soybeans that are delivered or that are available all over the country, in a sense, throughout the Midwest, but they are not deliverable soybeans. Now, they are fully aware that, let us say, that there is 10 million bushels of soybeans available in Chicago. Now, their position may be with their customers, may amount to 50 million bushels, so they know that nobody can deliver 50 million bushels. All they have to do is stand pat.

Chairman RODINO. Would you say then that that is within the category of what you refer to as a manipulative practice?

Mr. FORTES. Definitely.

Chairman RODINO. Would this kind of a practice and this kind of knowledge have been anticipated, do you think, by the Antitrust Division of the Justice Department, or should it have been?

Mr. FORTES. I believe that if they had people who are knowledgeable and focused their attention particularly to commodities and commodity exchanges, there was a point in time where they could have become aware of the situation, aware of the fact that the commercial houses had a dominant position in the market, aware of the fact that not only do the commercial houses have a dominant position, but that their customers, as a result of their position, became a dominant factor in the market. And the general trading public, who are unsophisticated when a commodity goes above its historical highs, like soybeans went above $6 and $7, are immediately attracted to a situation for profit, but they are completely unaware of the fact that here a group is standing pat and is ready and willing to take delivery of all available supply.

Chairman RODINO. Well, shouldn't the Department of Agriculture at least have been in the position of knowing or anticipating what was going to take place?

Mr. FORTES. That is another bag of beans, Mr. Chairman, and definitely I say that the Commodity Exchange Authority of the Department of Agriculture—there has been a tendency by the Commodity Exchange Authority to say, well, we would like to have the boards of trade police themselves. Well, unfortunately that does not work, and it would be ideal if the Commodity Exchange Authority would come in and say, "Look, there is an emergency situation here; we insist that the board of trade close trading for liquidation only." But, an analagous situation arose whereby the market was going the limit, up every day, and the limit at that time was 10 cents a bushel. So, in order to free the market, they thought they would simply remove the limits. Well, they removed the limits and market went up a dollar. So they did not help anybody. They simply exacerbated the situation.

Chairman RODINO. Mr. Fortes, on page 6 of your statement you refer to a "Massive swindle of the trading public. * * * of over $100 million" and the widespread professional grain dealer had much of this. Could you elaborate on this?

Mr. FORTES. Yes; the commodity trading became so attractive, and it became so feverish that some people got an idea that instead of actually trading in commodities, we will simply trade in what they call "naked options." You do not contract to buy a car of pork bellies or car of eggs, or 5,000 or 10,000 bushels of grain. You take an option to buy it. Now, these options are not controlled by the Commodity Exchange Authority. It is not a regulated, so-called regulated commodity. They were trading in nonregulated commodities.

Now, they attracted the public to get into this because they said there was a great deal of leverage in it. Well, there is one firm known as Goldstein & Samuelson, which started, I believe, in California, and then opened offices all over the country, and people were being told that this was fantastic, you could buy silver, you could buy sugar, and you could buy a lot of other nonregulated commodities, and the profit potential was terrific. It was all right, but the trouble was that this firm was selling options, but in the meantime were not protecting themselves or protecting the public in the event that the people would actually come in and ask for the fulfillment of their options. As a result of that, there was, in my understanding, close to a $100 million loss by the public in these traded options.

Chairman RODINO. Mr. Fortes, the Justice Department has brought several antitrust actions against the exchanges and the most recent one, I believe, still is pending for fixing of brokerage commission rates. Have you any opinion as to why the Department of Justice avoided other areas, and if concentration on commodity trading is appropriate for action on its part?

Mr. FORTES. I believe that the question of fixed prices, fixed brokerage rates and commissions is all right, but I think that there was a lot more important segment involved, and that was the question of the manipulative practices of the price of the commodity itself, which was, in my opinion, much more important.

Chariman RODINO. Well, can you tell me, if you know, the companies that were responsible for highly concentrating the buying of soybeans and soybean futures, and are these the same firms that had market power in the purchase and sale of wheat?

Mr. FORTES. Definitely. The firms that I mentioned prior were the Central Soya, Staley, Continental Grain, ADM, and Cargill. There

may be a few others, but the traders on the floor of the Chicago Board of Trade are fully aware of the fact that from time to time who the prime buyers of prime bulls in the market are. All of the professional traders, the pit traders, were aware of the fact that Central Soya, Staley, Continental Grain, ADM, and Cargill were on the market on the long side, and that their customers were in the market on the long side. So, when that occurs, you attract a terrific coattail, you attract a coattail of customers, and you attract a coattail of professional traders.

Now, for every purchase you also need a sale. What unfortunately happens is you have a tremendous amount of people who are attracted into the market because of the fact that prices are so high, and they figure, well, they are historically too high to hold.

Chairman RODINO. And are these companies some of the same companies that were involved in the wheat deal?

Mr. FORTES. Definitely. Definitely.

Chairman RODINO. Which one of those that you mentioned?

Mr. FORTES. I would say Continental Grain was one of the prime firms involved, and I think that all of the others to some extent were involved.

Chairman RODINO. Thank you very much, Mr. Fortes.

[Subsequent to the close of the hearings the following information was submitted by the subcommittee staff:]

FINANCIAL INFORMATION ON GRAIN COMPANIES

Rank among manufacturing companies	Name	1972 sales (millions)	1972 profit margin on sales (percent)	1972 return on equity (percent)
204	Archer-Daniels-Midland	676	1.7	9.1
157	Central Soya	911	1.8	10.4
64	Ralston Purina	1,833	3.2	12.0
369	Staley Manufacturing	336	1.9	6.1

Two of the larger grain companies are closely-held and financial information on them must be estimated. These companies are:

Name	1972[1] sales (in millions)	1972[2] employees
Continental	$3,500	2,200
Cargill	$3,200	6,000

[1] Source: Estimated from H. J. Mardenburg, "Harvest of Profits for Continental Grains," New York Times, Aug. 5, 1973
[2] Source: Standard & Poor's Register of Corporations.

Chairman RODINO. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. As a Representative from Illinois, I want to welcome you here this morning, Mr. Fortes.

Mr. FORTES. Thank you.

Mr. MCCLORY. And as a lawyer, practicing formerly in Chicago, I am interested in your background. I assume that your primary activities, from your testimony, have been in the Chicago Mercantile Exchange?

Mr. FORTES. Right.

Mr. MCCLORY. And, of course, they do not deal in soybeans, do they?

Mr. FORTES. Right.

Mr. MCCLORY. I assume that when you were a member of the Chicago Mercantile Exchange you did a lot of trading in the products that are traded on the Mercantile Exchange?

Mr. FORTES. Right. That is right.

Mr. MCCLORY. And you had direct experience with these groups that you charge are capable of manipulating in the market?

Mr. FORTES. Right.

Mr. MCCLORY. What particular products did you trade-in? Did you have any specialty?

Mr. FORTES. Well, the Chicago Mercantile Exchange traded in pork bellies and eggs and cattle.

Mr. MCCLORY. Butter?

Mr. FORTES. Pork bellies.

Mr. MCCLORY. Does it trade in butter?

Mr. FORTES. Butter is a minimal factor right now. It has been a minimal factor for quite some years. But, the main—the main contracts traded on the Chicago Mercantile Exchange are pork bellies, cattle and hogs, and shell eggs.

Mr. MCCLORY. Did you experience any losses yourself?

Mr. FORTES. No, no. As a professional trader, and this is one of the things a professional trader learns, is how to protect himself.

Mr. MCCLORY. Did you trade in all of these different products?

Mr. FORTES. From time to time. From time to time.

Mr. MCCLORY. And I take it that you resigned from the Chicago Mercantile Exchange?

Mr. FORTES. Right.

Mr. MCCLORY. And you are making charges against them now. Why didn't you remain a member and attempt to affect a change?

Mr. FORTES. Well, I was a member of the Board of Governors for 12 years, Mr. McClory, and I think I did a pretty good job and tried to police some of the situation.

Mr. MCCLORY. Do you feel that you did make some improvements?

Mr. FORTES. I think so.

Mr. MCCLORY. But you felt frustrated, I judge?

Mr. FORTES. Not necessarily. There was a question—frankly, I had a fairly lucrative law practice, and it had reached a point of either I could devote all of my time to trading on the floor and brokerage, or I could devote my time to the practice of law, and I decided to practice law.

Mr. MCCLORY. Now, you tend to condemn futures trading, for the reason that the manipulators benefit disproportionately from futures trading, is that right?

Mr. FORTES. That is right.

Mr. MCCLORY. You can also get burned in futures trading, can you not?

Mr. FORTES. Oh, certainly. Certainly.

Mr. MCCLORY. Do not some of the so-called manipulators experience losses?

Mr. FORTES. They sure do, and I can quote you a specific situation. In 1970, from October 1969 up to September 1970, there was a group of traders who were trading shell eggs and shell eggs traded on the Chicago Mercantile Exchange on a month-to-month basis, although a

year ahead. Now, this particular group was trading in shell eggs, month to month, and they were very successful from October 1969 up through August of 1970, and in the normal futures market there are practically no deliveries actually, because your futures price and your cash price comes together. Now, this group was successful for a period of about 11 months.

Then all of a sudden in September of 1970, the same group—and you chart these things, and you find out who are in the market, and whether it is the same group, and now this same group was involved in the September 1970, contract. And you are saying, well, they also lose money and, well, sure, they made money for a period of 11 months, and then, lo an behold, in September of 1970 they wound up taking delivery of about 350 cars of actual eggs, cars of eggs, and they got murdered, frankly. They lost. And I have, incidentally, this chart——

Mr. McCLORY. I would gather from what you are telling me that the manipulators, whether they make undue profits or whether they experience losses, ought to be curtailed so that we have direct trading, in actual produce and commodities present at the time, and without speculation?

Mr. FORTES. Right. I think, Mr. McClory, I think it is the excessive speculation, and the leverage that is given to some of these traders which is one of the problems in the commodities market. And I think that the tightening up of the rules of the Commodity Exchange Authority, as well as some jurisdiction by the Antitrust Division of the Department of Justice, would be very helpful.

Mr. McCLORY. Your reference to the soybean futures trading on page 4 of your testimony appears to be comparable to the egg futures trading.

Mr. FORTES. Right.

Mr. McCLORY. Have you reported to the Department of Justice any information that you think would be helpful or useful regarding the manipulation in soybean futures trading?

Mr. FORTES. Mr. McClory, in the course of my investigation of other commodities, and in filing suits, I filed suit, as I mentioned, in 1970 in the *egg* case. I have filed a suit in 1971 on the *Idaho Potato* case. My investigation, and I am simply an individual practitioner with a couple of associates, had no problem in charting, and in the course of my subpenas, to ascertain the congestion and show that certain firms did maintain a dominant position. And it is no problem to do that.

Mr. McCLORY. It is your suggestion that the antitrust laws could be strengthened to prevent the manipulation in trading. Can you recommend specific changes in the law which might be useful in this regard?

Mr. FORTES. I do not think it is a question of changes in the law. I think it is a question of simply enforcement. Let us take the country as a whole which has been focused on the——

Mr. McCLORY. You state that this concentration of power to manipulate the trading may not violate any specific sections of the act. That is why I ask then, should there be additional language in the act?

Mr. FORTES. Are you referring to the Commodity Exchange Act?

Mr. McCLORY. Well, in your statement you spoke about soybeans.

Mr. FORTES. Yes. Well, the Commodity Exchange Authority has jurisdiction over soybeans as well as the Board of Trade and Chicago Mercantile.

Mr. McCLORY. You might have some suggestions as to changes in the Commodity Exchange Act?

Mr. FORTES. Oh, sure, there are quite a few changes. I think that one of the important things is, and I have found over the years that brokers in the pits are handling public orders, and they are trading for themselves. Now, you have a conflict of interest there. I think that is one of the prime things, one of the glaring defects of the commodity trading, whereby you have men who are handling hundreds of thousands of cars of orders for the public, and they are completely aware of what the order are in the pit at all times, and in the meantime, they are trading for themselves. Now, that is a distinct conflict of interest. A trader should either be a broker or a speculator, and if he is a speculator, he should not be entitled to handle customer, public orders.

Mr. McCLORY. I know that the chairman is encouraging me to hurry, and this is very interesting. I only ask that if the Department of Justice does require any additional specific information, would you be willing to submit it?

Mr. FORTES. Be glad to.

Mr. McCLORY. Thank you very much.

Chairman RODINO. Thank you. Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman.

Mr. Fortes, I appreciate your testimony, and I have somewhat of a feeling for the activities of the Chicago Board of Trade, having had a small personal experience in connection therewith about 10 or 12 years ago, and it was not very expensive to me, but I took my knowledge and became a little bit wiser, and have not ventured back into the market since then.

But, I am wondering, sir, if you could tell us how the fictitious buying and selling that occurs in the futures market relates in terms of numbers involved, whether it is bushels, or barrels, or whatever, to what are really the facts of life in terms of soybeans for example? We are most aware of that right now.

Mr. FORTES. Let me put it this way, that the dollar volume of trading in commodities on Boards of Trade—you mean the generic term for Chicago Mercantile Exchange and the Chicago Board of Trade. Last year it was an excessive $260 billion—now the actual value——

Mr. FLOWERS. Dollar volume, and that is how many total commodities bought and sold?

Mr. FORTES. In other words, they traded in a million contracts of wheat, and if they traded in a million contracts of shell eggs, and a million contracts of pork bellies, the value, the total value of the commodities traded, was in excess of $260 billion. That is last year.

Now, I understand that this year the Chicago Board of Trade for the first 6 months, the value of the commodities traded was $126 billion. That is only in the Chicago Board of Trade. They are looking forward to this year commodities being traded in excess of $300 billion.

Now, the actual value and the amount of actual product traded against that figure is infinitesimal. For every bushel of wheat that actually exists and is deliverable, there are thousands upon thousands of bushels of wheat that are traded against that one bushel of wheat, and it is bound to have an effect on the value, on the increase of the price of the commodity.

Mr. FLOWERS. Well, let us go back to the beginning. The basic reason, for the existence of the Mercantile Exchange and the board of trade is to offer some hedge to the producer?

Mr. FORTES. Right.

Mr. FLOWERS. To insure him against unforeseen circumstances that he can, if he is going to produce wheat go into the market and establish a price at which he knows he can deliver wheat 10, 12 months hence?

Mr. FORTES. Right, now, the original purpose, and that is fine, the original purpose of the futures market and the Commodities Exchange Act was price protection, price insurance for the producer, which has an excellent purpose. But, we have lost our purpose.

Mr. FLOWERS. We have gone completely beyond that now?

Mr. FORTES. Right.

Mr. FLOWERS. The thrust of your testimony, sir, as I understand it, is that the false market, the false situation, the fictitious situation, was created by this massive buying and selling in futures that do not really exist and never will exist on the ground?

Mr. FORTES. You know, a question that might occur to you gentlemen to say is, "Well, how is the producer hurt? Here, my God, soybeans went to $12.90." Well, let me put it this way, let us assume that the man produced 50,000 bushels of soybeans, and he had soybeans which got to $4, or $4.50, or $5, and he hedged his contract. Soybeans went to $12.90. Now, what occurred between $5 and $12.90?

In the first place, he did not get advantage of that. Forget about that.

But, another horrible thing occurred. Every time his hedge price went up, he had to come up with an additional margin to protect his position. Now, a hedged product, normally you do not have any problem getting money from the bank to protect yourself against your hedged position. But, it got so feverish when soybeans got up to $7, $8, or $9 or $10, that, frankly, the banks ran out of money, some of the farm banks, and they could not protect the man anymore on his hedged position, although he had an actual product to deliver against his position.

What occurred is that these people were driven out of the market. They were more or less forced to sell their soybeans to the commercial houses, whereas, if they had been able to hold on, they could have gotten substantial premiums on their product. They were forced out of the market.

Mr. FLOWERS. Thank you, sir. I believe my time has expired.

Chairman RODINO. Mr. Seiberling?

Mr. SEIBERLING. I have no questions, Mr. Chairman.

Chairman RODINO. Ms. Jordan.

Ms. JORDAN. Mr. Fortes, I have just one or two questions. Referring to commodities and the subject of market manipulation, you talk about soybeans primarily. Which other commodities are likely to be subject to market manipulation?

Mr. FORTES. Any commodity that is traded on any exchange in this country is subject to manipulation.

Ms. JORDAN. All right.

Now, the agreement which would exist that would constitute manipulation of the market, and consequently result in higher price, I take

it, is the agreement which is entered between the buyer and the seller about the purchase, sale, of the specific commodity?

Mr. FORTES. Right.

Ms. JORDAN. Now, if the buyer and the seller enter into an agreement to manipulate the price, is this not an agreement in restraint of trade under definitions as we know them in antitrust legislation?

Mr. FORTES. Well, Ms. Jordan, the buyer and seller do not enter into an agreement per se. The agreement that exists, whether it is an actual verbal agreement or a tacit agreement between people, and these situations exist between the people who go long in the market. The short is the man who is being squeezed. That is the seller. He is the person who is being squeezed, and the housewife is being squeezed. The big commercial interests, realizing that the available supply is short, go into the market and buy over and above, beyond what the available deliverable supply is.

Ms. JORDAN. So we have no written agreement that we could point to and say that this was a violation of law because you are manipulating the market?

Mr. FORTES. They are a lot smarter that that, Ms. Jordan. You do not prove a conspiracy by written or verbal agreements. You can only prove it by drawing charts and showing a congestion, uniformity of purchases, purchases at the same time, sales at the same time. This is the question of sophistication.

Ms. JORDAN. All right. So this is such a sophisticated arrangement; would it not take an aggressive action then on the part of the FTC or the Antitrust Division of the Department of Justice to probe into these situations if they are suspected to exist?

Mr. FORTES. Definitely. The only way—you take the soybean situation, and I believe some aggressive action when the market got to $6 or $7, if the Department of Justice had gone in and sought an injunction against the board of trade from proceeding in the soybean contracts, I think that that would have been a big help to the situation that finally was created.

Ms. JORDAN. And they certainly need new legislation to do that.

Mr. FORTES. Definitely not.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. SEIBERLING. Would the gentlewoman yield?

Ms. JORDAN. Yes.

Mr. SEIBERLING. Is there not an old antitrust case, in fact, on the Chicago Board of Trade?

Mr. FORTES. Yes, *United States* v. *Patten*.

Mr. SEIBERLING. That puts a severe limitation on the extent to which we can take that kind of action?

Mr. FORTES. Well, I do not think that. I believe that the tenor of the courts has changed in many respects, and I believe, in a situation of this kind, I believe that the court would recognize any injunctive proceeding, and they would have recognized an injunctive proceeding in the soybean contracts.

Mr. SEIBERLING. OK.

Chairman RODINO. Mr. Mezvinsky.

Mr. MEZVINSKY. Mr. Fortes, I want to thank you for your statement and comments. I think they are very much on target, and I want to pursue several areas. One, you made clear in your statement that most

of the detrimental action of grain markets in the past could have been controlled or deterred by injunctive proceedings under the antitrust laws. You added that such decisive action could have saved the American housewife hundreds of millions of dollars, and that the expansion of futures trading that has been rampant for the last 5 years has served the public in higher food prices.

Can you go into that a little more? In your opinion, how has this manipulative action directly affected the high prices of food today?

Mr. FORTES. Well, we are all aware, Mr. Mezvinsky, of the fact that we had the Russian export deal, and we know that there was a scarcity, that the growing conditions were such that we had a scarcity, and everybody was aware of that. But, when a commodity, a futures commodity, goes from $3, to $5 or $6, because of the scarcity, we can understand it. But, when a commodity goes from $3.31 to $12.90, and you have a tremendous long position in the market, there is nobody who can definitely tell you categorically that so much was attributable to futures speculation, so much was as a result of scarcity. I mean this is my conjecture as well as anybody else's.

When you have a concentration of buying that put this market to $12.90, and you are asking how did it affect the American housewife, soybeans and other feed grains have a direct bearing on every other commodity in this country. And as a result of that, the soybean situation, going to $12.90, that had an effect on cattle, it had an effect on eggs, it had an effect on pork, it had an effect on our entire spectrum of commodities that the housewife uses, and when you put on that price, that extra $5 or $6 that I believe was put on the soybeans, it had to affect the housewife who purchases.

Mr. MEZVINSKY. Now, as I understand from your testimony, and also from some degree of research, most of the major grain companies, or at least the large ones such as Cargill, Continental, and Bunge, are private corporations with no public stockholders. That means that they do not have to file financial reports with the SEC, and these are multiproduct and multibillion dollar operations.

Mr. FORTES. Right.

Mr. MEZVINSKY. How important, in your opinion, is this as far as a handicap to the Antitrust Division of the Department? Do you see an enforcement problem here because they have no obligation for any kind of public reporting of their corporate financing?

Mr. FORTES. Well, I do not think it is necessarily a question of public finances. I think it is a question of they are compelled to report their positions to the Commodity Exchange Authority. If the Department of Justice would simply check from time to time when we get into a congested situation, check the reports that are issued to the Commodity Exchange Authority, and would then chart and see that, let us say, there is 50 million bushels in the hands of a few commercial houses, and the available supply is, say, only 10 million bushels, and that the only available supplies for delivery are in Chicago, and that these commercial houses and their customers are simply standing pat, then I think you have a monopolization.

Mr. MEZVINSKY. Now, as I understand when the Kansas City Board of Trade investigated the manipulations of wheat futures concerning the Russian wheat deal, their Business Conduct Committee absolved its dealers of any wrongdoing. One of the members of this Business

Conduct Committee is the vice president of Continental Grain, one of the firms under investigation. Can you tell us anything about this makeup of the Business Conduct Committee of the Chicago Mercantile Exchange, and do you know of any instances in which a conflict of interest has prevailed?

Mr. FORTES. All right, Mr. Mezvinsky. This is a very touchy spot, and I think you have touched a nerve there in this respect. The 12 members of the Board of Governors of the Chicago Mercantile Exchange, by their very nature, most of them are traders in commodities themselves. Their houses are traders in commodities. Their customers naturally are traders in commodities. A situation arises where there is alleged manipulation. Well, I believe that it is impossible for an individual to sit on the Board of Governors when he is, in a sense, personally involved in the market, or his house is personally involved in the market. And I am not attributing any malevolence to it. I am just saying this is the normal human reaction that when his house is involved, his attitude is, well, this is normal, there is a scarcity, and there is no reason why we should not buy and continue buying. People have gone wrong in the market and consequently they have got to pay the price. The same thing is true of the Business Conduct Committee of the Chicago Mercantile Exchange. There are men sitting on the Business Conduct Committee who are personally involved in the market, and I could document case after case where they were involved in situations where they were supposed to be investigating a manipulation of a squeeze and they did not have the integrity; frankly, to absent themselves from making a decision on what was involved. When that situation occurs, you are dealing, the whole trouble is that exchanges have been for many years considered a private club, and that has been the fallacy. As a matter-of-fact the courts for many years said that trade associations, are more-or-less private clubs. Of course, the courts have changed that quite a bit. One of the landmark cases is *Silver* v. *the New York Stock Exchange*, whereby finally the Supreme Court slapped the wrists of the New York Stock Exchange and said it is no longer a private club, they have got to abide by equitable rules. They have got to abide by their own rules, and I think that the CEA, Department of Justice, can take a major hand in enforcement of equitable laws and rules and seeing that the exchanges, the boards of trade, enforce their own rules.

Mr. MEZVINSKY. Now, I have a last question and will defer other questions. Yesterday, when we had the United Egg Producers before us, we referred to an audit report by the Department of Agriculture from the Inspector General which quoted an official of the Chicago Mercantile Exchange who said there was the likelihood of price fixing by United Egg Producers of egg futures. Did you ever see any evidence to suggest that egg futures were being rigged? By whom and how?

Mr. FORTES. Yes; definitely. I filed a suit in 1970 against Tyson's Foods, and actually I filed a suit against 20 defendants, which included Tyson's Foods and then their directors against a Dr. and Mrs. Newton, Norman Bell, Mel Cleland, Barnes Brokerage, Merrill Lynch, and several other clearing firms. It so happens that I settled part of this case just several weeks ago, and it is interesting that you mention the United Egg Producers. The United Egg Producers, being a cooperative, is exempt from the antitrust, in a sense. United Egg Producers

was the genius behind this 1970 egg case incidentally, and then for them to come in here, as you mentioned that they came in here, and talk about manipulative practices, they were the geniuses behind this 1970 September deal, incidentally.

Mr. MEZVINSKY. Thank you. For the record, Mr. Chairman, I would like to submit articles that appeared in the "Des Moines Register" which did a very extensive study of the commodity exchange.

Chairman RODINO. Without objection, it will be admitted in the record.

[The articles referred to are in app. 4 at p. 478.]

Chairman RODINO. Mr. Sandman.

Mr. SANDMAN. No questions. Thank you.

Chairman RODINO. Well, thank you very much, Mr. Fortes, for your testimony before this committee. We certainly appreciate your taking the time to come here and make this contribution.

Mr. FORTES. Thank you. Thank you, gentlemen.

Chairman RODINO. Our next witness is Mr. Ralph Nader, who is accompanied by Mr. Beverly Moore, who is from the Corporate Accountability Research Group.

Mr. Nader, I regret that although you had been scheduled to appear first, why we had to go on in the interest of trying to conserve time.

Mr. Nader, I do appreciate, and I am sure the committee appreciates your taking the time to come before us and present your testimony. You may proceed. I think there is no need to say that the public is indebted to you for a great deal of the work that you have been doing in the interest of the consumer, and I, for one, expressly wish to acknowledge your great contribution in that area.

TESTIMONY OF RALPH NADER AND BEVERLY C. MOORE, JR., CORPORATE ACCOUNTABILITY RESEARCH GROUP

Mr. NADER. Thank you, Mr. Chairman, members of the subcommittee.

With me today is Mr. Beverly Moore, Jr., who will be able to testify in some detail on some of the technical aspects later in the question period.

The statement which I have today is a little long. I will selectively excerpt from it in terms of its highlights, and request from the Chair that the entire statement be submitted for the record.

Chairman RODINO. Without objection, it will be included in the record.

Mr. NADER. Mr. Chairman, I wish to thank you and the subcommittee for your invitation to contribute my views to your inquiry into possible anticompetitive practices, the structure of markets, and the enforcement of the antitrust laws as they relate to the food industry.

One of the refreshing aspects of this inquiry by the committee is the recognition that the Agriculture Committee in the House does not have a monopoly on inquiry into matters relating to food.

With each successive month's release of the latest Consumer Price Index, it becomes increasingly clear that President Nixon's once-heralded new economic policy has failed utterly to stem the rising tide of food price inflation. The latest statistics show that during phases 1, 2, and 3 wholesale food prices rose by 12.5 percent per year, and the in-

creases are accelerating: Retail food prices during the first quarter of 1973 stood at 31.4 percent above their 1967 levels.

There are a number of myths, Mr. Chairman, that are repeatedly exuded from the Department of Agriculture, regardless of whose administration is in charge, and I would like to note these because I think they are necessary to clarify some of the fog that has surrounded our Nation's agriculture food policy and the impact that that policy has on consumers. In the President's speech accepting the 1972 Republican nomination, he adopted the food industry slogan that the American people enjoy "the lowest percentage of the family budget going to food of any country in the world."

Agriculture Secretary Butz, who used to rejoice at soaring farm prices, never misses an opportunity to boast that American consumers spend less than 16 percent of their disposable income on food. This is deliberate demagoguery. Naturally the Nation with the world's highest per capita disposable income will spend the smallest percentage of it on food. It follows from the inelasticity of the stomach that when one's income doubles he or she does not respond by eating twice as many pounds of food per day. The deception is compounded by the impression that this statistic generates that the average family spends only 16 percent of its income on food. In fact the average—median—family in 1971 spent 27.6 percent of its $9,186 disposable income on food, which is still the largest single item in the typical family budget and consumes even larger proportions of lower income families budgets. Only by including the incomes of, for example, the 2 percent of families that receive 18 percent of personal income with the incomes for the poor and middle classes do total food expenditures represent just 16 percent of disposable income.

Consumers are also told that rising food prices are in part compensated by rising food quality. According to President Nixon, Americans are "the best fed people in the world." This is similar to the American Medical Association saying that Americans are the best medically treated people in the world, et cetera. This conclusion is not easily apparent from the United States dismal rank in male life expectancy—40th in the world, and infant mortality, 13th in the world, or from the epidemics of obesity and heart disease which plague our population. The truth, revealed by the Government's own surveys, is that food price inflation has been accompanied by a deterioration in the nutritional quality of the food supply. There is a table here indicating that, as well as supplementary reference material.

In a further effort to shirk the blame, Secretary Butz attributes part of food inflation to increased convenience, which he calls built-in maid service. There can be little doubt that it is usually more expensive to buy convenience foods at the supermarket than to purchase their raw ingredients and prepare these foods at home. But what value does the homemaker receive in return? A major study published in 1969 found that while homemakers had reduced their food preparation and after-meal cleanup work by 30 minutes per day since 1927, their time spent on "marketing and recordkeeping" had increased by 36 minutes per day during the same period. Apparently most of the time saved in the kitchen was required to select and buy higher priced convenience foods in the supermarket jungle.

Further, while in recent decades there have been and continue to be dramatic shifts in the specific types of foods consumed and their nutri-

tional characteristics, convenience foods in general were fully on the scene long before the current boom in food prices. A recent analysis by Secretary Butz' own Department of Agriculture shows little change in stage of preparation of supermarket foods since 1952.

The administration also argues that successive devaluations of the dollar have increased foreign demand and ability to purchase American food products, thus bidding up U.S. farm prices even higher. Of course, it is inexcusable that the $300 million bonanza from the Russian grain deal went not to American farmers to stimulate increased production that would have mitigated current shortages but was instead split between the Russians and huge grain dealers through export subsidies at the expense of American taxpayers and consumers. Now we have been forced into export limitations which will further impair our balance of trade and further imperil the dollar. There are a lot of vicious circles in the entire food cycle that need to be traced out for broader public communication, of course.

The crux of the matter is that the administration's "game plan" in the fight against inflation has amounted to little more than the dramatic application of cosmetic price regulation schemes—promoted by public relations gimmickry and optimistic economic forecasts which almost always turn out to be wrong. The fundamental truth, which the administration persists in ignoring, is that the only real solution to inflation and devaluation is a more efficient and innovative economy—fueled by vigorous competition between corporations and other producers and directed by the wants of informed consumers. It is no wonder that the United States is fast becoming a stagnant and declining economic power, comparatively speaking, unwilling to keep costs down at home and unable to out-compete other nations abroad. The economy is riddled with waste, protectionism, subsidization, and monopoly. Wealth, income, and power are grossly maldistributed. Giant industries operate as cartels, and they talk of free enterprise at chamber of commerce luncheons as these cartels are distributing monopoly profits to wealthy stockholders and executives, allowing costs to rise, misallocating resources. They are too vast in size and too enamored with the easy life to solve the pressing technological problems of the day. Consumer demand for their products is created and manipulated by massive expenditures on misinformative advertising, eye-catching packaging, and the point-of-sale concealment of vital purchasing information. Those enterprises that cannot suppress competition by themselves seek the willing aid of Government: To erect import barriers against foreign competitiors, to sanction their price fixing—as in the case of the Civil Aeronautics Board, the Federal Maritime Commission, and the SEC—to exclude or protect each other from competition—the ICC and FCC, for example—or to hand out patent monopolies, tax loopholes, loan guarantees, and cost overruns. And in their wake these corporations leave a massive toll of costly and often deadly side effects: pollution, accidents, poor nutrition, and occupational diseases. Removing these economic cancers is the key to combatting inflation. Adam Smith did not propose this kind of a "free enterprise" system, characterized as it is not by the survival of the fittest but by the survival of the fattest, which is apparently consistent with the interests of the administration's political constituency. That holds true for past administrations as well.

In a word, Mr. Chairman, our massive economy is not getting its money's worth in terms of quality, safety, health, and price given the demand.

The farm program is obviously inextricably involved in the issue of quantity, quality, and price. Whatever justification existed for the farm program in its inception, particularly during the Depression in the 1930's, certainly may not and in some cases does not, given the declared data, exist today. And it always takes a generation or two to revalue a policy that may well be not only obsolete, but destructive of consumers, taxpayers, and small farm equity.

I have outlined a number of issues which we believe are important to place before the subcommittee dealing with the direct subsidies, the reduction in farm output, the idled and misallocation of resources attendant thereto, as well as the environmental costs of some farm programs. For example, the encouragement of the application of pesticides and fertilizers with the restrictions in crop acreage curtailment policies.

The problem of marketing orders, and I shall not read the detailed testimony, and we can certainly discuss these in the question period. I would like to note, however, that on page 7 the marketing order systems are classic examples of monopolistic building under Government protection against potential or actual efficient challengers who are not able to break into the legally approved conspiracy that raises such strong barriers to their entry. One of the most ironic examples of the ability of the human mind to criticize other situations, when the exact same situation prevails to benefit the critic, is, of course, the marketing order system. If the businesses that were involved in this system were asked about the free enterprise system, and the worthiness of the market enterprise system, they would shout bally-ho. But, the fact that they are permitted a type of corporate socialism is also exemplified on the basis of the unique conditions pertaining to their industry.

The only justification for any Government farm program is the consumer. Any farm program that has to be given Government support must be rationalized in terms of the ultimate consumer value, price, quantity, safety, health. If certain farmers are in serious economic circumstances, and usually that has been the case with many smaller farmers, they should be given direct economic assistance, not because they are farmers, but because they are human beings in need of collective aid from the rest of this society.

Unfortunately, by confusing this economic assistance policy with a farm policy, the prices that the consumer and the taxpayers are paying over and over again is a geometric increment to what is necessary to support legitimately the needs of small and poor farmers. It is not necessary for the U.S. Government and the taxpayer to subsidize Standard Oil for land held out of production in southern California. That is not the inspiration of the farm program that passed through the Congress, but that is certainly its distortion in recent years.

Because of the approximate jurisdiction of this committee over the antitrust area, I would like to focus my remaining remarks on that subject matter and the subject matter of consumer manipulation through these kinds of monopolistic practices, and what economists have called monopolistic competition and product differentiation.

Previous studies by the Federal Trade Commission and the National Commission of Food Marketing have verified a high degree of concentration in the food manufacturing industry. Since about 57 percent of the total food bill goes not to farmers but to manufacturers, transporters, and retailers, there is much price-lowering from vigorous antitrust enforcement against those segments of the food industry not exempted by farm program legislation.

There is now a substantial and growing body of evidence indicating the costly consequences of economic concentration. These are footnoted assertions that I am making at the present time. First, concentrated industries extract monopoly profits totaling perhaps 3 percent of GNP. Second, the lack of competition in these industries leads to excessive executive compensation, internal inefficiency, stagnation of technological innovation, racial and sex discrimination in employment. Third, the higher-than-competitive prices charged by these industries restricts output and imposes large costs on the economy through misallocation of resources. Fourth, in consumer goods industries there is a substantial relationship between the degree of concentration, excess profits, and advertising expenditures. It is likely that product differentiation through heavy advertising outlays emphasizing relatively trivial "unique" aspects of the product is both a cause and a result of concentration. In one landmark study it was found that "industries with high advertising outlays earn, on the average, at a profit rate which exceeds that of other industries by nearly 4 percentage points. This differential represents a 50 percent increase in profit rates. It is likely, moreover, that much of this profit-rate differential is accounted for by the entry barriers created by advertising expenditures * * *."

The "differentiability" of the product and the amount of monopoly profits available for expenditure seem to be the key variables explaining why advertising outlays are large for some products but not for others. Finally, the studies show that corporations do not have to be large to be efficient or inventive—that, indeed, the opposite is generally the case. As corporations grow larger in size their expenditures on research and development decline per dollar of sales. Nor in most cases can huge corporate size and market concentration be explained by economics of scale, which means that breaking up oligopolistic industries through antitrust enforcement would not increase production costs. I have been told time and time again, for instance, by smaller farmers throughout the country that if they were only given a fair break in terms of market competition they could easily outcompete the lumbering agri-business outfits. The reason why the agribusiness outfits are able to erode the smaller market operations is because of a large array of subsidies and predatory practices, the market tie-ins that make for very unfair competitive conditions. These general observations are borne out by specific studies of the food industry. There is data dealing with the concentration ratio of various subindustries in the food industry for the committee's information.

In the area of competition and consumer sovereignty, it is important to antitrust agencies and the Congress to look much more closely at advertising and promotion efforts. The increase in concentration resulting from barriers to competitive entry raised by product differentiation strategies, which has thus far been the major concern,

is really a very abstract way of saying that competition cannot work to produce better and less-expensive goods and services unless consumers possess the information to be efficient purchasers. I am sure many of you have seen the ridiculous Wonder Bread ad on television that if you say to the consumers, "if it squeezes in a most soft manner," then it is a candidate for consumers' purchases. One might wonder what does squeezability have to do with the quality of a particular bread product. I once received a letter from a housewife in the Southwest indicating that by mistake her child had left a loaf of Wonder Bread on a rock in the yard, and it just stood there for several days under the sun, and when it was retrieved it was still soft. How remarkable!

Some examples: It is extremely difficult for price competition to work without unit pricing, and it is extremely difficult for unit pricing to enable consumers to shop on the basis of price unless the unit prices—and all other informative labels—are clearly and efficiently communicated to the supermarket shopper—which they are not. For instance, one of the cardinal axioms of an efficient marketing system is that the consumer is able to know what the price of a product is from one area to the other, from the final loans to the food industry. It is very difficult for the consumer to grasp the particular price and to make price comparisons. That is one of the purposes of an effectively communicated pricing scheme. It is extremely difficult for there to be competition in quality without a uniform grade labeling system for all significant food products. Nationally advertised brands often sell for 20 percent higher prices than the supermarket's private label brand even though the contents of both cans are usually identical in quality and are marketed by the same food manufacturing company. Similarly, consumers cannot effectively buy many convenience foods on the basis of comparative quality without percentage ingredient labeling. Consumers cannot even tell how much product they are buying without some designation of the package's slack fill, such as a dotted line around the top or, as is often the case, around the middle of the package indicating where the contents stop and the air begins. A recent FDA survey found the following percentages of slack fill. For instance, in dried desserts there is 47 percent average air volume; in mint candies, 29 percent; in spaghetti, 29 percent; in frosted and filled cookies, 26 percent; in cake and candy mixes, 18 percent; in corn breakfast food, 12 percent; and in oat breakfast food, 7 percent average air volume. Along with fat, water and air, rarely have these ingredients been selling at such high supermarket prices.

[See exhibit 1, at p. 280.]

A very important aspect of quality competition—improving nutritional values of foods—also is hampered unless effectively communicated mandatory nutrition labeling enables consumers to purchase on the basis of nutrition. Spokesmen for the food industry produce surveys purporting to show that consumers do not rank nutrition very high among purchasing criteria. Ironically, industry surveys also show not only that the vast majority of consumers do think that good nutrition is very important, but also that most consumers have been led to assume that the foods they purchase do, in fact, provide good nutrition, and in some cases may even be shot from guns. Thus, the industry's justification for not competing in nutrition becomes a self-

fulfilling prophecy arising out of consumers' basic lack of nutrition information. What all this means in terms of food prices is that there is an enormous potential in the provision of relevant food purchasing information for enabling consumers to satisfy their food needs with much less money through more efficient purchasing.

You know, Mr. Chairman, the auto industry for years said that the consumer did not put safety on a very high level in purchasing an automobile. Since they were never told the difference between what kind of safety they could have and what kind of safety they were getting, and since they were never informed about the connection between increased safety of the motor vehicle and decreased risk of their being killed or injured on the highways, it is not surprising that they tended to look at the fin structure in the beginning, or the rim or grill patterns, in order to determine what their preference was between Tweedle dee and Tweedle dum.

The theoretical model of a free enterprise market economy assumes that advertising, packaging, and other seller promotional information will provide consumers with the types of purchasing information that have just been described. Consumers certainly have a right to expect to receive this information since they are paying over $4 billion a year for food advertising costs that are included in food prices. However, an examination of the actual content of food advertising shows that instead of being solidly informed about the advertised product's comparative price, quality, and nutritional value, consumers are given such purchasing tips as, and I quote from current ads:

> Mm good!
> The secret sauce kids never get tired of.
> No dog food ever looked like that before.

And there is also an ad by Ralston Purina indicating that its dog food was preferred by 6 out of 7 dogs.

> Lip smacking, whip cracking, patty whacking.
> Anyone can be a Frito bandito.

Here is another illustration which we can submit for the record. This is a Kool-Aid ad, and the text, in effect, shows happy smiles, sunny smiles, Kool-Aid smiles, funny smiles, silly smiles, Kool-Aid smiles. Shy smiles, sad smiles, Kool-Aid smiles. Glad smiles, sorry smile, never-saw-a-bad-smile. Happy smiles, sunny smiles, Kool-Aid smiles. Some of the ads are really unreadable, the yabba dabba doo type ads, as if one is trying to communicate for visceral responses of canine receptors rather than to the children of the country.

A citizens committee in Boston against TV advertising for children has submitted very compelling evidence of the manipulation of children in order to have these children crave the kinds of foods and the kind of taste habits that rebound adversely to their nutritional benefit. For example, the enormous craving for sugar in dozens of food manifestations promoted by these food advertisements.

The consequences of advertisings' noninformational content are far more serious than a mere waste of $4 billion a year to purchase food advertising space. That is because advertising powerfully influences consumers: First, to purchase different food items than those they would purchase if adequately informed of comparative product price and quality characteristics; and, second, to spend more money on food than they would spend if the level of noninformative advertising mes-

sages were reduced. The second effect has consequences that merit elaboration. We have already discussed the supply side of the Nixon administration's limited supply-increased demand explanation of rising food prices. To increase supply faster than increases in demand will lower prices. But lower prices can also be achieved by decreasing demand while holding supply constant. The effect of heavy advertising inducing consumers to spend more of their dollars on food than they otherwise would is the same as an increase in demand, which creates a supply-demand gap that bids up prices. Thus, advertising inflates food prices by artificially increasing demand for limited food supplies as well as by inducing consumers to spend more for less value.

In that context, the committee may wish to reread a speech given by Donald Turner several years ago when he was head of the Antitrust Division of the Justice Department. The thesis of the speech was the effect of excessive advertising expenditures by large monopolistic corporations on the competitive quality of the marketplace. And his point, which was very controversially received by the advertising industry, needless to say, was that beyond a certain point excess advertising budgets working on product differentiation themes, which do not inform consumers of the quality or the price of the product, in effect reduces the competitive quality of the marketplace and increases costs to the consumers. And I think that address is highly relevant to the committee's inquiry into concentration in the food industry and food prices. [See exhibit 2, at p. 282.]

I would like to conclude on the following note.

There are many recommendations which can be made for the various congressional committees to consider. Your main committee's jurisdiction permits the pursuit of this inquiry deep into its antitrust ramifications in order to determine: (1) what existing enforcement and advocacy action the Justice Department should take promptly; (2) what additional funding and manpower is needed by this agency—that is, the Justice Department—and your committee; and (3) what new authority is required to bring to bear more effectively antitrust enforcement toward a competitive food industry. The subpena power must be readied for use where corporate or governmental—for example, the U.S. Department of Agriculture—recalcitrance impedes your legitimate inquiry.

We have tried to put together, Mr. Chairman, a mass of data referenced in our footnotes to support some of the observations that are made in the testimony, but it is clear that citizens are not capable, they do not have the authority to obtain the kinds of data which are so necessary for a thorough airing and policymaking process before your committee. This is why the request is pointed out in such a fashion.

It is also important to note that the Government has a lot more information about agri-business than it is willing to reveal to the public. There is like a collusion of information assembling between these companies in a number of Government agencies, particularly the U.S. Department of Agriculture.

As a consumer issue, a competitive food industry could bring to the consumer both lower food prices and healthier food. Your committee can help bring this about if it follows legislative inquiry with legislative action and oversight. Otherwise the fruits of this inquiry will have the endurance of a single crop of corn.

I think, in conclusion, it is important to note that there is nothing more destructive of a rational and persistent inquiry along these lines than to have the food industry induce the American people to rest on the past laurels. The past is no longer a guide to future projections. The skyrocketing prices in food to the consumer have no precedent in modern times. The problem of world demands for food and world supply for food are reaching new points of crisis. The contamination of food by chemical processing, as well as environmental pollution, have incubation periods for human disease which are taking their toll in mortality and morbidity statistics. And in so many other ways what we are now witnessing are the kinds of gyrations and speculations and movements in the food industry from the farmer to the consumer's table that require the kind of constructive oversight that this committee has initiated, and because of this committee's jurisdiction in the antitrust area, it can make a strong connection between the structure of the food industry and the techniques of sales perpetuated by the food industry to consumers' well-being. And, if the polls mean anything, there is probably no other issue that has commanded both the concern and outrage of consumers than food prices. Sometimes it is spoken of as food prices; sometimes it is spoken of as inflation; and for most consumers, inflation means largely increased food prices in recent months.

Thank you.

Chairman RODINO. Thank you very much, Mr. Nader, for a very, very well thought out and certainly well presented statement. And I am sure the committee appreciates the great effort and the amount of study and research that you have put into this. And I also want to thank Mr. Moore who has accompanied you, who I know has been very helpful in this regard.

Mr. Nader, there are one or two points that I would like to touch upon. Before I do, however, there is a statement which you make on page 8 of your prepared testimony, in which I am interested because this committee intends also to inquire into an area that you make reference to, the energy crisis, sometime later. Your statement is to the effect that: In a May 25, 1973, letter to dairies announcing new price hikes, the giant Associated Milk Producers co-op said:

> We are preparing a public relations campaign to prepare the consumer for a price increase in milk. This will be in the form of press conferences, releases to news media, radio, television, etc.

And then you go on to say:

> The success of corporate "energy crisis" propaganda has apparently caught the food industry's eye.

Could you elaborate on that; and with that, I would like, before you do, to state this: I am aware of the fact that through the marketing system in the area of milk the independent producers it seems do not at all benefit by the increase in price, nor does the consumer, because it appears to me that there is no improvement of the quality of the milk the consumer gets. And yet, apparently, through public relations the consuming public is expected to pay more for something that never benefits them in any way whatsoever, and that the profit is passed on to just a few who are exempt under some provisions of the law which are referred to as probably being antiquated by now, which exemptions should at least be reviewed by the subcommittee. And, incidentally,

the Justice Department has said, or suggested, that we should possibly reexamine the Capper-Volstead Act. Together with the question I put to you, I would like to ask whether or not you would go further in a suggestion to this committee?

Mr. NADER. Yes; I think the giant milk producer co-ops are operating in a monopolistic context which needs to be reexamined in light of the seventies, not in light of the thirties, the pit of the Depression where so much legal permissiveness was dealt out in these areas in order to keep the milk producer's head above water, so to speak.

First of all, the very fact that these milk producers are preparing an expensive public relations campaign to prepare the consumer for a price increase in milk industries that they basically have a system where they set the price, and then they persuade the consumer to receive an increase in that price, and make the consumer pay for the public relations campaign through the price increases. No; that has nothing to do with consumer sovereignty, a market system, a competitive economy. It is basically corporate socialism, and when you get these giant co-ops, in effect, doing the same thing in the political campaign fund area, as they have done most dramatically in the past year, funneling campaign funds in order to get an increase in the price supports for milk, you have the ultimate combination of manipulative power toward the consumer and the Government.

Now, the energy industry has been engaging in a relatively similar process by shouting "crisis" and by shouting "shortage" compared to supply and demand. They have tried to create the kind of political climate whereby they would achieve out of Washington tax privileges, pipelines as they wished them designed and built, and a driving out of the market—the driving out of the independent gasoline marketers and refineries. So, I would think that the parallel here is quite compelling. Whenever we see sellers spending money in the public relations area to persuade buyers to accept a larger price, you have seen the end of the market system, because if the market system was operating, these sellers would be spending money to improve their efficiency in order to reduce their costs so that they can reduce their prices so that they can meet their competition. I do not think there is any more justification for the kind of legal immunization given these giant co-ops by the Capper-Volstead Act. If you will note, in Assistant Attorney General Kauper's testimony, he quoted Senator Capper's justification for the act, years and years ago, saying that the reason why the act will not harm consumers is because milk producers cannot, like United States Steel, curtail output. And, of course, now we have shown, we have been shown very compelling evidence that these giant milk co-ops are largely designed to curtail output, given their ability to mesh supply and demand to maximize their price.

Chairman RODINO. Well, would you then say, Mr. Nader, that the protection against monopoly power of milk processors has been used to create monopoly power of milk cooperatives?

Mr. NADER. Yes; I think to some extent they have worked hand in hand, and when you get three segments of a marketing system prior to the consumer level increasingly monopolized, they will feed their own concentration levels. And the bigs get bigger in order to deal with other bigs.

Chairman RODINO. You mentioned some recommendations that might be initiated in order to insure the protection of the consumer

and, in particular, some initiatives this committee might take. What new efforts could the Antitrust Division of the Department of Justice undertake to implement the policies of the Department of Agriculture in order to mitigate the inflationary aspects of price support programs, marketing orders, and the Capper-Volstead cooperatives?

Mr. NADER. Well, the first step the Justice Department has to take is to hire some lawyers and some economists that specialize in this area. They are very undermanned. We have shown statistics, for example, which illustrate that over the last 15 years the increased budget of the Antitrust Division has basically gone to increased salaries, and that in the late 1930's, compared to the size of the economy, they had more manpower than they do today. They have got to get more lawyers and economists and that is the nitty-gritty.

Given that, they could, for example, petition the Department of Agriculture whenever they find the situation where these large producer co-ops are unduly enhancing the price, as the phrase goes, petition the Department of Agriculture, and the Department of Agriculture is required to take action under that type of situation. The Justice Department could also petition the U.S. Congress to curtail or to abolish the portions of the Capper-Volstead Act that feed this kind of monopoly.

Furthermore, the Justice Department can, as indeed they are beginning to do, look into the commodity markets which are supposedly regulated by the U.S. Department of Agriculture. The Justice Department could challenge many of the marketing orders which are basically legally approved monopolies that carve up sales and restrict entry. And, I think in a number of ways the Department of Justice can jar or perturb the Department of Agriculture to start making studies or releasing the data that would more regularly etch the degrees and pace of concentration in these markets.

Lacking that, the Justice Department would have to set up its own statistical gathering apparatus, and it simply does not have the budget to do that.

Mr. MOORE. I would like to point out that section 2 of the Capper-Volstead Act, about which Kauper of the Antitrust Division was previously questioned by this subcommittee, does not merely permit the Secretary of Agriculture to take action against producer co-operatives that have unduly raised prices. It requires the Secretary of Agriculture to take such action when and if information is brought to his attention that, in fact, prices have been unduly enhanced. Note that, notwithstanding the impact which co-ops have on prices, there are a multitude of other direct efforts of the Federal and State governments to artificially inflate the price of milk and dairy products. First, domestic producers are protected from foreign competition by import barriers. Second, the nationwide marketing of milk is impaired by the Federal Filled Milk Act. Third, there is a USDA price support program for dairy products. Fourth, Federal Milk Marketing Order Administrators throughout the country fix prices for fluid milk even higher than the price support level. Thus, if there is an example of greater greed than the co-op's drive for even higher prices I do not know what it is. The co-ops are now charging prices higher than the levels set by the Federal Milk Marketing Administrators, and most of the premiums which the co-ops earn—that is, the excess

of the price over the price already fixed by the Government—is dissipated by the very inefficient and wasteful practices, typical of monopolies, in which the co-ops engage.

Chairman RODINO. Mr. Moore, you stated that when this data is called to his attention, the Secretary of Agriculture, or the Department, is required to take action against producer cooperatives when the prices are unduly enhanced. Do you mean that he awaits particular information to be put before him concerning unduly enhanced price, or is he under the responsibility to be aware of what the marketing conditions are?

Mr. MOORE. He surely has that responsibility. But if through what is known as a prosecutoral discretion he should happen to neglect that responsibility, as he has even since the Capper-Volstead Act was passed in 1922—there has not been a single action brought by the Secretary of Agriculture under this section since that time—an outside party may bring the information to his attention. And the statute says he shall not, he may, as many modern statutes are phrased, take action. And I think the only discretion that would then be left up to the Secretary is whether or not prices have been "unduly" increased by virtue of the co-op's market power. Since there are already several programs to increase the price of milk, the marketing order system and the others listed previously, a strong argument can be made that any increase above the already inflated levels set by those programs would certainly be "undue."

Chairman RODINO. I have just one more question. You suggested in your statement the need for a quality grading system that would apply to all significant food products. Would not this require a very expensive data gathering operation, and the creation of a large Government bureaucracy to administer it?

Mr. MOORE. I think not. Basically there would be three types of costs involved. First, there is the cost of determining what characteristics of food products should be included in a grading system—nutrition, price, taste, convenience, et cetera.

Second, there is the cost of generating and collecting that information, and third, the cost of putting it onto the labels.

Considering these three costs in reverse order, first, labels on food packages are and will continue to be changed periodically whether or not there is a grading system. The cost of adding grading information at the time when the label is going to be changed anyway would be relatively minuscule. Second, most of the potential grading information about the various characteristics of food products, the percentage of ingredients, for example, is already known by the food manufacturers themselves.[1] The food manufacturers know the contents of their own products, or at least we should hope they do. Whatever additional grading information needs to be generated would not represent major costs. In large measure all that needs to be done is to disseminate to the public information which corporations already possess, but presently hide from the consumer. So, we are let with the only significant cost being the cost of setting up an administrative agency to hold hearings at which various viewpoints could be expressed as to what

[1] *See* Ferguson *et al.*, "Consumer Ignorance as a Source of Monopoly Power: FTC Staff Report on Self-Regulation, Standardization, and Product Differentiation, 5 *Antitrust L. & Econ. Rev.* 55 (Spring 1972).

factors should be included in grading a product A, B, C, D, E, or F, and how those factors should be weighted.

A partial lesson in the cost of this process is provided by Consumers Union, which in the past 5 years has graded or rated roughly 10,000 brands of 450 products at a cost of only $8.5 million.

Moreover, any conceivable amount that might be spent on maintaining a grading system for consumer products would be minuscule relative to the potential of the gain in consumer purchasing power. There have been studies correlating the Consumer Reports product quality ratings with the marketplace prices of the rated products. That is, if you were to arrange competing brands of a product in the order of their ranking in graded quality, you would expect to find their prices distributed in the same order; that is, the higher the price, the higher the quality and the lower the price, the lower the quality. Quite the contrary though is the case. Studies have found a very low correlation between price and quality in the marketplace of about 0.3 on a scale of zero to 1.0.

Assuming that the CU ratings accurately reflect actual consumer preference, the distinguished economist who performed one of the studies [1] calculated that if consumers purchased the "best buy" within each product category—that is, the highest quality relative to price instead of purchasing each rated brand equally, as this economist was forced to assume because the sales figures for specific product brands are kept secret by corporations—that given those assumptions, consumers could have increased the value of their purchasing power by 50 percent, meaning that every dollar would be buying $1.50 worth of goods and services. For the entire economy that would translate into something like a $400 billion increase in annual consumer purchasing power. Given the assumptions employed, including the representativeness of the sample, certainly cannot propose such an astronomical saving, but we can accept this figure as some indication of the gain to consumers achievable through improved consuming information, including a grading system.

Chairman RODINO. Thank you.

Mr. McCLORY.

Mr. NADER. Excuse me, Mr. Chairman. There is another benefit, and that is if point of sale information can be conveyed through grading systems to the consumer at the store level so that the consumer can realize what the best buy is, it would not be necessary to spend these fantastic amounts on television, radio, and other kinds of advertising, trying to get consumers to buy products based on brand name identification and colorful packaging. Large food corporations, it needs to be repeatedly pointed out, spend about 16 percent of its gross revenues on advertising. That is a spectacularly high level. The only industry I know of that exceeds that besides soaps and detergents is the cosmetic industry and the difference, of course, is that food is a necessity, while cosmetics are primarily selling hope. And now to illustrate, to illustrate how ironic it is that the most basic necessity in the marketplace, which is food, goes at the rate of 16 percent advertising of gross revenue of large food corporations, the automobile industry, which is not miserly in its advertising, spends 2 percent of its gross revenues on advertising.

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[1] Oxenfeldt, "Consumer Knowledge: Its. Measurement and Extent," 32 Rev. Econ. & Stat. 300 (1950).

So that the added benefit would be a reduced level of advertising expenditures which has got to translate itself into lower consumer prices.

Chairman RODINO. Thank you.

Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I am sure that your testimony, Mr. Nader, is going to attract a lot of attention, and it is of interest to this committee. I am disturbed somewhat by your very sharp and, in my opinion, unfair attack against this administration, an attack bolstered by references to legislation enacted under prior administrations, such as Capper-Volstead exemptions and marketing agreements and things of that nature. I am also concerned about some of your other references, and——

Mr. NADER. Let me say just that point, Congressman, that I did note prior administration policies, and if we were in 1968, now we would be talking about the Johnson administration. But, we are in 1973, and we are talking about more recent events.

Mr. MCCLORY. Well, on the first page you talk about the deliberate demagoguery in claiming that the American consumer pays 16 percent of his disposable income for food, and that percentage is related to other countries. I assume that the references that the Secretary of Agriculture made were to precisely the same statistics for other countries. It seems to me to be equally demagogic to dispute that by referring to the nutritional value of foods and to the wheat deal and other things of that nature. I cannot help but note what, in my opinion, is an unjustified and unsupported attack against this administration. That is my observation. To me, that colors your testimony.

Mr. NADER. Congressman, it is basically a recognition that as disposable incomes go up, because of the finite appetite of people, the amount spent on food and the percentage weight has to go down. That goes down to Engel's Law at the turn of the century when it was first documented. So it is, we are saying it is misleading to make that kind of a comparison in order to try to induce consumers into a state of complacency about food price increases.

Mr. MCCLORY. Well, in another part of the statement which I think may be related to the reference that you are making now, you contend that the high prices of some foods are the result of the high amounts that are paid for advertising. You justify the grading of foods by saying, "Well, we could save the $4 billion spent each year in advertising foods."

But, the $4 billion in advertising supports free speech. It supports the newspapers, radio, and television. Who do you suggest should support these institutions if they are not supported through advertising costs, including that of food products?

Mr. NADER. Well, I must say that is a unique justification for worthless advertising. We cannot operate on that premise, Mr. Congressman. We cannot say that this kind of advertising which does not communicate information, should continue to burden consumers because it supports newspapers. If newspapers are to be supported, they should be supported by the market mechanism, that is, maybe we should pay more for newspapers, rather than paying a nickel or a dime or 15 cents.

Mr. MCCLORY. Maybe we should have more public support of television, more public television?

Mr. NADER. Exactly. In other words——

Mr. MCCLORY. With the taxpayers supporting public television, instead of the consumer supporting television in the purchase price of his products?

Mr. NADER. But consciously—that is, the taxpayers through the Congress would decide whether they want to pay x amount of dollars for y amount of service rather than being victimized by what is, in effect, a hidden tax in the area.

Mr. MOORE. I would add that so-called free television—that is, advertiser sponsored television—is not free at all, instead we have to pay the increased price of advertised food products and, indeed, so-called pay television would be cheaper than free television, because it would eliminate the 15 percent advertising commission. In addition to that, through a pay television system diversity of programing, and thus its value to viewers, is tremendously enhanced, because 1 million people can combine to pay a quarter each to watch a program which they, a minority, may wish to see; whereas under the present system, only if perhaps 30 million people are willing to watch a program does that program get on the air.

Mr. MCCLORY. We could have a new Federal agency, taxpayer supported, in order to arrange this.

Mr. MOORE. It would require no taxpaper support whatsoever.[1]

Mr. MCCLORY. If we would eliminate advertising and brandname products, which are presumably purchased at higher prices because advertising costs go into the price of the product, then it seems to me that we would truly be eliminating the element of competition. We would have to establish some agency which would establish what the exact grade of the product would be.

Mr. NADER. I am sorry, Congressman; you misunderstand the point I was trying to make. There are different kinds of advertising. The most efficient kind of advertising is one that is informative, that it tells the consumer about the characteristics of the product and permits the consumer to compare one product with another, and the kind of advertising that is closest to the point of sale. And that is why we would prefer the grading type of advertising, which is the kind of advertising when information is on the packages, unit pricing, grading, and facts about ingredients. It is at the point of sale where the decisions are made. And, secondly, it is informative.

Mr. MCCLORY. It seems to me that you are saying, Mr. Nader, that advertising copy should be delivered to some governmental agency for prior approval and that we should have strict government control of all advertising copy. It seems to me that that is quite inconsistent with a free economy, as I understand it.

Mr. NADER. No. I do not want to be misconstrued here because it is too important. We must clarify each other's points. Those are your points, not mine. You do not have to have preclearance of advertising copy in order to implement standards of information content. As you know, on certain drugs there is information that is required to be put on the bottle. The copy, the advertising copy, is not cleared, but the information has to be put on the bottle in order to inform the con-

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[1] *See* Moore, "The FCC: Competition and Communications," in M. Green, ed., "The Monopoly Makers" 35, 70–73 (1973).

sumer, say, as to dose levels. And that is what we are saying. Now, if we are talking about excess bureaucracy, I quite agree. There is a lot of excess bureaucracy in the entire subsidy and agri-business area. In fact, I would rename the U.S. Department of Agriculture to be called the U.S. Department of Accounts Receivable for Agri-Business. I mean, that is where the bureaucracy is.

Mr. McCLORY. I know that we have limited time here, and I am not able to explore all this through questioning; but I do want to emphasize that the policy of this administration with regard to food and the price of food is one of plenty as opposed to the policies of scarcity of prior administrations. In the present farm bill you will notice that with the support of this administration, there will be released 45 million acres of previously set-aside land which will be available for production of wheat. I would further like to point out that other attacks have been made here which are directly against bigness as such. To me bigness as such is not necessarily bad. If it is the result of efficient operations—which we ought to credit in a free economy and not condemn either by legislation or interpretation of existing law, it can be good.

Mr. NADER. Our comments on bigness are squarely on the issue of monopolistic practices and inefficiencies. We are not against economic bigness per se.

Mr. MOORE. And we are also talking about market concentration, not size per se. The inefficiencies associated with size per se, while obvious, constitute a different terrain that would take considerable time to traverse.

Mr. NADER. I think you might have noted a "Business Week" article, Congressman, about a year ago, showing some large agribusinesses which were getting out of certain areas because they were not efficient. The smallest producers were whipping them to the market, so to speak. And the importance, the importance there is that many times they do not recognize this because they make up this inefficiency at the producer level, they make it up along the road to the marketplace through various subsidies and monopolies, make up the differences, and this is what we object to, because the regular farmer does not have that kind of opportunity. He cannot lose at the farm and make it up at the wholesale or integrated level down the line, and he cannot subsidize losses at the farm in that way, and that is what the farmer means when he says to us that if we were only allowed to compete, we could easily outcompete them. Namely, we would care for our 500 or 300 acres, and we know how to intensively farm them. We are not from a corporate bureaucracy getting signals from some computerized office back in Chicago.

Mr. McCLORY. A large percentage of farmers to which you make reference would be adversely affected by what is called the Emily Farm Act, and I assume that you are not, accordingly, supporting that legislation?

Mr. NADER. I think the issue of massive demand that is coming up through exports, and domestic demand, changes the kind of social welfare climate that permitted excessive immunization from the antitrust laws in the 1930's where this, so much of this started.

Chairman RODINO. I am sorry, but we will have to move along.

Mr. Flowers?

Mr. FLOWERS. Thank you, Mr. Chairman. I would like to thank both of these gentlemen for their testimony. I might say it has given us a great deal of food for thought.

In line with your statements, I would gather that you feel that the outrageous price increases, as you stated, would amount to unfair pricing practices at some level in the food-to-consumer scale, is that correct, some unfair pricing?

I am curious at what stage then, if there is unfair pricing. There has got to be some of what you might call undue profiteering at some stage of the game, too. Do you find any general trend there? Can you put your finger on where it would be in your judgment?

Mr. NADER. Well, before Mr. Moore goes into the details of that, certainly in the grain area, the large grain exporters there——

Mr. FLOWERS. This is in line with the previous gentleman's testimony, the influence of the board of trade, and I would say your organization would have a large area for inquiry there, I think, that might be very helpful to the American public. And I hope you will look into it at some convenient time.

Mr. MOORE. You asked specifically, I think, about monopoly profits.

Mr. FLOWERS. Where in the scale of things is the undue profit taking place? Where is it occurring?

Mr. MOORE. First let me point out that Mr. Silbergeld, in his testimony before this subcommittee in these hearings, has submitted a list of 17 food industries studied by the Federal Trade Commission, which is not the entire food industry, of course. The FTC has calculated that there were monopoly overcharges attributable to these particular industries amounting to $2.63 billion per year, but more noteworthy is that the bulk of the price inflation that we are talking about is attributable not to so-called "excess profits" but to economic waste. Of course, this waste properly falls into the category of monopoly profits in that it could be converted into monopoly profits were it not squandered by the corporations involved through a variety of internal inefficiencies, including backhauling of empty trucks, advertising expenditures, and the development of thousands and thousands of new food products, 43 percent of which fail. Consider also the farm program, specifically the farm subsidies. A recent economic study by Dr. Gale Johnson of the University of Chicago estimates that of $3.5 billion in subsidy payments under the wheat, feed grain, and cotton programs, farm income was only increased by only $1.5 billion, you have, in other words, a cost to the taxpayer in this case of $3.5 billion in order to increase the income of farmers by $1.5 billion. The missing money is accounted for, first, by capitalization of farm benefits when the program originated—that is, the original holders of, say, tobacco allotments saw the value of that farmland increase at the point in time when the program was instituted, in expectation of future benefits.

The farmer to whom that original allotment holder later sold this land is not receiving those benefits. He has already paid that price to the original land holder. Another component of the "missing" taxpayer subsidy is that costs are increased in order to more intensively cultivate a smaller amount of land being put under production. Furthermore, some of this subsidized income the farmer would have

earned anyway by increasing output had there not been controls on supply.

Similarly, in the area of food manufacturing there is much distortion, in allocation, inefficiency, failure to innovate, the ICC's regulation of transportation, all involving economic waste or foregone productivity, although monopoly profits are surely a factor.

Mr. FLOWERS. Yes, but so many of these things have been evident for some time. They are not directly attributable to the recent price increases. They have been there for years you might say.

Mr. MOORE. Indeed, some of them have. But, nevertheless, the most severe crunch should be an incentive for us to eliminate these long-standing economic evils, and by eliminating, for example, the ICC regulation scheme, we would be able to reduce prices, which would neutralize recent increases of whatever origins and the effect in terms of the consumer's pocketbook would be the same.

Mr. NADER. The Nixon administration has recognized, by support of a deregulation bill, that there is enormous waste in the transportation of food over the highways and the rails. For instance, you have got truck lines which come back empty because they have got the no-competition certificate from the ICC. Now, if you say, well, that increases prices, that is generally agreed, to the consumer. Most of that does not go to price, it goes to waste, which I think was Mr. Moore's point.

Second, there are areas where clearly there are monopoly profits. For example, in the breakfast cereal manufacturers, which the FTC has moved against, I believe, about 2 years ago which has resulted in very, very considerable overcharges to the consumer. And the large grain exporters, the commodity market speculators, and the important thing, I think, to realize is that the system is sprung in such a tense way that when you get a Russian grain deal, which is, you know, a large deal to be sure, but its repercussions in terms of escalating costs throughout the economy were almost geometric. It put an increased burden on certain transportation facilities, it broke the sensitive relationship of time between supply and demand, and increased the prices all the way up. It is just like the farm program. For every dollar of subsidy, the consequences all the way up to the consumer can be more, much more, than a dollar. This is what we are dealing with here oftentimes. Say we have seven links in a chain when we should only have four links in the chain to the marketplace. That is another indication of proliferating waste.

Mr. FLOWERS. I think I have overreached my time.

Mr. MOORE. I would just like to add that with respect to the emphasis we have placed on potentially more efficient shopping in supermarkets—involving grading and the like—that those kinds of savings flow also in part from the elimination of waste, from consumers being induced to buy higher priced products which costs more to produce, package and sell than competing or potentially competing products of comparable consumer-judged functional utility as opposed to "excess profits" being involved, although they are substantial in many instances, of course.

Mr. SEIBERLING [presiding]. All right, are you finished, Mr. Flowers?

Mr. FLOWERS. Yes.

Mr. SEIBERLING. We will switch over to the Republican side.

Mr. SANDMAN. I am going to be very brief in the few questions that I have. In the interest of consistency, I would like to ask just a couple of questions. At the outset, I want you to know that I have never voted for any of the farm subsidies; so I share many of the thoughts expressed in a good deal of your testimony. Now, if we base that position upon the premise that we would probably get lower food prices in a free economy, I think that has got to be the fundamental premise by which you and I have arrived at that decision. Would you agree with that?

Mr. NADER. Yes.

Mr. SANDMAN. All right, now, how could we, in the interest of consistency, supporting a system of open and free enterprise, advocate a highly controlled system such as you are suggesting today, in the field of advertising?

Now, I am not talking about what is going to be required to be printed upon the article itself. I am talking about the highly expensive kinds of TV advertising that you are referring to. How could we curtail that without interfering with the free system of private enterprise?

Mr. NADER. There are two ways to do that. One is, more information is supplied at the point of sale and consumers are able to compare more intelligently between products. The value of heavy, noninformational advertising, based on brand name identification, will be reduced.

Let me give you an example. Bleach. Bleach is bleach. Chlorox comes along at, say, 25 percent higher next to the private brand. And people buy Chlorox. Now, if people were more informed that there really is no difference between the two bottles, then, you see, they would buy the cheaper product.

Mr. SANDMAN. Well, let me ask you this: Assuming that what you say is correct—and I think it is, how do we reach the goal? How do we accomplish that, how do we stop company A, B, or C from advertising by the millions over TV on something like the "Frito bandito"?

Mr. NADER. You do not have to stop it. You do it in two ways without regulating. One, more information, as I mentioned, at the point of sale. No. 2, counteradvertising. That is, you have messages dealing with consumer information through the same media that these advertisements are being placed to inform the consumer that it is simply not so. When you get a gasoline additive that is a total fraud and is selling $40 million a year, largely because of its advertising over the TV, which is unchallenged, if counteradvertising instituted, you would not have that kind of advertising continue, because the truth would wear it down.

Mr. SANDMAN. Yes; but you would need some kind of control to keep out the useless kinds of advertising.

Mr. NADER. Yes; the controls are traditional against deceptive ads which the FTC has had authority on for years and years. I thought you were speaking about more of the problem of the more traditional controls.

Mr. SANDMAN. Control over what a man can spend for advertising; this is what I am really addressing myself to. We have no such law on that today. Do you recommend that?

Mr. MOORE. Are you suggesting, for example, passing legislation which would prohibit a corporation from spending more than x percent of its sales revenues on advertising?

Mr. SANDMAN. Is that what you recommend?

Mr. MOORE. No; I am simply trying to obtain a clarification of your question.

Mr. SANDMAN. No; I am not recommending it. But I understood from what you said that this is what you recommend.

Mr. MOORE. We have not recommended that.

Mr. SANDMAN. Oh, you have not. Again, basically, how do you stop somebody from spending millions on something like the "Frito bandito" that you referred to?

Mr. NADER. Just let me summarize four ways. One, by enforcing the laws against deceptive advertising which have been with us now for some 55 years in the FTC. Two, by requiring corrective advertising, which the FTC has begun to do. And, three, by having counter-advertising. And, four, by having information at the point of sale so that the consumer can find out how much unit pricing per ounce he or she has to pay for a product or other comparisons. Now, those will, those will——

Mr. SANDMAN. Just let me stop you there. Who would pay for the counteradvertising?

Mr. MOORE. The specifics of how a counteradvertising scheme might be implemented have not yet been developed very extensively in the literature. Most proposals suggest a reserve of some portion of all media advertising time, say 15 to 20 percent, which would be allocated for counteradvertisers' messages.

Mr. MCCLORY. Who pays for them?

Mr. MOORE. If you simply withdrew 20 percent of the advertising time from the market, without compensating for this reduction in supply by increasing the total time available, the result would be to increase the price of the remaining time purchased by the commercial advertisers.

Mr. SANDMAN. Under this proposal one who is advertising the Frito bandito would pay higher rates, and a portion of that could be assigned by the media for counteradvertising, is that true?

Mr. MOORE. Not exactly. Perhaps it would be helpful if I could submit for the record at this point a draft proposal for counteradvertising which I authored a couple of years ago and which deals with the proper allocation of the cost of such a program. [See exhibit 3, at p. 289.]

Mr. NADER. In the interest of time, because this is a very complex thing, that is one approach and that is basically the theory of corrective advertising with one exception, that the theory of corrective advertising is that the advertiser corrects himself. The theory of counter-advertising is that other legitimate groups, recognized groups, would be able to inform the public in that respect. For instance——

Mr. SANDMAN. You would not put a limitation on what someone could spend in the advertising business?

Mr. NADER. No, the only response to that question is we are not advocating it now, but I can see the day coming when very specific studies in the monopoly area would show a powerful correlation between a certain level of advertising per sales that generate monopolistic violations.

This is what Mr. Turner was talking about when he was Antitrust Chief. And he says, and I might say that that level is very high, the average industry spends 2, 3, or 4 percent, and we are talking about 15, 20, or something like Alberto Culver which spends, you know, 40 percent of gross sales on advertising. That is the only exception to the point you are making.

Mr. SANDMAN. One last question, and this I direct mainly to what you had to say about milk control. I have had some experience with that. Have you made any studies on the profit of the co-ops?

Mr. MOORE. Well, there has been one relevant study of which I am aware, if I correctly understand your question to be addressed to the amount in excess of the federally fixed price which co-ops are able to charge.

Mr. SANDMAN. Right, we all agree the farmer is not getting the increase, right.

Mr. MOORE. Right.

Mr. SANDMAN So, from what you have said here, I understand that the co-op is getting the increase.

Mr. MOORE. These are called over-order premiums—that is, the amount in excess of the Federal Milk Marketing Order Administrator's price which the co-ops are able to command. These amounts are theoretically rebated to the co-op members, but as it turns out, very little of this money is, in fact, rebated, because most of it is consumed through the expenses of the co-op, so that the actual members of the co-op have benefited very little, if any, in terms of receiving some share of this increased amount of money.

Mr. SANDMAN. In this connection then, am I right in assuming that your main complaint is the operating expenses of the co-op?

Mr. MOORE. Not exactly; no, it is the ability of the co-op to raise prices above—I should not say above competitive levels because they are already fixed by the Government above competitive levels—but to raise prices even further above competitive levels.

Mr. NADER. And, therefore, justify the increasing inefficiency on their part, you see. It is that kind of a system. I mean, they have got enough money to pump millions of dollars into public relations campaigns to prepare consumers for increased prices. You see, it is that kind of a revolving of higher prices to justify more inefficiency and more expenditures to get higher prices.

Mr. MOORE. It is worse than monopoly profits. At least someone receives those. We are talking here about waste.

Mr. SANDMAN. Do you have figures that back this statement up?

Mr. MOORE. We can submit for the record the study to which I refer. [See exhibit 4, at p. 293.]

Mr. SANDMAN. OK. I have no other questions.

Mr. SEIBERLING. Well, thank you, Mr. Sandman. We have a quorum call, but it is an ordinary quorum call which will take probably until about 11:35. Besides myself, the only other member that has questions is Mr. Mezvinsky, and I do not know whether he plans to come back or not. But, I thought I would get my question out of the way. By that time, we will know whether Mr. Mezvinsky wants to return or has returned, and, if not, I guess we will just then recess.

Well, Mr. Nader, I think you have made a very excellent statement here, and I think you have brought out some very important points for

this committee to consider, and backed it up with a lot of obvious study and research. And I am particularly impressed by the fact that you brought out that 16 percent of food processing firms' income is spent on advertising, which certainly does, under classic economic doctrine, indicate that this is not a case of product differentiation. They are trying to sell products by other means.

Mr. NADER. Yes; this relates, Congressman, to the large food corporations.

Mr. SEIBERLING. Right, now, how big a slice of our total food bill though is represented by food that is distributed through these big chains who are engaged in advertising, and big processors? How much of it does that represent? I do not need exact percentages, but is this a big slice of the market, or is it just a small fraction?

Mr. NADER. No; it is the largest, by far the largest slice of the market, talking about the food processing industry, which includes General Foods.

Mr. SEIBERLING. In addition to food processing, are you including in this big food marketing outfits, the A. & P. and Safeway, and so forth?

Mr. NADER. Pardon.

Mr. SEIBERLING. Now, does this 16 percent apply to the marketing companies like the big grocery chains?

Mr. NADER. No; it applies to the large food processors who sell to these companies and whose prices determine retail prices. For instance, I may name a few, General Mills, General Foods, Kellogg, the brand name companies.

Mr. SEIBERLING. There are a lot of things such as potatoes and meat and staples of that sort, as well as vegetables, that comprise a pretty good chunk of the consumer dollar and are not projected by the food processors.

Mr. NADER. That is true. I did not say these processors were it, and I was saying they are the largest slice, and many of these fruits and vegetables are now coming in processed cans, and they are going through the brand name distribution system which has high television and other forms of advertising.

Mr. SEIBERLING. Well, do you have any statistical information to give us to put this in prospective as to how big a slice of the problem this represents?

Mr. NADER. Yes; we will supply that.

Mr. SEIBERLING. All right. Well, thank you.

Now, that gets me to the next question, which is, could you comment on the problems that you personally have encountered in simply obtaining the kind of economic data and other information necessary to make an intelligent analysis of the food industry? I think that is one of our problems, and I would like to get your view on it.

Mr. NADER. Yes; in addition to what Mr. Moore will be saying, for instance, we share the problem that Mr. Kauper talked about when he was before this committee—that is, to get information about marketing orders and how they are administered, and that is one important area. The second is to try to find out exactly how farm subsidy payments are determined on an agribusiness-by-agribusiness basis.

You know, we talked about aggregate farm subsidies, $3 billion, $4 billion, but when you get down to the farm level, who determines what x farm corporation gets, and that is determined by committees made up of people in the farming business area, and that is a very murky and secretive area, and there needs to be more information on that.

Third, we have found that there is information circulated between companies by business for services at a very high rate of pay that are not publicly available. Here is one illustration.

Mr. MOORE. Mr. Silbergeld devoted much of his testimony to the problem of the unavailability of product line or line of business profit and sales data—that is, I.T. & T. only reports its combined profits and sales for all of its products, which includes both Hostess Twinkies and telephone equipment, so there is no way to tell what the sales figures are for Hostess Twinkies in particular, or what the profits on that particular product are.

The objective of this kind of corporate secrecy is not protection of legitimate trade secrets, such as manufacturing processes, but it is the avoidance of competition. Ironically, however, the leading firms in the industry already know what each other's market shares are. I have here a brochure of the Selling Areas Marketing Corporation, a subsidiary of Time, Inc., which describes the company's offering of such information services as market shares, dollar sales, prices, and the effectiveness of various promotional devices for hundreds and hundreds of food products. This information is subscribed to by most of the leading supermarket chains and food manufacturing corporations. So, for a very high price, these exclusive subscribers are informed of what each other's market shares are.

[See exhibit 5 at p. 296.]

However, outside of the industry, and that does not include just the Antitrust Division or congressional committees, but outside potential competitors and investors, this information is not readily available because the industry wants to avoid scrutiny by academic economists, the Antitrust Division, or Congress, and also because it wants to avoid the disclosure of where monopoly profits are being made, so that outside investors will not enter to take away some of those monopoly profits as, indeed, the very theory of a market economy suggests is what is supposed to happen.

Mr. NADER. It would be interesting to find out if the Government subscribes to this service, and if it does, whether it would make this information available to you or to the public.

Mr. MOORE. I think it is out of their budget range.

Mr. SEIBERLING. Of course, we have had examples of newspaper clippings being stamped "Top Secret" in recent years, and maybe this is another one of that type of thing.

Well, now, to get to a little different area. In your opinion, does the regulation of prices through freezes in the various phases we have had recently, have any particular adverse effect from the standpoint of competition in the food industry?

Have you in your research run across any indications of that, or is that another case where information is too meager to draw a judgment?

Mr. NADER. Well, generally the observations I have read on the impact of these phases is just solidifying existing concentration and existing rigidity in the food economy. For example, Professor Hou-

thakker of Harvard, who was on the Council of Economic Advisers a couple of years ago, has been berating the various phases as ineffective promoting the already inflationary tendencies and inefficiency tendencies that occur in the food economy. But, I have not seen a specific study out of the Cost of Living Council or elsewhere that answers your question.

Mr. SEIBERLING. Well, I am going to have to recess the hearing in order to go over and answer the quorum call. Now, Mr. Mezvinsky is going to be back, and he has some additional questions which he wants to ask, and if I cannot make it back, then I will just ask him to take the Chair.

Let me say that I do not share the position expressed by Mr. McClory that the effective labeling and other consumer disclosures, recommendations that you have made here, are insignificant and would be contrary to free enterprise. I feel that they would help competition as well as help the consumer, and I want to emphasize very strongly that I think you have made a great contribution to us in that regard and in several others. And I guess I am going to have to end my part of this right now and get over and answer the roll call.

Could you come back in about 10 minutes? The hearing is recessed for 10 minutes.

[Short break.]

Mr. MEZVINSKY [presiding]. We will reconvene the hearing.

Mr. Nader, I would like to have you elaborate, in view of some of the earlier questioning, on the bigness for bigness sake idea. You are not saying in your testimony, are you, that even if a firm has an efficient operation and operates in the public interest, its size should be limited because bigness is inherently bad? Would you care to elaborate specifically on that as well as your ideas on the problems of concentration in the marketplace?

Mr. NADER. Yes; first of all, from an economic standpoint, as firms grow larger because of efficiencies that they have attained, they should confront no particular limitations to their growth. If, however, as is often the case, firms grow to a point where they find it easier to engage in predatory and anticompetitive practices, than to continue a level of efficiency and innovation, then they will run into the antitrust laws at the Federal and State level.

I have yet to see a situation where a company has achieved, say, 30 percent or more of the market not also be characterized by monopolistic and anticompetitive practices. So, we have to look at this in terms of a historical growth. As General Motors increased its market share back in the 1920's, and earlier, it did so by acquisitions rather than by certain kinds of efficiencies. It did so by acquisitions vertically and horizontally and I am not referring to that kind of growth. I think if we had had a tough Antitrust Division 50 years ago. General Motors would not have been created because of the anticompetitive characteristics to its acquisition policy.

I think Mr. Moore can elaborate on that.

Mr. MOORE. There are two separate dimensions of inefficiency here. First is size alone, bigness per se. It is simply the case that as organizations grow larger they become inherently more difficult to manage as efficiently. And, as Mr. Nader has pointed out, large size per se may provide the "deep pocket" leverage to engage in predatory and anti-

competitive practices. Second, there is the lessening of competition associated with market concentration. That is, regardless of how inefficient a corporation is because of its huge and stumbling size, the absence of competitive pressure causes costs to rise further. There is less diligence taken to be sure that costs are increasingly and successively cut. The most economic evidence that I have seen put together in one place with respect to these points is in John Blair's book, "Economic Concentration," which is cited in footnote 45 of our statement. Dr. Blair compiles numerous studies showing in general that smaller corporations are more efficient—for example, their higher profitability (exclusive of monopoly profits) is one indication of superior efficiency—more inventive, more innovative. With respect to technological innovation, every measure you can conceive of to measure relative rates of innovation—the number of patents per man-hour, the R. & D. expenditures per man-hour or per-dollar of sales, the number of significant inventions—all indicate that it has been the smaller corporations, not the larger ones, that have been the significant innovators in the American economy throughout the 20th century.

Mr. NADER. Two good examples are Xerox and IBM, which came up the economic ladder basically on the basis of developing certain inventions, neither of which they inspired, by the way, neither IBM nor Xerox were the basic inventors. They took the licenses and then developed it, and they attained a high degree of monopoly, and you can see right now that they are being charged by the Justice Department—namely IBM, and by the Federal Trade Commission—namely Xerox, in terms of anticompetitive and monopolistic practices.

There is another limit to size which is increasingly being recognized in the courts. That is, if a company has the power to monopolize, it can be curbed, even if it does not exercise that power.

Now, in answer to your question, therefore, I think that if we rigorously apply our antitrust laws they will sufficiently deal with the problem of size in an economic sense in our economy. I do not—I do not want to minimize that we may have a social or a political reason for deconcentrating, but here we are talking in terms of economics, and the antitrust laws could be used to curtail size.

Mr. MEZVINSKY. Just for the record, do you not feel it is true that the large size of some food corporations are well beyond the size that is actually needed to achieve significant economies of scale?

Mr. MOORE. It is quite obvious that that is the case. Indeed, there are two unpublished doctoral theses, cited in our statement, which made vigorous attempts to measure the economies of scale and the minimum optimum size of plants in the various food subindustries and found that the size of plant necessary to achieve all of the economies of scale was much smaller than is currently the case. They further found that economies of scale explained practically none of the variations in profit rates among corporates in the food industry, and, indeed, that the higher profit rates of some corporations, as opposed

to others, were largely explainable by concentration or by product differentiation advertising strategies.

Mr. NADER. It is interesting to note in an integrated food operation, very often the economies of scale are just in reverse; that is, the big poultry processors who buy their chickens from tiny poultry farmers who raise them, and at the other end of the spectrum is the real economy of scale, and the real economy of sale—these giant food companies, is in advertising when they can adverse nationally they get lower rates than regional firms can get. And with the kinds of advertising that they are deploying they further this product differentiation, noninformative, nonemotional type of advertising, which further secures their monopolistic position in the market. For example, the four cereal manufacturers control over 90 percent of the breakfast cereal trade. Campbell Soup controls about 90 percent of the canned soup trade. So, the one place where there is an economy of scale, based on price discrimination by the broadcasters in favor of large advertisers, is the place which further fosters their monopolistic grip. So, it is rather a tragic irony attendant to that point.

Mr. MEZVINSKY. You know, since we have the testimony from yourself and others, including Mr. Fortes, and agricultural accountability's book on what you call the great unarmed robbery, I think that I could subscribe to the position advanced by you and Mr. Fortes that, to a great extent, a contributing factor to high food prices has been the manipulation of the marketplace by the large grain companies.

Mr. NADER. Yes; the most serious aspects of that point is that it is difficult to communicate it to the public because it is so esoteric and so secretive and full of mumbo jumbo jargon that you can basically have enormous numbers of unarmed robberies and nobody, including the FBI, would ever know about them.

Mr. MEZVINSKY. The main argument we get on this secrecy problem, and comes primarily from the FTC, is that the access to information is so very difficult. And there is the fear that it might get worse because of the threat of shifting the FTC's control over quarterly financial reports to the Census Bureau. There is a fear that such a shift would result in even less access to necessary information corporations. Would you care to elaborate or make a comment concerning this and on Mr. Silbergeld's comments in this area?

Mr. NADER. Well, of course, a principal obstacle over the years, since 1942, has been the Federal Reports Act, which requires any agency that sends out a questionnaire to more than 10 respondents to send that draft questionnaire to the Office of Management and Budget in the White House, which, in turn, delegates the scrutiny of that questionnaire to industry advisory committees, resulting in a blockage of information procurement, because the questionnaire is either limited, restricted, or delayed years before it is cleared. So, the first order of business is to repeal the Federal Reports Act, which has been the subject of some consideration by Senator Metcalf's subcommittee over in

the Senate. But, I do not think we are going to be able to get the regulatory agencies doing their job on the basis of sound and timely information unless the Federal Reports Act is repealed.

Mr. MEZVINSKY. I will have to run over for a vote, which will bring this to a close. But, one last point. In view of the grading, and the name brands we were talking about, I understand that the National Commission on Food Marketing in 1966 discussed this and said that consumer grades should be developed and required. What efforts have actually been made by the FTC, by the USDA and the FDA to consider these recommendations?

Mr. MOORE. None. In 1970 the USDA did issue the results of a survey of six categories of graded food products indicating that on the average less than 2 percent of consumers could correctly identify the grades used and their rank order. Consider also the local grading standards for milk. Have you ever seen grade B milk in the supermarkets? Of course not, it is all grade A. What good can that kind of grading system do for the consumer?

Turning to the FDA, that agency has taken the position that percentage ingredient labeling is neither authorized by existing law nor desirable if it were authorized. And the Federal Trade Commission staff is currently developing a set of to-be-proposed trade regulation rules which would require affirmative disclosure of certain nutrition information in nationally disseminated food advertisements. The exact form, if any, which that will take I do not know at this time.

Mr. MEZVINSKY. If there are no further questions, the subcommittee will adjourn until 10 o'clock on Thursday morning.

[Whereupon, at 12:52 p.m., the hearing was recessed, to reconvene at 10 a.m. on Thursday, July 19, 1973.]

[The prepared statement and exhibits of Mr. Nader follow:]

STATEMENT OF RALPH NADER

THE INFLATED PRICE OF FOOD

Mr. Chairman, I wish to thank you and the Subcommittee for your invitation to contribute my views to your inquiry into possible anti-competitive practices, the structure of markets, and the enforcement of the antitrust laws as they relate to the food industry.

With each successive month's release of the latest consumer price index. It becomes increasingly clear that President Nixon's once heralded New Economic Policy has failed utterly to stem the rising tide of food price inflation. The latest statistics show that during Phases 1, 2, and 3 wholesale food prices rose by 12.5% per year, and the increases are accelerating:[1]

Retail food prices during the first quarter of 1973 stood at 31.4% above their 1967 levels.[2]

Nevertheless, this Administration constantly urges American consumers not to grumble but to give thanks. In his speech accepting the 1972 Republican nomination, President Nixon adopted the food industry slogan that Americans enjoy "the lowest percentage of the family budget going to food of any country in the world."

Agriculture Secretary Butz, who used to rejoice at soaring farm prices, never misses an opportunity to boast that American consumers spend less than 16%

[1] Washington Post, July 7, 1973, at A5.
[2] U.S. Department of Agriculture, *National Food Situation* 5 (May 1973).

of their disposable income on food. This is deliberate demagoguery. Naturally the nation with the world's highest per capita disposable income will spend the smallest percentage of it on food. It follows from the inelasticity of the stomach that when one's income doubles he or she does not respond by eating twice as many pounds of food per day.[3] The deception is compounded by the impression that this statistic generates that the "average" family spends only 16% of its income on food. In fact the average (median) family in 1971 spent 27.6% of its $9,186 disposable income on food, which is still the largest single item in the typical family budget and consumes even larger proportions of lower income families' budgets. Only by including the incomes of, for example, the two percent of families that receive 18% of personal income with the incomes of the poor and middle classes do total food expenditures represent just 16% of disposable income.

Consumers are also told that rising food prices are in part compensated by rising food quality. According to President Nixon, Americans are "the best fed people in the world." This conclusion is not easily apparent from the United States' dismal rank in male life expectancy (40th in the World) and infant mortality (13th in the World) or from the epidemics of obesity and heart disease which plague our population. The truth revealed by the Government's own surveys,[4] is that food price inflation has been accompanied by a deterioration in the nutritional quality of the food supply:

[3] First postulated over 100 years ago as Engel's law, the proposition that as income increases a smaller proportion of it will be spent on food "is perhaps the best established empirical proposition in economics." H. Houthakker, "Economic Policy for the Farm Sector" 6 (1967). Dr. Butz, an economist, is no doubt aware of this relationship. Food prices in the United States have been rising so fast, however, that the percentage of disposable income spent on food jumped from 15.4 percent for the last quarter of 1972 to 15.6 percent for the 1st quarter of 1973. "National Food Situation," supra note 2, at 8. And of course the fact that food consumes "only" 15.6 percent of disposable income is no excuse for resting on our laurels instead of seeking to push the food proportion even lower. Actually, as the following scatter diagram indicates, the 16 percent of disposable income that Americans spend on food is substantially higher, relative to rising per capita income, than the pattern mapped by other nations would otherwise project.

Nation	Per capita income	Percent food expenditures
1. Sierra Leone	130	45.6
2. Ceylon	132	50.9
3. Korea	163	47.1
4. Ghana	198	60.0
5. China (Taiwan)	247	41.6
6. Jamaica	411	32.7
7. Malta	486	37.9
8. Panama	502	45.9
9. South Africa	543	26.8
10. Greece	*651	37.5
11. Venezuela	803	27.6
12. Ireland	808	29.6
13. Japan	1,122	35.4
14. Puerto Rico	*1,142	22.8
15. Austria	1,146	28.3
16. Israel	1,147	26.1
17. Italy	1,140	36.9
18. Finland	1,342	29.3
19. United Kingdom	1,451	23.7
20. Netherlands	1,604	25.2
21. Germany	1,682	31.9
22. Belgium	1,696	24.3
23. Australia	*1,807	20.8
24. Norway	1,808	27.8
25. France	1,927	27.5
26. Denmark	1,960	22.3
27. Switzerland	2,294	23.6
28. Canada	2,247	19.3
29. United States	3,578	18.3

*1967.

[4] U.S. Department of Health, Education, and Welfare, Ten State Nutrition Survey 1968–1970 (1972); U.S. Department of Agriculture, Dietary Levels of Households in the United States, spring 1965 (1969).

U.S. FOOD SUPPLY: INDEX OF VITAMINS AND MINERALS AVAILABLE PER CAPITA PER DAY [5]

Nutrient	1945	1966	1972
Protein	100	95.0	99.0
Calcium	100	90.0	88.0
Phosphorus	100	90.0	92.0
Magnesium	[1] 100	[2] 93.0	92.0
Iron	100	92.0	100.0
Thiamin	100	86.0	94.0
Riboflavin	100	92.0	96.0
Niacin	100	95.0	102.0
Vitamin A	100	76.0	81.0
Vitamin C	100	82.0	91.0
Composite index	100	89.1	92.5

[1] 1947–49.
[2] 1967.

In a further effort to shift the blame, Secretary Butz attributes part of food inflation to increased convenience, which he calls "built-in maid service." There can be little doubt that it is usually more expensive to buy convenience foods at the supermarket than to purchase their raw ingredients and prepare these foods at home.[6] But what value does the homemaker receive in return? A major study [7] published in 1969 found that while homemakers had reduced their food preparation and after-meal cleanup work by 30 minutes per day since 1927, their time spent on "marketing and record keeping" had increased by 36 minutes per day during the same period. Apparently most of the time "saved" in the kitchen was required to select and buy higher priced convenience foods in the supermarket jungle.

TIME USED FOR HOUSEHOLD WORK BY URBAN HOMEMAKERS [7]

[Hours per day]

Homemaking activities	Full-time homemakers			Employed homemakers	
	1926–27 (N–154)	1952 (N–102)	1967–68 (N–979)	1952 (N–53)	1967–68 (N–317)
All food activities	2.8	2.6	2.3	1.9	1.9
Care of house	1.3	1.6	1.6	.8	1.2
Care of clothes	1.6	1.6	1.3	.8	.9
Care of family members	1.2	1.1	1.8	.3	.8
Marketing and record keeping	.4	.5	1.0	.3	.8
All homemaking work	7.3	7.4	3.0	4.1	5.3

[7] Walker, "Homemaking Still Takes Time," 61 J. Home Econ. 621, 622 (1969).

[5] Computed from U.S. Department of Agriculture, Food Consumption, Prices, Expenditures 94 (1966); Friend, "Nutritional Review," National Food Situation 25, 26 (November 1972); Friend, "Nutrients in United States Food Supply: A Review of Trends, 1909–1913 to 1965," 20 Am. J. Clin. Nutrition 907, 913 (1967). Moreover, remarkably large proportions of many of the listed nutrients are found in the food supply only as a result of fortification: 40 percent of thiamin, 25 percent of iron, 20 percent of niacin, 15 percent of riboflavin, 10 percent of vitamin A, and 10 percent of vitamin C. Friend, "Enrichment and Fortification of Foods, 1966–70," National Food Situation 29, 30 (November 1972). Recent increases in fortification levels account for much of the slight improvement in nutritive quality of the food supply between 1966 and 1972. The logical inference is that dietary levels have declined more drastically for the more numerous and typically unfortified (but equally essential nutrients not listed in the table and about which reliable data are not available.

The replacement in the diet of traditional foods such as dairy products, fruits, and vegetables with snacks and convenience foods has produced emptier calories, accelerating the double dangers of nutrient deficiencies and the caloric overconsumption responsible for obesity and strongly implicated in heart disease. By 1970, 41 percent of total calories came from alcoholic beverages and from sugar and fats added to foods. The proportion of total calories from fats rose from 32 percent in 1909–1913 to 43 percent in 1970. In 1830 the average American consumed 8 pounds of sugar. By 1971 the consumption of refined sugar, corn syrup, and other caloric sweeteners had risen to 125.2 pounds per person per year—approaching 20 percent of total calories. Total calories per person, after declining by 11 percent from 1909–1965, rose by 5 percent between 1965 and 1972. Given the obvious decrease in physical exercise during the same period, the rise in obesity is not difficult to explain.

[6] For example, Peterkin, "Convenience and the Cost of Food," Family Econ. Rev. 9 (June 1971). See generally S. Margolius, The Great American Food Hoax (1971).

Furthermore, while in recent decades there have been and continue to be dramatic shifts in the specific types of foods consumed and their nutritional characteristics, "convenience foods" in general were fully on the scene long before the current boom in food prices. A recent analysis by Secretary Butz' own Department of Agriculture shows little change in stage of preparation of supermarket foods since 1952.

PERCENTAGE OF FOOD EXPENDITURES BY STAGE OF PREPARATION [8]

Stage of preparation	1952	1971
Ready-to-eat	47.0	43.0
Ready-to-cook	48.5	53.7
Requiring further preparation	4.5	3.3

[8] Manchester, "Total Consumer Buying of Fresh Versus Processed Foods Remains Stable," National Food Situation 35 (May 1973).

The Administration also argues that successive devaluations of the dollar have increased foreign demand and ability to purchase American food products, thus bidding up U.S. farm prices even higher. Of course, it is inexcusable that the $300 million bonanza from the Russian grain deal went not to American farmers to stimulate increased production that would have mitigated current shortages but was instead split between the Russians and huge grain dealers through export subsidies at the expense of American taxpayers and consumers. Now we have been forced into export limitations which will further impair our balance of trade and further imperil the dollar.

The crux of the matter is that the Administration's "game plan" in the fight against inflation has amounted to little more than the dramatic application of cosmetic price regulation schemes—promoted by public relations gimmickry and optimistic economic forecasts which almost always turn out to be wrong. The fundamental truth, which the Administration persists in ignoring, is that the only real solution to inflation and devaluation is a more efficient and innovative economy— fueled by vigorous competition between corporations and other producers and directed by the wants of informed consumers. It is no wonder that the United States is fast becoming a stagnant and declining economic power, comparatively speaking, unwilling to keep costs down at home and unable to out-compete other nations abroad.[9] The economy is riddled with waste, protectionism, subsidization, and monopoly. Wealth, income and power are grossly maldistributed. Giant industries operate as cartels, distributing monopoly profits to wealthy stockholders and executives, allowing costs to rise, misallocating resources, too vast in size and too enamored with the easy life to solve the pressing technological problems of the day.[10] Consumer demand for their products is created and manipulated by massive expenditures on misinformative advertising,[11] eye-catching packaging, and the point-of-sale concealment of vital purchasing information. Those enterprises that cannot suppress competition by themselves seek the willing aid of government: to erect import barriers against foreign competitors, to sanction their price fixing (as in the case of the Civil Aeronautics Board, the Federal Maritime Commission, and the SEC), to exclude or protect each other from competition (the ICC and FCC, for example), or to handout patent monopolies, tax loopholes, loan guarantees, and cost-overruns.[12] And in their wake these corporations leave a massive toll of costly and often deadly side effects: pollution, accidents, poor nutrition, and occupational diseases. Removing these economic cancers is the key to combatting inflation. Adam Smith did not propose this kind of a "free enterprise" system, characterized as it is not by the survival of the fittest but by the survival of the fattest, which is apparently consistent with the interests of the Administration's political constituency.

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[9] The sagging value of the dollar has been such that, based on international currency exchange rates, both Sweden and West Germany now surpass the United States in per capita GNP. Washington Post, July 2, 1973, A22.

[10] M. Green, B. Moore and B. Wasserstein, The Closed Enterprise System (1972).

[11] Green and Moore, "Winter's Discontent: Market Failure and Consumer Welfare," 82 *Yale L.J.* 903, 906–909 (1973).

[12] M. Green, ed., The Monopoly Makers (1973).

I. THE FARM PROGRAM

The Administration characterizes the present crisis in food prices as one of increased demand and short supply. Fortunately, part of the supply problem is temporary, having resulted from adverse weather conditions here as well as crop failures in many parts of the world and the loss of the protein rich Peruvian anchovy catch. These natural disasters have bid up the prices for the remaining supply. However, since the 1930s another force—this one entirely artificial—has kept a lid on the production of American farmers in a deliberate attempt to increase their incomes in such a way that ordinary taxpayers and consumers pay the bill several times over. The reference is, of course, to the federal farm program. Through various combinations of direct subsidy payments to farmers and allotments or other inducements to set aside land from cultivation, the prices of wheat, feed grain, cotton, milk, sugar, peanuts, rice, tobacco, wool, and even "tung nuts" are maintained above competitive market levels. The inflated feed grain prices translate directly into higher prices for meat, poultry, eggs, and dairy products.

The costs of the programs to non-farmers are of four types:

(1) First, there are the direct subsidies paid by the Treasury totaling $54 billion since 1933.

(2) Second, the reduction in farm output that is purchased through these subsidies and through allotment schemes artificially raises the prices that consumers must pay in the marketplace for supported commodities. While it is difficult to place a specific price tag on the costs. Dr. Charles Schultze of the Brookings Institution has estimated that in 1969 direct subsidies and related payments cost taxpayers $5 billion, American consumers another $4.5 billion, and foreign consumers $1 billion.[13] Thus, the costs to U.S. consumers and taxpayers amounted to about ten percent of the total food bill.[14]

More recent estimates by the Department of Agriculture conclude that by 1980 milk prices would increase by 30% under the present programs but by only 10% if free market conditions prevailed. Rice prices, now at $5 per hundredweight, would range from $4 to $4.25 between 1974 and 1980 if acreage allotments were abandoned. If output controls were dropped, peanut prices would fall to 40–50% below their projected 1974 level.[15] Dr. Gale Johnson of the University of Chicago has estimated that eliminating the sugar import quota, which currently protects subsidized domestic producers, could save consumers and taxpayers $1 billion annually.

(3) A third cost is inflicted on the entire economy through idled agricultural production and through the misallocation of resources attendant to subsidizing certain crops more than others.[16] During 1972 nearly 60 million acres of wheat and feed grain cropland was held out of production in order to enhance prices. Even conservative estimates conclude that 20 million of these acres would come back into production if restrictions were lifted, with an increase in output valued at over $1 billion annually.[17]

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[13] C. Schultze, The Distribution of Farm Subsidies 1 (Brookings 1971). This estimate refers to the short to intermediate term impact of terminating farm programs—"a period long enough to allow the impact on livestock production and nonprice-supported crops to occur, but not long enough to allow for an accelerated exodus of farmers to other occupations." Id. at 22. However, the increasing reliance of world demand on American farm production is cause to modify expectations about such "an accelerated exodus."

[14] Of course the fraction of total farm program costs attributable to the tobacco, cotton, and wool programs does not translate into higher "food" prices.

[15] Hearings on Extension of Farm and Related Programs Before the Senate Agriculture and Forestry Committee, 93d Cong., 1st sess., at 676–679 (1973).

[16] As pointed out in the Report of the U.S. Department of Agriculture's Young Executives Comm., New Directions for U.S. Agricultural Policy 17 (1972),

> The attachment of program benefits to land has impaired movement of agricultural production to areas of least cost. The present geographical distribution of production, particularly for cotton and wheat, would likely be different in a free market environment and the cost of producing our present bundle of food and fiber would be less.

such as soybeans are diminished due to incentives to plant heavily subsidized crops instead. A further point is that the artificial overcapitalization of expected future price support benefits into the present value of allotment-holding farm land misallocates capital to the farm sector and increases the cost of capital in the non-farm sector.

[17] G. Johnson, Farm Commodity Programs 38–42, 44, 49 (American Enterprise Institute 1973). This static analysis does not consider what present production might be if American agriculture had developed since the 1930's under no farm program acreage controls at all.

USDA has recently projected that by 1980 rice acreage would increase by 22% and peanut production by 45% if planting restrictions were removed.[18] With the prices of soybeans soaring, Agriculture Undersecretary Campbell has pointed to peanuts as the next "miracle crop" in the drive to meet world protein needs, as U.S. export sales could rise from $500 million to $2 billion annually if output restrictions were dropped.[19] All of these increases in production would translate into a higher real GNP and thus into more jobs and income for the American people.

(4) The farm program also creates substantial environmental costs. Farmers attempt to compensate for acreage restrictions by more intensive application of pesticides and fertilizers to the land remaining under cultivation. These practices exacerbate the problems of soil depletion and water pollution from agricultural runoff. In addition, holding land out of production, often with no cover crops, increases the rate of soil erosion.

The magnitude of these costs raises the question of whether the public interests requires the complete abandonment of the farm program and a return to a free market governed by vigorous competition and the laws of supply and demand. The defense of the farm program continues to rest on such inflexible concepts as the parity price ratio, which attempts to maintain the same relationship between the prices farmers receive and the prices they pay as existed in 1910–1914. However, in the intervening years farm productivity has far outstripped productivity in other sectors of the economy. The consequent decline in farm production costs relative to the costs of producing non-farm goods renders the parity price concept indefensible as a measure of the proper level of farm incomes. The adequacy of farm income should be gauged by the return of invested capital and labor, the measure that is used in the rest of the economy.[20]

Farm program proponents also argue that subsidization is justified because per capita farm income is only about three-fourths high as per capita non-farm income. But this income gap has no basis in reality. It is purely the creation of deliberate USDA statistical manipulations. Almost half of the three million places that the Agriculture Department classifies as "farms" for the purpose of computing average farm income are simply not genuine farms. These so-called farms not only account for less than five percent of total U.S. farm production—even more revealing is that their proprietors receive only 16.5% of their average annual incomes ($8744) from farming and 83.5% from non-farm employment. If we isolate these part-time farmers from the other 1.5 million farms that produce 95% of U.S. farm output, we find that the average 1970 income for the real farmers was $14,819 (of which, in contrast, only 28% came from non-farm sources), well above the median family income for the entire nation.[21] As economist Hendrik Houthakker has observed,

> the general income of the farm population has improved to the point where income support for crop producers is no longer justified. On the better managed family farms in the Great Plains, gross revenue in the current crop year probably has approached $200 per acre. Even at $100 per acre these farms would probably give an adequate return to labor and capital, so they are now extremely profitable.[22]

The basic dilemma facing the farm sector has been that the aggregate demand for food prices at only a fraction of the rate of increase in demand for all goods and services—a reflection of the economic law that progressively smaller proportions of increasing consumer incomes are spent on food. What this means is that as our total economy grows we can rely on a progressively smaller percentage of the labor force to produce the demanded output of agricultural products. This process has and will continue to lead to a steady flow of marginal farmers into more productive occupations. By attempting to retard the speed of this adjustment, the farm program has cost consumers and taxpayers dearly. That we are now entering an era in which the United States will increasingly supply the much larger world food demand—which will itself reduce the outflow from agriculture—simply compounds the unjustified cost to consumers and taxpayers.

To make matters worse, the benefits of the farm program go primarily to the

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[18] Hearings, supra note 15.
[19] Milling and Baking News, June 26, 1973, at 31.
[20] Of course the valuation of investment in land should not include capitalized price support benefits.
[21] New Directions for U.S. Agricultural Policy, supra note 16, at 2–5.
[22] Wall St. Journal, Jan. 16, 1973, at 18.

larger farms which need them least. A recent study of the cotton, feed grain, and wheat programs found that the bottom 41% of farms received only seven percent of the benefits, and the bottom 63% received only 23%. The entire long run cost of these programs to consumers and taxpayers—$5.25 billion per year—was greater than the $5 billion cost of eliminating rural poverty entirely with direct income supplements, although the farm programs themselves contributed to closing this poverty gap by at most only ten percent.[23] Moreover, all legislative attempts thus far to place a ceiling on subsidies received by individual farmers have been completely evaded by the practice of leasing portions of farmland to relatives and others.

Even more notable is that the net incomes of the farmers who do receive subsidies and price support benefits are actually increased by only a fraction of the cost borne by consumers and taxpayers. This happens in part because a substantial proportion of the benefits have long ago been capitalized into the farmland values of the original participants in the supply restriction programs. And another portion of the benefits represent either (a) income which would have been earned from increased production in the absence of controls or (b) increased costs for more intensive cultivation of land to increase yields in compensation for acreage left idle. According to one recent analysis, direct annual subsidies under the wheat, cotton, and feed grain programs of $3.5 billion increased farmers' net incomes by at most only $1.5 billion.[24]

In light of this evidence the continuation of the farm program is indefensible.[25] If we wish to supplement peoples' incomes we should do so because they are poor rather than because they are farmers. And we can supplement the incomes of the poor at the least cost to society by doing so directly rather than by artificially inflating the prices of goods they produce. Similarly, if we wish to alleviate urban crowding we should directly supplement the incomes of people who agree to reside in non-urban areas rather than supplementing only the incomes of farmers.

Judging from its rhetoric, a return to the free market in agriculture should have been ideologically appealing to the Nixon Administration. Yet the day after Secretary Butz took office in late 1971 he launched a $600 million subsidy increase to reduce the 1972 feed grain crops in order to prop up the incomes of corn belt voters in time for the 1972 election. The plan succeeded in garnering 67–70% of the farm vote for President Nixon. Some frauds are so large that no one notices them. This vote was purchased at the expense of consumers everywhere, as short supplies bid up the prices of feed grain and fueled the escalation of supermarket prices for meat, poultry, and dairy products which had been initiated by the corn blight of 1970.[26] Even as late as January, 1973 the Agriculture Department was advising the broiler industry to cut back production by five percent to avoid "depressed prices," when in fact wholesale broiler prices were 27% above the previous year's level.[27]

It was not until the beginning of Phase 3, in early 1973, that the Administration took any steps to increase U.S. food production, by freeing up more set-aside wheat acreage and allowing grazing on the 15 million acres still idle. President Nixon then apparently reversed his earlier decision to phase out farm subsidies by going along with continuation of the program in some form. The House formula in the new farm legislation would pay subsidies to wheat, cotton, feed grain, wool and dairy producers projected to rise from $2 billion in fiscal year 1975 to $3.2 billion in fiscal year 1978.[28] The payments under the Senate passed version range from $4.4 billion in 1975 to nearly $7.7 billion in 1979.[29]

The major subsidy-price support programs represent only the most familiar ways in which federal farm policy has supplanted federal antitrust policy. There is an array of lesser known protectionist and inflationary devices. These include

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[23] Lidman, "The Distributional Implications of Agricultural Commodity Programs," in Subcommittee on Priorities and Economy in Government of the Joint Economic Committee of the U.S. Congress, The Economics of Federal Subsidy Programs, 93d Cong., 1st sess., pt. 7, at 893, 912 (1973).

[24] G. Johnson, supra, note 17, at 45–49.

[25] Termination of the farm program need not subject farmers to a degree risk-inflating price instability that ultimately imposes costs on consumers. Crop insurance, including a yardstick Federal crop insurance corporation that pays its own way, could iron out the market ups and downs caused by climatic variations and natural disasters. Additional price stabilizing measures, if necessary, can be achieved without subsidies or protectionism. See H. Houthakker, supra, note 3, at 51–60.

[26] Houthakker, "Showdown in the Stockyard," New Republic, Apr. 21, 1973, at 15, 16.

[27] Washington Post, Jan. 11, 1973, at A18.

[28] H. Rept. No. 93–337 93d Cong., 1st sess. 49 (1973).

[29] Congressional Record, June 8, 1973, at S10786.

marketing orders, farmer cooperatives, and import restrictions which insulate the entire apparatus from foreign competition. Marketing orders are essentially devices enabling large number of agricultural producers to collectivize the marketing of milk, fresh fruit and vegetables, nuts, and other specialty crops. Typically, a committee of dominant producers draws up the terms of an order prescribing the commodity's grade, sizes, and maturity. One of the basic rationales is "orderly marketing," and several orders for fresh produce seek to regulate the flow to market so as to even out seasonal variations in supply. As innocuous as this function may appear, the result may often be to implicitly restrict supply and increase the overall prices paid by consumers.[30] Other orders, however, explicitly restrict supply through allotments, production bases, and other devices. This was true of 23 of 90 federal and state orders for fruits, vegetables, and nuts in 1966.[31] In other cases producers have conspired through size and quality regulations to exclude competition. The most egregious current example is the Florida tomato order which excludes Mexican imports and has no doubt achieved the stated intention of producer committee members to raise the prices consumers pay for tomatoes.[32] When state or federal officials ratify the orders proposed by producer committees, antitrust exemption may be conferred. In 1965 federal marketing orders covered 35% of all fresh fruit and vegetable sales, with state orders covering a substantial share of the remaining supply.[33]

The federal milk marketing order system is the most intricately developed and the most inflationary.[34] In 60 geographic districts covering 80% of total U.S. milk production, federal milk marketing order administrators fix the price of fluid milk above the floor set by the dairy subsidy-price support program. The milk marketing order system also limits total output, allocates production among individual producers, and together with the federal filled milk act and the operations of the giant milk producer cooperatives, limits the flow of competitive milk from more to less efficient producing areas in order to keep high cost producers in business.

The Florida celery marketing order also increases consumer prices through a marketing quota system that restricts the members' production and also by refusing to grant allotments to other farmers who wish to enter the celery business. Because of the exclusion of new entrants, the Florida Supreme Court declared in 1965 that the state marketing order was unconstitutional. Noting that after the system had been instituted the price of a crate of celery had risen by 144%, 24%, and 61% for the three annual marketing seasons, the Court observed that "the regulation . . . is strong evidence . . . of a planned and controlled agricultural economy."[35] Although Florida celery acreage doubled between 1930 and 1962, the number of celery farms declined from 533 to 41. The top eight producers who dominated the Florida Celery Committee controlled three-fourths of the allotments under the marketing order when it was judicially invalidated. Immediately after the Florida Supreme Court acted, however, these same producers obtained approval of a virtually identical federal marketing order system from the Department of Agriculture.

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[30] In other words, the aggregate consumer expenditures for a commodity marketed in large volume at low prices immediately following the growing season and at high prices thereafter due to depleted supplies may be less than expenditures for the same commodity marketed in an "orderly" manner, even taking into consideration spoilage losses and the value to consumers of the commodity's year-round availability. It seems obvious that an order controlling the rate and time of the commodity's movements to market must have an effect on producers' decisions as to how much of the commodity to produce and when. It also would appear that in the absence of such an order the market itself would provide incentives for producers to "even out" supply. Why then are orders necessary to achieve what the market could achieve unless order objectives include market power (as the legislative intent of "parity prices" seems to indicate)? The subcommittee may be interested to know that the USDA's Economic Research Service is presently conducting its first economic studies (focusing on orders for prunes and walnuts) to determine if "orderly marketing" by itself and without explicit output controls increases prices paid by consumers.

[31] Nat'l Comm'n on Food Marketing, Organization and Competition in the Fruit and Vegetable Industry 288–293 (Tech. Study No. 4, 1966).

[32] *See* "Why Winter Tomatoes May Be Tough, Tasteless and Costly," 38 Consumer Reports 287. For additional case studies and references see J. Jamison, Marketing Orders and Public Policy for the Fruit and Vegetable Industries (Stanford Food Research Institute, 1971). 68 (January 1973).

[33] Organization and Competition in the Fruit and Vegetable Industry, Supra note 31, at

[34] *See* Kessel, "Economic Effects of Federal Regulation of Milk Markets," 10 J. Law & Econ. 51 (1967). The USDA orders for hogs and cranberries also deserve special scrutiny for their price-raising effects.

[35] *Rabin* v. *Connor*, 174 So. 2d 721, 726 (Fla. 1965).

Marketing Cooperatives,[36] which enjoys a very limited immunity from the federal antitrust laws under the Capper-Volstead Act,[37] often serve as the vehicle for concentrated producer control over marketing order provisions, since the cooperatives can cast the votes of all of their members. The power of the coops is most obvious in the dairy industry, where they account for about 90% of all milk producers subject to federal milk marketing orders and have been able through their monopoly power to command prices even higher than those fixed above competitive levels by the federal marketing order administrator.[38] In a May 25, 1973 letter to dairies announcing new price hikes, the giant Associated Milk Producers coop said: "We are preparing a public relations campaign to prepare the consumer for a price increase in milk. This will be in the form of press conferences, releases to news media, radio, television, etc." The success of corporate "energy crisis" propaganda has apparently caught the food industry's eye.

II. ANTITRUST AND THE FOOD PROCESSING SECTOR

Previous studies by the Federal Trade Commission[39] and the National Commission of Food Marketing[40] have verified a high degree of concentration in the food manufacturing industry. Since about 57% of the total food bill goes not to farmers but to manufacturers, transporters,[41] and retailers, there is much price-lowering potential for vigorous antitrust enforcement against those segments of the food industy not exempted by farm program legislation

There is now a substantial and growing body of evidence indicating the costly consequences of economic concentration. First, concentrated industries extract monopoly profits totaling perhaps 3% of GNP.[42] Second, the lack of competition in these industries leads to excessive executive compensation,[43] internal inefficiency,[44] stagnation of technological innovation,[45] and racial and sex discrimina-

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[36] Useful data can be found in Youde and Helmberger, "Membership Policies and Market Power of Farmer Cooperatives in the United States," U. Wis. Dep't Ag. Econ. Res. Bull. 267 (August 1966). Goldberg, "Profitable Partnerships: Industry and Farmer Co-ops," Harv. Bus. Rev., March–April 1972, at 108.

[37] See generally Charles D. Mahaffie, Jr. (Chief, Trial Section, Antitrust Division, Department of Justice), "Agricultural Cooperatives and the Antitrust Laws" (prepared for delivery at the Annual Meeting, Springfield Bank of Cooperatives, Cherry Hills, N.J., Aug. 18, 1971).

[38] *See* R. Knutson, The Purdue Bargaining Study: Implications for the Dairy Industry in the 1970's (address to the annual meeting of Great Lakes-Southern Milk, Inc., undated); R. Knutson, New Forces in Milk Marketing—Cooperative Consolidations and Mergers (paper presented at the convention of the Milk Industry Foundation and International Association of Ice Cream Manufacturers, New Orleans, Nov. 2, 1969); R. Knutson, Report to M.I.F. on Proportion of Premium Returned to Producers in Selected Markets (circa, 1969).

[39] Federal Trade Comm'n, Economic Report on the Influence of Market Structure on the Profit Performance of Food Manufacturing Companies (Staff Rept., 1969); Federal Trade Commission, The Quality of Data as a Factor in Analysis of Structure-Performance Relationships (Staff Rept., 1971). Federal Trade Commission, Economic Report on the Frozen Concentrated Orange Juice Industry (Staff Rept., 1965); Federal Trade Commission, Economic Report on the Structure and Competitive Behavior of Food Retailing (Staff Rept., 1966).

[40] National Commission on Food Marketing, Organization and Competition in the Dairy Industry (Tech. Study No. 3, 1966); National Commission on Food Marketing, Organization and Competition in the Milling and Baking Industry (Tech. Study No. 6, 1966); National Commission on Food Marketing, Studies of Organization and Competition in Grocery Manufacturing (Tech. Study No. 5, 1966); National Commission on Food Marketing, The Structure of Food Manufacturing (Tech. Study No. 8, 1966); National Commission on Food Marketing Organization and Competition in Food Retailing (Tech. Study No. 7, 1966).

[41] Food transportation costs are inflated by ICC protectionism which costs the economy $4–8.7 billion annually. T. G. Moore, The Feasibility of Deregulating Surface Freight Transportation (paper presented at the Conference on Antitrust and Regulated Industries, Brookings Institution, Washington, D.C., Oct. 28–29, 1971). The transport of food bears some portion of that cost, although what portion is difficult to estimate since truck and barge shipments of raw agricultural commodities are deregulated. See Hearings on the Transportation Act of 1972 before the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Commission, 92d Cong., 2d sess., pt. 1, at 155–193 (1972). See also National Commission on Productivity, Productivity in the Food Industry 11–14, 17 (1973).

[42] F. Scherer, Industrial Market Structure and Economic Performance 409 (1970).

[43] See, for example, Williamson, Managerial Discretion and Business Behavior, 53 Am. Econ. Rev. 1032, 1042–47 (1963).

[44] See, for example, *id.* at 1051–53; Liebenstein, Allocative Efficiency versus 'X-Efficiency,' 56 Am. Econ. Rev. 392 (1966); W. Shepherd, Market Power and Economic Welfare 195–96 (1970), see Alchian and Kessel, Competition, Monopoly, and the Pursuit of Money, in National Bureau of Economic Research, Aspects of Labor Economics (1962). Within 3 months after workers in the Kaiser Steel Co.'s Fontana, Calif. plant were told of an impending shutdown due to competition from Japanese imports, productivity rose by 32.1 percent. Washington Post, Feb. 11, 1973, at E5, col. 1.

[45] See generally J. Blair, Economic Concentration 199–254 (1972).

tion in employment.[46] Third, the higher than competitive prices, charged by these industries restricts output and imposes large costs on the economy through misallocation of resources.[47] Fourth, in consumer goods industries there is a substantial relationship between the degree of concentration, excess profits, and advertising expenditures.[48] It is likely that product differentiation through heavy advertising outlays emphasizing relatively trivial "unique" aspects of the product is both a cause and a result of concentration.[49] In one landmark economic study it was found that

"industries with high advertising outlays earn, on the average, at a profit rate which exceeds that of other industries by nearly four percentage points. This differential represents a 50% increase in profit rates. It is likely, moreover, that much of this profit rate differential is accounted for by the entry barriers created by advertising expenditures . . ."[50]

The "differentiability" of the product and the amount of monopoly profits available for expenditure seem to be the key variables explaining why advertising outlays are large for some products but not for others. Finally, the studies show that corporations do not have to be large to be efficient or inventive—that, indeed, the opposite is generally the case. As corporations grow larger in size their expenditures on research and development decline per dollar of sales.[51] Nor in most cases can huge corporate size and market concentration be explained by economics of scale,[52] which means that breaking up oligopolistic industries through antitrust enforcement would not increase production costs."

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[46] Shepherd, "Market Power and Racial Discrimination in White-Collar Employment," 14 Antitrust Bull. 141 (1969).

[47] For a more or less "traditional" computation of the welfare loss from monopoly, see F. Scherer, supra note 42, at 400–404. However, elements not included in that type of thus understated estimate include: (1) The tendency of the potential for monopoly profit to direct resources toward obtaining it, Tullock, "The Welfare Costs of Tariffs, Monopolies, and Thefts," 5 W. Econ. J. 224 (1967); (2) the failure to include, as part of the difference between price and marginal cost, not only monopoly profit but also: (a) Wasteful advertising outlays and monopoly rents capitalized as royalties, good will, et cetera, Kamerschen, "An Evaluation of the 'Welfare Losses' from Monopoly in the American Economy," 4 W. Econ. J. 221 (1966); (b) monopoly union gains, Bell, "The Effect of Monopoly Profits and Wages on Prices and Consumer's Surplus in American Manufacturing," 6 W. Econ. J. 233 (1968); (c) internal inefficiency, Comanor and Liebenstein, "Allocative Efficiency, X-Efficiency and the Measurement of Welfare Losses," 49 Economica 304 (1969); (d) excess executive compensation; and (e) laggard technological progressiveness; (3) the use of aggregated and unadjusted industry profit and concentration data, which understates both, Weiss, "Average Concentration Ratios and Industrial Performance," 12 J. Ind. Econ. 247 (1963); W. Shepherd, Market Power and Economic Welfare 196–198 (1970); Imel and Helmberger, "Estimator of Structure-Profit Relationships with Application to the Food Processing Sector," 61 Am. Econ. Rev. 614 (1971); The Quality of Data As a Factor in Analysis of Structure-Performance Relationship, supra note 39; (4) the omission of underpricing (predation, cross-subsidization, J. Blair, supra note 45 at 339–371, loss leaders, monopsony); (5) failure (or inability) to account for the tendency of monopoly profits to become capitalized through transfer of monopoly assets; and (6) quantifying monopoly profits by reference to the average profits of all industries (including market power industries) instead of average competitive profits. See also, Worcester, "Innovations in the Calculations of Welfare Loss to Monopoly," 7 W. Econ. J. 234 (1969).

[48] For example, Mann, Henning and Meehan, "Advertising and Concentration: An Empirical Investigation," 16 J. Ind. Econ. 34 (1967).

[49] See Greer, "Advertising and Market Concentration," 38 S. Econ. J. 19 (1971).

[50] Comanor and Wilson, "Advertising, Market Structure and Performance," 49 Rev. Econ. & Stat. 423 (1967).

[51] See generally J. Blair, supra note 45.

[52] See, for example, J. Bain, Barriers to New Competition III (1956); Saving, Estimation of Optimum Size of Plant by the Survivor Technique, 75 Q.J. Econ. 569 (1961); Sherman & Tollison, Public Policy Toward Oligopoly: Dissolution and Scale Economies, 4 Antitrust L. & Econ. Rev. 77 (1971); Esposito, Noel & Esposito, Dissolution and Scale Economies: Additional Estimates and Analysis, 5 Antitrust L. & Econ. Rev. 103 (1971). See also Kottke, Dissolution and Scale Economies: A Comment, 5 Antitrust L. & Econ. Rev. 55 (1972). Even in the few industries where deconcentration might impose higher costs through suboptimal scale economies, the countervailing gains from improved resource allocation, increased internal efficiency and technological progressivity, and redistribution of monopoly profits and excessive compensation must be considered before rejecting divestiture on economic efficiency grounds.

Industry	Concentration ratio		Geographic dispersion [3]
	4 firm [1]	8 firm [2]	
Animal feed	21	28	26.9
Baby food	95	99	69.0
Baked goods, dry crackers	71	81	24.2
Baked goods, dry cookies	52	60	31.0
Baked goods, soft	(4)	(4)	14.8
Baking powder and yeast	86	91	49.2
Beans, canned dry	65	77	23.9
Brewing	33	51	34.7
Chips	41	51	16.9
Confections, bulk and packaged	25	34	48.5
Confections, bars and specialties	40	52	60.3
Cereal ready to eat	90	99	85.0
Cereal to be prepared	80	92	85.0
Chocolate and cocoa	71	83	118.3
Coffee, instant	81	91	54.9
Coffee, ground	51	66	20.9
Corn, wet milling	65	87	125.9
Distilling	48	62	51.7
Distilled beverages	48	62	28.4
Dessert mixes	86	92	39.4
Fish and seafood, canned	58	73	104.5
Fish and seafood, finfish	23	34	45.9
Fish and seafood, shellfish	23	34	45.9
Flavorings and extracts	27	36	45.9
Fruit canned and frozen	35	49	74.1
Fruit, dried	39	55	74.1
Grain mill products, wheat flour	40	58	54.2
Grain mill products, mixes and prepared flours	70	85	47.7
Grain mill products, refrigerated doughs	87	97	47.7
Gum	90	97	92.3
Juice	31	41	54.8
Meat	25	34	46.4
Meat sauce	45	57	50.2
Milk, canned	70	82	36.5
Milk, dried	73	91	104.7
Milk, fluid			10.3
Margarine and butter	14	20	114.0
Nuts	28	40	11.6
Oil, edible crude	32	42	61.5
Oil, salad and cooking	51	74	27.9
Peanut butter	51	77	20.0
Pet food	43	57	52.4
Pickles	20	31	28.4
Protein	51	68	69.1
Soft drinks, syrup	89	92	35.4
Soft drinks, bottling	89	92	13.9
Soup	92	96	58.4
Spice	70	80	68.9
Sweeteners	44	64	39.1
Tobacco, cigars	59	71	57.7
Tobacco, cigarettes	80	100	138.9
Tomato products, catsup	81	94	75.8
Tomato products, cooking products	46	68	75.8
Vegetables	29	41	52.5
Vinegar	49	60	23.3

[1] The 4-firm concentration ratio refers to the percentage share of total market sales held by the 4 leading firms. A 4-firm concentration ratio in excess of 50 percent is generally associated with oligopolistic performance.

[2] The 8-firm concentration ratio refers to the percentage share of total market sales held by the 8 leading firms. An 8-firm concentration ratio in excess of 70 percent is generally associated with oligopolistic performance.

[3] The geographic dispersion index indicates the extent to which the industry market is national, regional, or local, with the higher numbers listed in this column referring to the former and the lower numbers referring to the latter. Thus the degree of effective concentration in many markets—i.e., those with relatively low geographic dispersion indices—is substantially higher than the concentration ratios applicable to national markets suggest.

Sources: J. B. Imel, "Structure-Profit Relationships in the Food Processing Sector" (unpublished doctoral thesis, University of Wisconsin Department of Agriculture Economics 1971); M. R. Behr, "Technical Progressiveness in the Agricultural Processing Sector: A Structural Analysis" (unpublished doctoral thesis, University of Wisconsin, Department of Agriculture Economics 1970).

These general observations are borne out by specific studies of the food industry.[53] FTC data indicate that 17 selected food industries may be collecting monopoly overcharges of at least $2.63 billion annually.[54]

III. COMPETITION AND CONSUMER SOVEREIGNTY

It is important for antitrust agencies and the Congress to look much more closely at advertising and promotion efforts. The increase in concentration resulting from barriers to competitive entry raised by product differentiation strategies, which has thus far been the major concern, is really a very abstract way of saying that competition cannot work to produce better and less expensive goods and services unless consumers process the information to be efficient purchasers.[55]

Some examples: It is extremely difficult for price competition to work without unit pricing,[56] and it is extremely difficult for unit pricing to enable consumers to shop on the basis of price unless the unit prices (and all other informative labels) are clearly and effectively communicated to the supermarket shopper—which they are not.[57] It is extremely difficult for there to be competition in quality without a uniform grade labeling system for all significant food products. Nationally advertised brands often sell for 20% higher prices than the supermarket's private label brand even though the contents of both cans are usually identical in quality and are marketed by the same food manufacturing company.[58] Similarly, consumers cannot effectively buy many convenience foods on the basis of comparative quality without percentage ingredient labeling. Consumers cannot even tell how much product they are buying without some designation of the package's slack fill, such as a dotted line around the top or as is often the case around the middle of the package indicating where the contents stop and the air begins. A recent FDA survey found the following percentages of slack fill.[59]

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[53] Authorities cited note 39 supra; Imel and Helmberger, supra note 47; Collins and Peston, "Concentration and Price-Cost Margins in Food Manufacturing Industries," 14 J. Ind. Econ. 226 (1966); M. R. Behr, "Technical Progressiveness in the Agricultural Processing Sector: A Structural Analysis (unpublished doctoral thesis, U. Wis. Dept. Ag. Econ. 1969). With respect to the significance of Behr's finding of a postive correlation between monopoly profits and research and development expenditures (but a negative relationship between aggregate firm size and R. & D.), note that most food industry R. & D. is wastefully deployed in developing and marketing new food products, *see*. The Structure of Food Manufacturing, supra note 40, at 80; N. Borden, Acceptance of New Food Products by Supermarkets (1968), 43 percent of which fail. *Advertising Age*, Oct. 9, 1967, at 2. The food industry spends less on R. & D. per man-hour than any other major manufacturing industry except lumber and wood products. Nat'l Science Foundation, Research and Development in industry 33 (1970), and only 5 percent of food industry R. & D. is spent on "basic" (as opposed to "applied") research. *Id.* at 85. *See also* Federal Trade Comm'n, Economic Report on the Use and Economic Significance of Trading Stamps (Staff Rept. 1966); Federal Trade Comm'n, Economic Report on the Use of Games of Chance in Food and Gasoline Retailing (Staff Report 1968).

[54] Testimony of Mark Silbergeld in these hearings.

[55] Scitovsky, "Ingorance as a Source of Oligopoly Power," 40 Am. Econ. Rev. (Papers and Proceedings) 48 (1950).

[56] See, for example, "What's Happened to Truth in Packaging?", 34 Consumer Reports 40 (January1969).

[57] For example, U.S. Department of Agriculture, Consumer Knowledge and Use of Government Grades for Selected Food Items (Marketing Research Rept. No. 876, 1970).

[58] National Commission on Food Marketing, Special Studies in Food Marketing 47, 65 (Tech. Study No. 10, 1966).

[59] See Rouse, "Government Survey Shows Packaging Deception Rampant," Consumer Newsweek, June 18, 1973. Nor are the percentages o fslack fill listed in the text unavoidable. Wide variances in slack fill percentages were found among different packages of the same brand. See also "Net Weight Nonsense on Canned Food Labels," 37 Consumer Reports 665 (1972):

Product:	*Average percent of air volume*
Dried desserts	47
Mint candies	29
Spaghetti	29
Frosted and filled cookies	26
Cake and candy mixes	18
Corn breakfast food	12
Oat breakfast food	7

Summary of CU's drained-weight data

	Labeled weight (ounces)	Average drained weight		Average price [1]	Cost per pound of drained weight [2]
		Ounces	Percent		
The following fruits were packed in cans, except as noted. Listed alphabetically					
Apricot halves, unpeeled:					
A&P in heavy syrup (A&P stores)	16	8.6	53.8	$0.31	$0.58
Waldbaum's (Waldbaum stores)	16	10.0	62.5	.39	.62
Apricots, whole, in heavy syrup:					
A&P, peeled†	16	8.6	58.8	.31	.58
Grand Union peeled (Grand Union stores)	16	9.0	56.3	.29	.52
Waldbaum's, unpeeled	16	7.5	46.9	.25	.53
Citrus salad:					
Floridagold citrus salad (Lykes Pasco Packing Co., Dade City, Fla.)	16	11.0	68.8	.42	.61
Grand Union grapefruit and orange sections in sugar syrup	16	10.3	64.4	.43	.67
Sun Sip Florida citrus salad (Ben Hill Griffin, Inc., Frostproof, Fla.)	16	9.4	58.8	.42	.71
Citrus salad, chilled: [3]					
A&P, fruit salad	32	22.4	70.0	.79	.56
Dally Sun, fruit salad (Citrus World, Inc., Lake Wales, Fla.)	32	21.9	68.4	.89	.65
Grand Union, Florida	32	21.4	66.9	.89	.67
Jaffa Jems, made with Israeli fruits (Fruits of All Nations, Red Hook, N.Y.)	26	15.5	59.6	.79	.82
Seald-Sweet Florida Indian River (Seald-Sweet Sales, Inc., Tampa, Fla.)	32	21.9	68.4	.75	.55
Fruit cocktail, in heavy syrup:					
Del Monte (Del Monte Corp., San Francisco)	17	10.1	59.4	.35	.55
Grand Union	17	10.7	62.9	.25	.37
Libby's (Libby, McNeill & Libby, Chicago)	17	11.9	70.0	.37	.50
Waldbaum's	16	10.9	68.1	.27	.40
Peach halves, yellow cling, in heavy syrup:					
A&P	{16	9.8	61.3	.27	.44
	{29	17.0	58.6	.37	.35
Del Monte	{16	9.8	61.3	.28	.46
	{29	18.9	65.2	.37	.31
Grand Union	{16	10.0	62.5	.25	.40
	{29	18.6	64.1	.28	.24
Waldbaum's	{16	10.5	65.6	.25	.38
	{29	18.8	64.8	.33	.28
Peach slices, yellow cling, in heavy syrup:					
A&P	16	10.6	66.3	.29	.44
Del Monte	16	11.0	68.8	.31	.45
Grand Union	16	9.6	60.0	.25	.42
Waldbaum's	16	10.7	66.9	.27	.40
Pear halves, Bartlett, in heavy syrup:					
A&P	29	16.2	55.9	.45	.44
Del Monte	{16	9.4	58.8	.35	.60
	{29	16.2	55.9	.57	.56
Grand Union	{16	9.2	57.5	.33	.57
	{29	18.4	63.5	.49	.43
Waldbaum's	{16	8.6	53.8	.29	.54
	{29	17.2	59.3	.37	.34
Pineapple chunks, in heavy syrup:					
A&P	13¼	8.2	61.9	.27	.53
Dole (Dole Co. Div., Castle & Cooke, Inc., Honolulu)	20	13.0	65.0	.43	.53
Grand Union, Hawaiian	20	13.0	65.0	.39	.48
Mandalay (Bentley-Markey, Inc., San Francisco)	16	10.1	63.1	.23	.36
Waldbaum's fancy Hawaiian	15½	10.9	70.3	.29	.43
Pineapple slices, in heavy syrup:					
A&P	20	13.0	65.0	.41	.50
Dole	20	13.1	65.5	.43	.53
Geisha (Nozaki Associates, Inc., New York City)	20	12.4	62.0	.27	.35
Grand Union, Hawaiian	20	13.4	67.0	.39	.47
Waldbaum's fancy Hawaiian	15½	11.0	71.0	.29	.42
Prunes, in heavy syrup: [3]					
Del Monte stewed dried	16	9.2	57.5	.39	.68
Sunsweet cooked (Sunsweet Growers, Inc., San Jose, Calif., dist. by Duffy-Mott Co., Inc., New York City)	16	7.8	48.6	.39	.80
Strawberries, frozen: [4]					
A&P, sliced, sugar added	10	4.7	47.0	.29	.99
Birds Eye, halved in delicious syrup (Birds Eye Div., General Foods Corp., White Plains, N.Y.)	10	5.5	55.0	.39	1.13
Grand Union, sliced, with sugar	10	7.2	72.0	.25	.56

See footnotes at end of table.

Summary of CU's drained-weight data—Continued

	Labeled weight (ounces)	Average drained weight		Average price [1]	Cost per pound of drained weight [2]
		Ounces	Percent		
The following frozen vegetables were packed in cartons. Listed alphabetically.					
Asparagus spears:					
A&P green, grade A	10	10.5	105.0	.69	1.05
Ardsley (Global Frozen Foods, New York City)	8	8.2	102.5	.51	1.00
Grand Union grade A fancy	10	10.2	102.0	.67	1.05
Seabrook Farms jumbo (Seabrook Farms Co., Inc., Seabrook, N.J.)	10	10.8	108.0	.73	1.08
Carrots: Grand Union grade A fancy crinkle cut	10	10.9	109.0	.15	.22
Corn, whole kernel:					
A&P cut golden sweet	10	8.9	89.0	.21	.38
Birds Eye sweet	10	10.2	102.0	.23	.36
Dulany golden (Dulany Foods Div., United Foods, Inc., Salisbury, Md.)	10	10.2	102.0	.23	.36
Grand Union grade A fancy	10	10.2	102 0	.17	.27
Waldbaum's cut, grade A fancy	10	10.3	103.0	.20	.31
Green beans:					
A&P cut	9	9.1	101.1	.25	.44
Birds Eye Italian	9	9.1	101.1	.31	.55
Dulany cut	9	9.0	100.0	.27	.48
Grand Union cut, grade A fancy	9	9.1	101.1	.24	.42
Waldbaum's cut	9	9.2	102.2	.24	.42
Peas:					
A&P sweet, grade A	10	10.4	104.0	.21	.32
Birds Eye Deluxe tender tiny	10	9.8	98.0	.35	.57
Birds Eye sweet	10	10.1	101.0	.25	.40
Dulany	10	10.2	102.0	.23	.36
Dulany tiny	10	10.1	101.0	.33	.52
Grand Union grade A fancy	10	10.0	100.0	.17	.27
Seabrook Farms Extra Fancy petite	10	9.9	99.0	.31	.50
Waldbaum's grade A fancy	10	10.0	100.0	.20	.32
Spinach, chopped:					
A&P, grade A	10	11.3	113.0	.18	.25
Birds Eye	10	9.3	93.0	.22	.38
Dulany	10	10.0	100.0	.21	.34
Grand Union grade A fancy	10	8.0	80.0	.17	.34
Waldbaum's grade A fancy	10	10.1	100.0	.16	.25
Spinach, leaf:					
A&P, grade A	10	5.9	59.0	.18	.49
Birds Eye	10	6.9	69.0	.23	.53
Dulany	10	5.2	52.0	.21	.65
Grand Union grade A fancy	10	10.5	105.0	.17	.26
The following vegetables were packed in cans, except as noted. Listed alphabetically.					
Asparagus, spears:					
A&P, all green	15	8.3	55.3	.69	1.33
A&P, green tipped and white	15	9.6	64.0	.65	1.08
Del Monte all green	14½	9.1	62.8	.75	1.32
Del Monte green tipped and white	14½	10.0	69.0	.69	1.10
Grand Union all green [3]	12½	8.2	65.6	.79	1.54
Grand Union whole, all green	14½	8.6	59.3	.63	1.17
Green Giant extra long tender green (Green Giant Co., Le Sueur, Minn.)	15	9.2	61.3	.81	1.41
Le Sueur tender green, extra large (Green Giant Co.)	19	12.1	63.7	.93	1.23
Meddo-Land Garden Run all green (Stanislaus Food Prod. Co., Modesto, Calif.)	14½	8.6	59.3	.57	1.06
Ritter [3] (P. J. Ritter Div. Curtice-Burns, Inc., Bridgeton, N.J.)	12½	7.7	61.6	.99	1.97
S&W all green, colossal size (S&W Fine Foods, Inc., San Francisco)	15	8.8	58.7	.79	1.44
Waldbaum's tender all green, grade A fancy	19	11.4	60.0	.79	1.11
Beets, whole:					
A&P, small grade A	16	11.2	70.0	.19	.27
Grand Union medium	16	11.3	70.6	.16	.23
Grand Union small	16	11.5	71.9	.20	.28
Waldbaum's medium	16	10.8	67.5	.18	.27
Waldbaum's tiny	16	12.4	77.5	.25	.32

Summary of CU's drained-weight data—Continued

	Labeled weight (ounces)	Average drained weight		Average price [1]	Cost per pound of drained weight [2]
		Ounces	Percent		
The following vegetables were packed in cans, except as noted. Listed alphabetically—Continued					
Carrots, sliced:					
A&P, grade A	16	10.5	65.6	.19	.29
Del Monte [3]	16	9.8	61.3	.29	.47
Grand Union	16	10.9	68.1	.19	.28
Libby's, seasoned with butter (vacuum packed)	11½	10.2	88.7	.21	.33
Lord Mott's (Duffy-Mott Co., Inc., New York City)	16	10.3	64.4	.25	.39
Lord Mott's garden sweet, in light syrup [3]	15	10.0	66.7	.29	.48
S&W very young [3]	16	10.4	85.0	.37	.57
Corn, whole kernel:					
A&P, golden sweet grade A	17	10.6	62.4	.22	.33
Del Monte family style, golden sweet	17	11.0	64.7	.31	.45
Grand Union, golden sweet	17	12.2	71.8	.21	.28
Green Giant country style golden	17	11.6	68.2	.27	.37
Libby's golden, seasoned with butter (vacuum packed)	12½	11.3	90.4	.29	.41
Libby's golden sweet	17	11.0	64.7	.23	.33
S&W golden sweet, very young Deloro	16	10.9	68.1	.29	.43
Waldbaum's, golden sweet vacuum packed	12	10.7	89.2	.18	.27
Green beans, cut:					
A&P	15½	9.2	59.4	.27	.47
Del Monte Blue Lake	16	9.3	58.1	.29	.50
Diamond A Oregon Blue Lake (Eugona Fruit Growers Assoc., Eugene, Oreg.)	16	9.4	58.8	.27	.46
Freshpak, mixed cuts and short cuts (Grand Union Stores)	15½	10.2	65.8	.15	.24
Grand Union	15½	9.3	60.0	.19	.33
Grand Union diagonal pantry	15½	9.2	59.4	.22	.38
Green Giant kitchen sliced, half-inch cut	16	9.6	60.0	.31	.52
Iona (A&P Stores)	15½	8.9	57.4	.19	.34
Libby's slant sliced	16	10.2	63.8	.31	.49
Lord Mott's	{15½	9.3	60.0	.22	.38
	{[3] 15	8.2	54.7	.31	.60
S&W medium size 4, Blue Lake variety (S&W Fine Foods, Inc., San Francisco)	16	9.1	56.9	.30	.53
S. S. Pierce red label, stringless (S.S. Pierce Co., Boston)	15½	8.9	57.4	.25	.45
Waldbaum's	15½	10.0	64.5	.18	.29
Mushrooms: Fred's fresh grown sliced whole (Fred Mushroom Prod. Co., South Lebanon, Ohio)	[4] 4	4.3	107.5	.45	1.67
Peas:					
A&P sweet, small size grade A	17	11.5	67.7	.27	.38
Del Monte early garden sweet	17	10.6	62.4	.20	.30
Grand Union small early June	16	10.2	63.8	.27	.42
Green Giant very young tender sweet	17	11.2	65.9	.31	.44
Iona sweet, large size	17	11.3	66.5	.20	.28
Kounty Kist mixed sizes young sweet (Green Giant Co.)	17	10.8	63.5	.31	.46
Le Sueur very young small early	17	12.0	70.6	.37	.49
Libby's early, seasoned with butter (vacuum packed)	13	11.3	86.9	.29	.41
Libby's garden sweet	17	11.7	68.8	.27	.37
S&W early June tiny petit pois	16	11.0	72.5	.43	.59
Waldbaum's Fancy sweet	16	11.6	72.5	.17	.23
Potatoes, whole white:					
A&P peeled and cooked, small	16	11.1	69.4	.19	.27
Grand Union	16	11.2	70.0	.13	.19
Kelley's, medium, Irish (H. E. Kelley & Co., Inc., New Church, Va.)	16	11.2	70.0	.17	.24
Waldbaum's	16	11.1	69.4	.15	.22
Spinach:					
A&P, young tender	15	8.8	58.7	.25	.45
Del Monte early garden	15	11.2	74.7	.28	.40
Grand Union leaf	15	9.1	60.7	.20	.35
S&W chopped	15	11.1	74.0	.27	.39
Waldbaum's leaf	15	9.8	65.3	.20	.33

[1] Paid by CU shoppers in New York City area in December 1971.
[2] See story.
[3] Packed in jars.
[4] Declared as drained weight.

A very important aspect of quality competition—improving nutritional values of foods—also is hampered unless effectively communicated mandatory nutrition labeling enables consumers to purchase on the basis of nutrition. Spokesman for the food industry produce surveys purporting to show that consumers do not rank nutrition very high among purchasing criteria. Ironically, industry surveys also show not only that the vast majority of consumers do think that good nutrition is very important but also that most consumers have been led to assume that the foods they purchase do in fact provide good nutrition.[60] Thus, the industry's justification for not competing in nutrition becomes a self-fulfilling prophecy arising out of consumers' basic lack of nutrition information. What all this means in terms of food prices is that there is an enormous potential in the provision of relevant food purchasing information for enabling consumers to satisfy their food needs with much less of their money through more efficient purchasing.[61]

The theoretical model of a free enterprise market economy assumes that advertising, packaging, and other seller promotional information will provide consumers with the types of purchasing information that have just been described.[62] Consumers certainly have a right to expect to receive this information since they are paying over $4 billion a year for food advertising costs that are included in food prices. However, an examination of the actual content of food advertising shows that instead of being solidly informed about the advertised product's comparative price, quality, and nutritional value, consumers are given such purchasing tips as, and I quote from current ads:

"Mm good!"
"The secret sauce kids never get tired of"
"No dog food ever looked like that before"
"Lip smacking, whip cracking, patty whacking"
"Anyone can be a Frito bandito"

COST OF 55 MILLIGRAMS VITAMIN C[1]

Food	Store price	Vitamin C cost
Orange juice, imitation powdered	18 ounce jar, $1.09	$.03
Orange juice, frozen concentrate	6 ounce, 24 cents	.04
Grapefruit juice, frozen concentrate	6 ounce, 24 cents	.05
Grapefruit juice, canned, unsweetened	46 ounce, 55 cents	.06
Oranges, fresh	Dozen, 94 cents	.07
Potatoes, boiled/baked in skin	10 pound, 86 cents	.08
Orange juice, home-squeezed	5 pound, 78 cents	.10
Tomato juice, canned or bottled	32 ounce, 35 cents	.10
Potatoes, mashed, dehydrated, fortified	13 ounce package, 60 cents	.10
Potatoes, mashed, homemade	1 pound, 13 cents	.11
Broccoli, frozen	10-ounce package, 32 cents	.11
Collard greens, fresh	Pound, 29 cents	.12
Grapefruit, fresh	Whole, 18 cents	.12
Strawberries, fresh	Pint, 46 cents	.13
Grapefruit, canned segments	17-ounce, 35 cents	.14
Strawberries, frozen, whole, sweetened	Pound, Package 63 cents	.15
Potatoes, French fried, frozen	9-ounce package, 18 cents	.18
Tomatoes, canned	Pound, 23 cents	.18
Tomatoes, fresh	Pound, 47 cents	.27

[1] Adult RDA=60 mg.

[60] Bauman and Ruch, "Problems of Researching and Marketing Fortified Foods and Its Implications on Consumption Trends," in Council on Foods and Nutrition, American Medical Association, Symposium on Vitamins and Minerals in Processed Foods 236 (1971). Note the disparities that would be uncovered by relating unit pricing not just to weight but to the other product quality characteristics, such as nutrition.

[61] For example, unit pricing, if effectively communicated to consumers who are also fully informed about brand quality comparisons, has a potential of reducing the total food bill by several billion dollars annually.

[62] The extent to which consumers do not in fact receive the information enabling them to maximize the value of their purchasing power is a very serious matter indeed. For it means frustration of the objective of consumer sovereignty which serves as the fundamental justification for preferring a private market economy over alternative forms of economic organization.

COST OF 20 GRAMS PROTEIN [2]

Food	Store price (per pound)	Protein cost
Dried lima beans [3]	23 cents	$0.05
Peanut butter	62 cents (18-ounce)	.10
Canned pork and beans in tomato sauce	17 cents	.12
Chicken	49 cents	.14
Eggs	59 cents (dozen)	.14
Cottage cheese	43 cents	.14
American processed cheese	93 cents	.17
Beef liver	80 cents	.18
Ocean perch fillet, frozen	69 cents	.20
Tuna fish	49 cents (6½-ounce can)	.21
Milk	34 cents (quart)	.21
Hamburger	89 cents	.22
Fish sticks, frozen	56 cents (10-ounce package)	.22
Chili con carne with beans	45 cents (15-ounce can)	.23
Whole ham with bone	79 cents	.27
Frankfurters, all meat	89 cents (8 in package)	.33
Beef chuck steak, with bone	79 cents	.35
Round steak	$1.69	.39
Pizza, frozen	79 cents (15-ounce)	.40
Bologna, all meat	42 cents (6-ounce package)	.42
Bacon	89 cents	.42
Rib roast of beef	$1.39	.55
Sirloin steak	$1.59	.66

[2] Adult RDA=65 g.
[3] Vegetable protein is generally inferior to animal protein with respect to the presence of essential amino acids.

Source: 1st National City Bank, "What Price Nutrition? Are You Getting Your Dollars' Worth?" Consumer Views, December 1972.

The consequences of advertisings' non-informational content are far more serious than a mere waste of $4 billion a year to purchase food advertising space. That is because advertising powerfully influences consumers: first, to purchase different food items than those they would purchase if adequately informed of comparative product price and quality characteristics and, second, to spend more money on food than they would spend if the level of non-informative advertising messages were reduced.[63] This second effect has consequences that merit elaboration. We have already discussed the supply side of the Nixon Administration's limited supply-increased demand explanation of rising food prices. To increase supply faster than increases in demand will lower prices. But lower prices can also be achieved by decreasing demand while holding supply constant. The effect of heavy advertising inducing consumers to spend more of their dollars on food than they otherwise would is the same as an increase in demand, which creates a supply-demand gap that bids up prices. Thus, advertising inflates food prices by artificially increasing demand for limited food supplies as well as by inducing consumers to spend more for less value.

The evidence that advertising distorts consumer preference is of at least two kinds.[64] First, studies correlating Consumers Union product quality ratings with the prices of the products rated find a quite small relationship between price and quality, when we would expect that the purchasing choices of adequately informed consumers would enforce the rule that the lower the brand's relative quality, the lower must be its relative price (and vice-versa).[65] Second,

[63] See Taylor and Weisserbs, "Advertising and the Aggregate Consumption Function," 62 Am. Econ. Rev. 642 (1972).
[64] Also significant is the mere fact that advertisers are willing to spend over $20 billion annually and that at least some and often extensive effort is made at empirical measurement of the sales effectiveness of most major advertising campaigns. Several billion dollars worth of secret advertising and packaging effectiveness research is locked in corporate files. See Choate, "The Selling of the Child." Hearings before the Consumer Subcommittee of the Senate Commerce Comm., Feb. 27, 1973; CBS Reports, "You and the Commercial," CBS Television Network, 10–11 p.m., EST, Apr. 26, 1973.
[65] The correlation between the Consumers Union product quality ratings and the prices of the rated products is only approximately 35 percent. Oxenfeldt, "Consumer Knowledge: Its Measurement and Extent," 32 Rev Econ. and Stat. 300 (1950); Morris and Bronson, "The Chaos of Competition indicated by Consumers Reports", 33 J. Marketing 26 (1969). When the sample is limited to product classes offering eight or more brand alternatives with

a recent and sophisticated econometric study of 41 consumer goods industries has found that an increase in advertising expenditures is an order of magnitude more effective in increasing sales than a comparable decrease in price.[66] This analysis further shows that if the advertising-to-sales ratio were limited to three percent for the 14 industries in the sample whose heavy advertising exceeded that level, their aggregate sales would have declined by 16.7%.

Essentially the same sort of manipulation of consumer purchasing choices is perpetrated daily in the supermarket through various point-of-sales techniques. For example, in one study, 19 products were removed from their normal shelf positions along supermarket aisles and placed in display racks at the ends of the aisles. The dollar sales of these items from their end display positions increased by an average of 673% over a normal week's sales from their regular shelf position.[67] The author of this study explained that "most shoppers feel that every [end] displayed item is also on sale. . . . This misunderstanding on the part of the consumer is one of the chief reasons for the success of end displays in increasing unit sales."

The objective of end displays and other point-of-purchase techniques is to generate what the industry calls "impulse purchases." Studies of shoppers conclude that fully one half of all items purchased in supermarkets are unplanned, impulse purchases,[68] and that the proportion of impulse purchases rose from 38.2% in 1945 to 50.9% in 1959,[69] roughtly paralleling the increasing complexity of food shopping that accompanied the rise of different forms of convenience foods and the modern supermarket jungle offering several thousand separate items for sale.

The *Progressive Grocer* magazine's 1964 controlled experiment carried out in the supermarkets of the Colonial Store chain provide data on the effectiveness of a number of other point-of-purchase devices in generating impulse purchases,[70] as well as a wealth of other information on how supermarkets can manipulate customers into spending more money for less value while driving up the prices of limited food supplies. For example, when five items normally sold in single units were converted to multiple pricing—i.e., three for 99¢ instead of one for 33¢—their sales increased by an average 27% even though there was no significant reduction in unit price. The use of "product spotters"—i.e., shelf signs directing attention to particular products—increased the unit sales of ten items by an average of 152%. These manipulative devices are not emphasized in a consumer controlled supermarket such as the Berkeley (California) Coop, where store policies require that all items placed on end displays actually are on reduced price sale, where all items on sale are marked with both the regular and the reduced price, where no items are sold in multiple units, where manufacturers' promotional "shelf-talker" material is not allowed in the store, and where unit pricing and posters with nutritional and other important information about each food are used to help consumers get more rather than less out of their food dollars.

There are many recommendations which can be made for the various Congressional committees to consider. Your main Committee's jurisdiction permits the pursuit of this inquiry deep into its antitrust ramifications in order to determine (1) what existing enforcement and advocacy action the Justice Department should take promptly; (2) what additional funding and manpower is needed by this agency that is the Justice Dept. and your Committee, and (3) what new

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interbrand price spreads of at least 50 percent the median price-quality correlation plummets to .20 percent. Friedman, "Quality and Price Comparisons in Rational Consumer Decision-Making," 1 J. Consumer Affairs 13, 17 (1966).

[66] Comanor and Wilson, Advertising and the Distribution of Consumer Demand (Standard Research Paper No. 160, May 1973).

[67] Kress, The Effect of End Displays on Selected Food Product Sales (Point of Purchase Advertising Institute, New York).

[68] For example, Kollat and Willett, "Customer Impulse Purchasing Behavior," 4 J. Marketing Res. 21 (1967). It is not suggested that all unplanned or "impulse" purchases are of items which consumers would refuse to purchase upon sober reflection. However, if even a relatively small proportion of "impulse" purchases fall into that category there is cause for concern. Furthermore, there is evidence that a large proportion of impulse purchases, are not compensated for by reductions in other purchases, so that total consumer spending is increased as a result. For example, Clover, "Relative Importance of Impulse Buying in Retail Stores," 15 J. Marketing 66 (1950). See Taylor and Weisserbs, supra note 63.

[69] E. I. du Pont de Nemours & Co., Consumer Buying Habits Studies (1945, 1949, 1954, 1959).

[70] Progressive Grocer, March 1964, at C121–C136.

authority is required to bring to bear more effectively antitrust enforcement toward a competitive food industry. The subpoena power must be readied for use where corporate or governmental (e.g., the U.S. Department of Agriculture) recalcitrance impedes your legitimate inquiry.

As a consumer issue, a competitive food industry could bring to the consumer both lower food prices and healthier food. Your Committee can help bring this about if it follows legislative inquiry with legislative action and oversight. Otherwise the fruits of this inquiry will have the endurance of a single crop of corn.

Thank you.

NOTE: Additional information should be sought through Mr. Beverly C. Moore, Jr., 1832 M St. N.W., Suite 101, Washington, D.C. 20036 (202) 833-3931.

EXHIBIT 1

CON$UMER NEW$WEEK

WASHINGTON, D.C., JUNE 18, 1973

Government survey shows packaging deception still rampant

A sampling of hitherto undisclosed details of a massive government survey of packaged food products shows that the 1966 "Truth-in-Packaging" law has not added much truth to packaged products.

It also indicates that neither government nor industry has done much to remove confusion at the supermarket.

The survey was conducted by the Food and Drug Administration under its authority to regulate "slack fill"—the amount of empty space—in food products. The study covered some 11,000 products in 11 states two years ago.

The only results announced by the FDA were averages of air space proportions for six product categories . . . Average slack fill was 47 percent for dry dessert mixes; 29 percent for mint candies and spaghetti products; 26 percent for filled and iced cookies; 18 percent for cake and cookie mixes; 12 percent for corn breakfast foods and 7 percent for oat breakfast foods.

But how much of the empty space was necessary because of inside envelopes and natural settling of contents and how much was essentially deceptive? To answer that question, the FDA recently commissioned a new survey to begin in July. Researchers plan to observe package filling operations.

A spot check of survey results, including nearly all samples analysed in one state, Washington, shows:

A very wide range of slack fill among products of the same type, even the same size, indicating that much of the air space is not necessary; (for example, slack fill among cake mixes ranged from zero to more than 42 percent).

A tendency to have proportionately more air in small packages than in large ones, indicating efforts to deceive shoppers when the proportion varies greatly; (the tendency is most noticeable in cereal products).

A substantial proportion of packages containing less than the net contents on the label, indicating considerable over-all loss to consumers and extra profit to producers. (Short weight is not shown in tabulations inside.)

A continuation of many odd-size packages such as fractions of pounds and ounces, indicating refusal of numerous manufacturers to comply with voluntary standards negotiated a few years ago by the Commerce Department to reduce fractional sizes and simplify cost comparisons.

(The tables inside this newsletter present the raw data from Washington State in four product categories. Each line gives the product identification, net contents and percentage of package volume taken up by empty space. Each line represents the average of five packages of the same product and size.)

PERCENTAGE OF EMPTY SPACE IN FOOD PACKAGES

Name of product	Ounces	Percent air
CEREALS		
Kellogg's Frosted Flakes	15.0	15.9
Do	10.0	15.4
Do	20.0	10.2
Do	15.0	12.4
Kellogg's Corn Flakes	8.0	20.8
Do	12.0	12.7
Do	18.0	15.5
Do	18.0	16.4
Do	18.0	22.3
Kellogg's Krumbles	12.0	16.3
Do	12.0	9.9
Kellogg's Rice Krispies	6.0	10.0
Do	6.0	14.3
Do	10.0	6.1
Do	13.0	1.7
Kellogg's Special K	7.0	8.3
Do	11.0	.9
Do	15.0	0
Do	15.0	5.0
Kellogg's Sugar Pops	9.0	2.4
Do	9.0	10.3
Do	12.0	4.3
Kellogg's All Bran	16.0	8.5
Do	16.0	12.9
Kellogg's Raisin Bran	15.0	7.6
Do	20.0	5.6
Do	20.0	23.3
Kellogg's 40% Bran Flakes	16.0	17.3
Kellogg's Cocoa Krispies	9.0	8.3
Do	13.0	7.6
Do	13.0	11.4
Kellogg's Product 19	8.0	11.4
Kellogg's Super Smacks	14.0	1.3
Kellogg's Puffa Puffa Rice	8.0	8.6
Kellogg's Fruit Flavored Loops	7.0	5.4
Kellogg's Apple Jacks	7.0	12.6
General Mills Wheaties	8.0	19.1
Do	12.0	5.2
Do	12.0	23.8
Do	18.0	11.6
Do	18.0	20.7
General Mills Frosty O's	9.0	3.5
General Mills Trix	8.0	2.9
Do	12.0	4.5
General Mills Cheerios	7.0	0
Do	10.0	2.1
Do	15.0	2.1
General Mills Total	8.0	18.7
Do	8.0	27.8
Do	12.0	14.4
Do	12.0	21.2
General Mills Lerdy Chains	9.0	14.4
General Mills Frosted Chains	14.0	3.5
General Mills Kix	9.0	.7
General Mills Kaboom	7.0	10.5
General Mills Sugar Jets	9.0	2.4
General Mills Clackers Grhm	9.0	13.9
General Mills Cocoa Puffs	8.0	4.0
Do	8.0	3.7
General Mills Corn Puffs	9.0	0
Post Grape-Nuts	12.0	0
Do	12.0	3.9
Do	15.0	13.1
Do	18.0	.9
Post Grape-Nut Flakes	18.0	19.0
Do	20.0	7.8
Post Crispy Critters	13.0	2.1
Post Honey Comb	12.0	6.8
Post Super Sugar Crisp	10.0	5.7
Do	15.0	7.5
Post Sugar Rice Krumbles	12.0	5.4
Post Toasties Flakes	18.0	17.3
Post Alpha Bits	13.0	0
Do	13.0	7.5
Post 40% Bran Flakes	16.0	3.5
Post Fortified Oat Flakes	12.0	2.4
Post Family Pebbles	9.0	14.6
Post Cocoa Pebbles	9.0	9.7
Do	9.0	19.7
Loma Linda Ruskets	12.0	63.8
Safeway Corn Flakes	12.0	14.5
Do	18.0	10.7
Gerbers Rice Cereal For Babies	8.0	19.5
Quick Quaker Oats	16.0	1.0
Quick Quaker Oats (1 min)	18.0	0
Quick Quaker Oats	42.0	0
Do	42.0	4.9
Nabisco Quick Cream of Wheat	28.0	0
Do	28.0	4.0
Nabisco Team	13.0	15.7
Nabisco Wheat Honeys	8.0	15.8
Nabisco Shredded Wheat	10.0	54.4
Do	15.0	69.0
Quaker Shredded Wheat	12.0	71.0
Three-Minute Raisin Oats	16.0	0
Sunshine Shredded Wheat	10.0	34.0
A&P Sunnyfield Corn Flakes	18.0	7.9
Chex Raisin Bran	16.0	9.8
CRACKERS AND COOKIES		
Nabisco Wheat Thins	10.0	26.9
Nabisco Cheese Flings	5.7	8.2
Nabisco Cheese Nips	10.0	13.6
Triscuit Whole Wheat Wafers	9.5	9.1
Nabisco Vanilla Wafers	7.2	29.1
Do	12.0	22.3
Nabisco Ritz Crackers	16.0	17.6
Nabisco Ginger Snaps	16.0	6.4
Nabisco Bacon Flavored Thins	8.0	11.8
Nabisco Shredded Wheat Biscuits	15.0	6.4
Busy Baker Oatmeal Snaps	14.0	22.6
Sunshine Coconut Caramel	10.0	29.7
Sunshine Cheese-it	6.2	32.7
Sunshine V.I.P. Snack Crackers	8.0	18.1
Sunshine Lemon Coolers	10.0	37.0
Sunshine Toy Cookies	7.5	11.9
Sunshine Apple Coolers	10.0	25.2
Sunshine Vanilla Wafers	11.0	27.2
Sunshine Cheese-it	16.0	31.6
Sunshine Butter Cookies	8.0	12.2
Sunshine Shredded Wheat Biscuits	10.0	37.6
Quaker Shredded Wheat Biscuits	12.0	13.4
DESSERT MIX		
Jell-o Golden Egg Custard	4.5	42.5
Do	4.5	42.6
Jell-o Lemon Instant Pudding	5.5	31.5
Do	5.5	30.7
Jell-o Banana Cream Instant Pudding	5.5	30.4
Jell-o Tapioca Pudding Vanilla	3.2	45.2
Jell-o Chocolate Instant Pudding	6.7	15.9
Jell-o Butterscotch Instant Pudding	3.7	33.7
Jell-o Self-Layering	4.8	34.2
Jell-o Whip'n Chill (Strawberry)	3.5	51.9
Jell-o Whip'n Chill (Chocolate)	4.0	42.7
Jell-o Whip'n Chill (Lemon)	3.5	53.1
Do	3.5	52.2
Jell-o Golden Egg Custard	3.0	39.8
Jell-o Black Cherry	6.0	30.5
Do	6.0	31.8
Jell-o Black Raspberry	3.0	29.9
Jell-o Cherry	6.0	31.2
Jell-o Strawberry-Banana	6.0	32.8
Western Family Raspberry	3.0	30.4
Mayfresh Cherry	3.0	35.1
Mayfresh Lime	3.0	35.7
Royal Lemon	6.0	34.3
Royal Orange	6.0	34.3
My-T-Fine Instant Pudding Chocolate	4.5	22.9
My-T-Fine Instant Pudding Butterscotch	3.5	44.0
Pillsbury Hungry Jack Pancake	32.0	10.8
Royal Butterscotch Pudding	6.0	32.4
Royal Dark'n Sweet Chocolate Pudding	6.0	33.6
Royal Instant Pudding Butterscotch	3.5	44.0
Minute Quick-Cooking Tapioca	8.0	3.8

PERCENTAGE OF EMPTY SPACE IN FOOD PACKAGES—Continued

Name of product	Ounces	Percent air
DESSERT MIX—Continued		
Smooth Whip Dessert Topping	2.0	8.5
Do	2.0	65.3
Do	2.0	68.0
Ann Page Instant Chocolate Pudding	6.0	25.9
Dream Whip Whipped Topping	2.0	60.0
CAKE MIX		
B. Crocker Gingerbread	14.5	1.3
B. Crocker Sour Cream White	18.5	12.6
Do	18.5	10.2
Do	13.0	16.4
B. Crocker Lemon Cake	18.5	11.1
B. Crocker Sunkist Orange	19.0	10.1
B. Crocker Chiquita Banana	18.5	9.0
B. Crocker Butter Pecan Muffins	12.5	6.3
B. Crocker Sour Cream White	18.5	10.2
B. Crocker Coconut-Pecan Frost	9.0	35.9
B. Crocker Butter Brickle	18.5	10.7
B. Crocker Golden Pound	16.0	3.0
B. Crocker Fudge Brownie	22.5	0
B. Crocker Angel Food	16.0	31.0
B. Crocker Sour Cream White Frost	13.0	14.8
B. Crocker Buttermilk Pancake	42.0	4.6
Swans Down Orange Coconut	18.0	7.7
Swans Down Devil's Food	19.0	7.0
CAKE MIX—Continued		
Standby Fudge Frosting	14.0	27.7
Standby Creamy Fudge Frosting	14.0	31.7
Standby White	19.0	18.7
Standby Devil's Food Cake	19.0	17.8
Western Family White Cake	19.0	16.3
Western Family White Frosting	14.0	35.1
Food Club Silver White	19.0	23.8
Food Club Chocolate Fudge Frost	14.0	18.9
Pillsbury Hungry Jack Pancake	32.0	11.6
Pillsbury Angel Food Cake	15.0	41.8
Do	15.0	41.4
Pillsbury Vanilla Frosting	15.4	6.5
Pillsbury Strawberry Cake	18.7	2.0
Ann Page Creamy White Frosting	14.0	13.2
Ann Page Almond Cake	19.0	19.0
I.G.A. Spice	19.0	5.6
Do	19.0	6.6
Albertson's Fudge Brownie	22.0	0
Albertson's Buscuit Mix	40.0	0
Nabisco Dromedary Pound Cake	17.0	0
Nabisco Dromedary Corn Bread	15.0	3.3
Nabisco Dromedary Gingerbread	14.0	2.2
Aunt Jemima Buttermilk Pancake	32.0	2.3
Duncan Hines Applesauce Raisin	13.0	30.7
Mrs. Wright's Biscuit	40.0	4.4

EXHIBIT 2

[From 40 American Economic Review, 48 (1950)]

IGNORANCE AS A SOURCE OF OLIGOPOLY POWER

(By Tibor Scitovsky, Stanford University)

Before starting out to discuss ignorance as a source of oligopoly power, I should like to recall to you the meaning of oligopoly power. We think of competition as a force that tends to eliminate profits; and of monopoly or oligopoly power as something that restrains competition and thereby prevents the elimination of profits. Oligopoly power, therefore, is the power to restrain competition. Professor Chamberlin has shown that we must distinguish two kinds of restraints on competition. One of these is the obstacles to entry, which keep profits from attracting newcomers to a market and so prevent the elimination of profits by the additional competition of these newcomers. The other kind of restraint on competition is that imposed on the market behavior of established firms, which enables them to raise prices higher relatively to costs than they could in the absence of such restraints.

Both types of restraints may result from natural circumstances or be imposed by the deliberate action of a group of firms acting in collusion. When we talk about institutional or sociological causes of oligopoly, we have in mind factors that contitute natural restraints on competition or facilitate collusion to impose artificial restraints. In particular, a given factor may create natural obstacles to entry; natural restraints on competition among established firms; and it may facilitate collusion for deliberately imposing either or both types of restraints.

Technological economies of scale, for example, constitute a natural obstacle to entry; and they also facilitate collusion by keeping the number of competitors small. Buyers' ignorance and sales techniques catering to buyers' ignorance are perhaps an even more important source of oligopoly power. They, too, give rise to natural obstacles to entry; they, too, facilitate collusion by keeping the number of competitors small; and in addition they also impose natural restraints on competition among established competitors.

Marshall and his contemporaries knew that the degree of competition depended on the buyers' information; but they believed, falsely I think, that the buyers' information in turn depended on the organization of the market. They thought that buyers' information and competition were perfect in the international com-

modity exchanges, because these markets happened to be highly organized. This view explains their optimism about the future of competition. They expected buyers' information, and with it competition, to increase as a result of the improvement of the technical means of communication and market organization.

Today, looking back on historical developments; it would seem that this view was wrong. In fact, I should say that the very opposite of Marshall's view is correct. I should regard the buyer's information as cause and the market's organization as effect; and I believe that the market's perfection depends on the buyer's expertness. For it is only the expert buyer who insists on comparing rival products before every purchase; and it is only his insistence on making comparisons that forces the seller—or rather makes it profitable for him—to make his product easily comparable to competing products. Hence, the geographical concentration of the expert's market and the grading and standardization of products in such a marget should not be considered data, as Marshall did. They are the result of a deliberate effort on the part of producers; and I believe that such an effort will only be made in the expert's market, in response to the expert buyer's demand for easy comparability.

On this view, of course, which regards market organization and the standardization or differentiation of products as variables that depend on the buyers' information, one cannot share Marshall's optimism about the future. The expert buyer has always been an exception; and the consumer is not only an inexpert buyer but the increasing complexity of consumers' goods is constantly increasing his ignorance.

But how and in what sense does the buyer's ignorance restrain competition? We know that the expertness of buyers leads to standardization, which implies that when the buyers are inexpert, the inducement to standardize is absent. We can even go farther than this. It can be shown that in the ignorant market every producer finds it profitable to differentiate his product, not indeed in any objective sense of the word, but by playing on the buyer's ignorance and creating the impression in one way or another that his product is different from competing products. Such differentiation lowers demand elasticities and makes higher profit margins possible; but this, while it lowers competition, is probably a very minor factor, which can hardly be called a competitive restraint. For a discussion of further restraints, however, we must first ask ourselves how exactly the ignorant buyer behaves.

An ignorant buyer is a person who is unable to judge the quality of the products he buys by their intrinsic merit. Unable to appraise products by objective standards, he is forced to base his judgment on indices of quality, such as the price of products and the size, long-standing and general reputation of the producing firms. Moreover, aware of the shaky basis and insufficiency of his judgment, the ignorant buyer dare not rely on his judgment alone and falls prey to the emotional suggestion of advertising.

That this type of consumer behavior is important in many markets needs no proof. But how does it give rise to oligopoly power? It is apparent to begin with that the ignorant buyer's inability to appraise the quality of goods on their own merits deprives the producer of the inducement to engage in quality competition. For it is pointless to offer improved quality to customers who cannot distinguish good quality from bad. Similarly, the ignorant buyer's habit of judging quality by price weakens also price competition. For the offer of a lower price will largely defeat its purpose in markets where a low price is regarded as a sign of inferior quality. In such markets a price change will lead few buyers to transfer their custom from one producer to another. Hence, the price elasticity of demand will be low in such markets. It may be almost as low as it would be if collusion among rival producers had suspended price competition among them.

Needless to say, consumers' ignorance is never absolute; and they never judge quality by price alone. Accordingly, quality and price competition are limited rather than totally absent in the ignorant market; but such limitation may be substantial and give rise to very high profit margins.

When quality and price competition are limited, other forms of competition tend to be intensified. Hence the great importance of advertising and of new models and eye-catching features in the uninformed market. These forms of competition, however, can never replace price and quality competition fully; and the lowering of price and quality competition lowers competition in general. Moreover, since advertising and other such competitive weapons are obviously wasteful and socially undesirable, their preponderance in modern society has considerably weakened people's belief in the usefulness of competition. Competi-

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tion by such methods may be no easier to limit by collusion than price and quality competition; but public opinion is certain to be less opposed to collusion in restraint of such forms of competition.

The limitations on price and quality competition in the uninformed market are what may be called the natural restraints on competition among established competitors. But the main manifestations of obligopoly power are restraints on potential competition from newcomers. Such restraints are due in the uninformed market to the importance of advertising service and good will.

I need not enlarge here on the fact that the importance and efficacy of advertising increases with the market's ignorance. But the importance of advertising would not, by itself, discriminate against newcomers if it were not for the fact that advertising seems to yield increasing returns to scale. This means that as far as the effectiveness of advertising is concerned, the large firm has an advantage over the small firm, and the new firm must operate on a large scale from the outset if it is to compete on equal terms with established competitors. In other words, the need for advertising in the uninformed market creates the same protection for established firms and the same obstacles to the entry of new firms as the existence of technological economies of scale.

A further and very similar obstacle to entry in the ignorant market is due to the importance that the buyer of durable goods attaches to the provision of repair and maintenance services by the producer from whom he buys. The need for such services is created, of course, by the technical complexity of durable goods. But the consumer's insistence that such services be provided and guaranteed by the producers themselves is to a large extent due to consumers' ignorance. For the ignorant buyer knows no more about the nature, availability, and quality of the services his car and appliances need than he knows about the quality of these products themselves; and he often believes, and is led to believe, that each brand of product requires special service. He wants an expert's assurance that adequate repair service for the product he buys will be available; and he believes that the best assurance he can get is the producer's guarantee to provide such services himself. Hence the consumer's preference for the products of manufacturers who can offer him repair and maintenance service as well. But the provision of services, just like advertising, yields increasing returns to scale; which means that the importance the uninformed consumer attaches to them creates the same advantages for the large and obstacles for the new firm as the importance of advertising and the technological economies of scale. It is worth mentioning in this connection that the marketing difficulties encountered in this country both by Kaiser-Frazer and by the British motorcar manufacturers have stemmed mainly from this source.

But by far the most important obstacle to entering the uninformed market is the ignorant buyer's habit of judging products by the size, age, and reputation of the manufacturing firm—in short, by the good will of the firm. Given his inability to appraise goods on their own merit, this may be the most rational thing that the buyer can do; but it gives a very important advantage to the large firm over the small and to the established producer over the unknown newcomer. The more ignorant are the buyers and the more their ignorance forces them to rely on the producer's good will for judging the quality of his products, the more important becomes this type of discrimination.

The established firm's advantage over newcomers is due to the mere fact that it is already established and that therefore its name is known and it has established trade connections and an established group of customers. The importance of this advantage is measured by the high price that is sometimes asked and paid for the mere use of a name or trade-mark. In fact, the price for which established good will is bought and sold may be regarded as a measure of the value of oligopoly power that is due to buyers' ignorance.

A new firm, of course, need not buy an established good will; it can always create a new one. A new name and a new reputation can be built up from scratch; but in the uninformed market this may take a major advertising campaign. In either case, therefore, a newcomer must pay for his good will. This payment represents a kind of entrance fee to the ignorant buyers' market; and the existence of this entrance fee protects the oligopoly profits of established firms.

Manufacturers are often aware of the fact that the security of their oligopoly position depends on and increases with the ignorance of their customers. At least they often pursue an advertising policy that seems deliberately aimed at impressing the consumer with his own ignorance. Hence the stress in some advertisements on the technical or chemical complexity of products. Hence the emphasis on the need for costly research and elaborate testing equipment for maintaining

high standards of quality. All such advertising carries the suggestion that the consumer, a mere layman, would be unwise to judge quality unaided, by mere inspection, and should rely instead on the guarantees offered by the reputation of established manufacturers. The same idea is expressed more succinctly in the advertisements that enjoin the consumer to buy only the products of reputable firms or to buy only nationally advertised goods.

To sum up the above argument, consumers' ignorance creates oligopoly power and oligopoly profits in three ways: it limits price and quality competition among established firms, it protects these firms from the potential competition of newcomers by setting a high entrance fee to their market, and it facilitates collusion by limiting the number of established firms. When one recalls that the decline of price competition and the increasing cost of good will are among the main trends in recent economic development, one realizes how important a source of oligopoly consumers' ignorance is. In fact, one may wonder why this factor has received so little attention in the past. One probable reason is that very little can be done about it. The consumer's ignorance is not something that he need be ashamed of. To a very large extent it is the inevitable result of our highly technical civilization. Another reason is that very often we think of the producer's profit not as the result of his exploiting the ignorance of his customers but as the well-earned remuneration of his expertness. For example, if I buy a painting in an art gallery, the price I pay is bound to be very much higher than the price received by the painter. Out of the difference come the gallery's profits; and as an economist I am trying to explain these profits. Should I regard them as the gallery's fee for having made an expert appraisal of the painting; or should I say that the gallery is exploiting my lack of artistic judgment, which prevents my going directly to the painter in Greenwich Village for fear of making a fool of myself and a financial blunder in addition?

The first explanation is undoubtedly more attractive; but there is one trouble with it. How do I know that the gallery has exercised expert judgment and has exercised it for my benefit? If I think so mainly because it has an imposing shop front and thick carpets, then the second explanation is likely to be more correct—and it certainly is the more honest one.

Advertising and Competition

(By Donald F. Turner, Assistant Attorney General, Before the Briefing Conference, Federal Controls of Advertising and Promotion, June 2, 1966, Washington, D.C.)

Although there are many aspects of advertising that deserve critical study, I should like to discuss briefly today the question of whether advertising and similar promotional effort is likely to enhance the growth of monopoly in our economy. As we all know, the protection and promotion of a competitive economy is one of our basic governmental policies, and one which we believe to be eminently sound. It is therefore quite appropriate to ask whether advertising hinders in any significant way the achievement of competitive goals; and, if it does hinder in one or more respects, what public corrective policies might be appropriate.

Let me begin with an obvious point. Advertising provides economic benefits to society, benefits which lie chiefly in providing highly useful information. In a complex and varied economy such as ours, new firms are constantly entering into production, new products are constantly being introduced, and old products improved. Some means are required therefore, to insure that potential customers are made aware of these new alternatives. Greater information, by widening market areas and bringing buyers into contact with sellers, increases competition. We all recognize that competition requires some degree of information regarding the alternatives which are available as among competing buyers and competing sellers, and thus more information is likely to promote and facilitate the functioning of a competitive market.

Nevertheless, while advertising provides gains to society in the form of expanded information about firms and products, we need to consider, also, the nature of the costs which exist and how these are likely to balance with potential gains. All economic activities involve some cost in that they are associated with the using up of resources. This applies as much to the production of advertising messages as to the production of automobiles. Whether in some industries

advertising costs are excessive in relation to what we get out of them is an important and difficult question. But my primary concern today is the relation of advertising to competition and monopoly power, and it is to this question that I now turn.

There is no doubt that advertising efforts comprise an important form of rivalry among firms. Whether what appears on the TV commercial is a pretty girl, soft music, or demonstration, the advertiser's message usually is that one product is better than another. At the same time on another channel, or on the same channel at another time, someone else is likely to be inviting listeners to "move up" to a competing product. This is competition of a kind. We should recognize, however, that this form of rivalry is likely to be considerably different in economic effect from those forms of competition which are concerned with the prices established in the market, and the possibility at least exists that the former may be at the expense of the latter.

Advertising outlays affect not only the rivalry which exists among established firms, but also they are likely to have an importnat influence on conditions affecting the entry of new firms into the marketplace. While consumers may not accept the view that one product is better than another simply because a pretty girl or a famous person says so, they at least are introduced to the names of specific firms and products, and this tends to distinguish established products from those produced by small firms and new ones. What has become important is not so much the context of an advertising message, but rather the mere fact that it has been advertised. Thus, we note the frequent description of a product as "advertised in Life."

This is not to say that the consumers are irrational—although they sometimes are—or that it does not make good sense to choose an established and well-known product over one which is unknown. In many cases, there is considerable uncertainty as to the relative merit of alternative products. When a consumer, therefore, decides to buy an established brand rather than a cheaper but unknown product, he may simply be doing his best to cope with the problem of uncertainty and to minimize the risks to him that the product will not do the job for which he is buying it. Because of this quite expectable behavior, a new entrant typically is likely to be compelled to sell at a price below that of established brands or else incur heavy selling costs in penetrating the market. This helps to explain the phenomenon of unbranded products which sell at prices substantially below those of heavily advertised products, even where there is little real difference between them.

To an extent, the increased barrier to entry created by advertising is a price we have to pay for providing consumers with information. But when heavy advertising and other promotional expenditures create durable preferences going beyond the relative superiority of the product, resistant to anything but major countervailing promotional campaigns, we may well question whether the price has not become too high. If heavy advertising expenditures thus serve to raise the barriers to entry, the adverse competitive consequences are important not only because new firms are kept out, but also because frequently it is the prospect of new entry which serves as a major competitive restraint upon the actions of existing firms.

Moreover, where the numbers of firms in an industry are few, this potentiality may be the most significant competitive factor that inhibits firms from setting high prices and achieving extensive monopoly rewards.

Traditional antitrust policy has repeatedly stressed the relationship between the conditions of entry and the existence of monopoly results. It is specifically on this basis that a number of business practices have been attacked as imposing unacceptable restraints on competition. We should hardly be unconcerned if heavy advertising outlays lead both to more concentrated market structures and to the establishment of high monopolistic prices, and it seems clear that they can and do.

A recent study of consumer goods industries found a significant correlation between the proportion of industry sales devoted to advertising and the average profit rates which were earned. Industries with high advertising outlays tended to earn profit rates which were about 50% higher than those which did not undertake a significant effort. Since, moreover, average profit rates in this study reached nearly 8% after taxes on stockholders' equity, it is likely that these additional gains represent monopoly rewards. They represent price levels which can be explained only on the basis of restrictions on competition.

Let me refer you to some more interesting statistics. We all know that the packaged soap industry tends to be highly concentrated. In 1958, for example, the largest four firms accounted for 74% of total industry shipments and the largest eight firms, 85%. This refers specifically to packaged soaps which are sold to consumers and tend to be heavily advertised. In the case of bulk soaps, however, the picture is quite different. The largest four firms accounted for only 30% of industry output, and the largest eight firms only 45%.[1] Bulk soaps tend to be sold to institutions or businesses and we should not expect to find them advertised as heavily because business customers are much better informed as to product quality and much less vulnerable to the kind of blandishments that seem to influence the average housewife.

In the case of detergents, the picture is similar. The largest four firms in packaged detergents account for 90% of output, while the largest four firms in bulk detergents accounts for only 47%.[2] While there may be many factors which are responsible for these differences, it is not unreasonable to suspect that the size of advertising outlays is an important one.

For heavy advertising expenditures may promote industrial concentration in a number of ways. In a competitive industry we normally expect to find firms entering and leaving the market during any given period of time. Although the exit of firms will continue, entry will be made more difficult as a result of the barriers created through extensive advertising. To the extent that consumers are unable to evaluate the relative merits of competing products, the established products may have a considerable advantage and it is this advantage that advertising messages tends to accentuate. High entry barriers interfere with the normal process through which increases in demand are met at least in part by new firms.

A further significant factor is the existence of economies of scale in advertising and other forms of promotion. To the extent that larger firms can provide more messages per dollar than their smaller rivals, they will have a strong competitive advantage, and this will be so even if smaller firms spend proportionately as much. Economies of this sort lead directly to the expansion of larger firms relative to their smaller rivals and thereby to more concentrated market structures. These advantages, moreover, may be held not only by firms which have a large share of specific markets, but also by those who deal on a nationwide basis in a number of related product areas.

It is in this respect that the quantity discounts given by television networks raise serious questions. While these discounts may in part represent real cost savings, I believe it highly doubtful that the savings should be passed along to purchasers of television time. If the discounts have the effect of accentuating the growth of larger firms and of promoting a tendency toward concentrated market structures throughout consumer goods industries, it may well be appropriate public policy to prohibit or at least drastically limit them, even if this means higher network profit margins for large purchasers than for small.

While I have been considering the general aspects of this problem, I should like to note briefly the competitive effects of advertising in a specific industrial situation, that of the prescription drug industry. As most of you probably know, this is an industry which earns very high rates of return, in many years approximately double the average profit rate in all manufacturing. In 1964, for example, the average rate of return after taxes for 12 major pharmaceutical firms came to nearly 19%.[3] Firms in this industry tend to spend large sums on advertising and other forms of selling and promotion. In Senate Committee hearings on the Drug Industry, the Committee found that major pharmaceutical firms spend on average nearly 25% of total sales revenues on selling, which is about four times the amount allocated to research.[4] It seems unlikely that these expenditures would be made if they did not play an important profit-making role; it is plausible that they have been a major factor, though of course not the only one, in the achievement of very high returns.

Even when small firms have developed a new product and the patent needed to protect it, they are likely to find it difficult to get doctors to use it. Doctors

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[1] Subcommittee on Antitrust and Monopoly, *Concentration Ratios in Manufacturing Industry*, 1958, p. 132.
[2] Ibid.
[3] Federal Trade Commission, *Report on Rates of Return for Identical Companies in Selected Manufacturing Industries*, 1955–1964.
[4] Subcommittee on Antitrust and Monopoly, *Report on Administered Prices in the Drug Industry*, 87th Cong., 1st Sess., 1961, p. 31.

are like the rest of us, and where there is a high degree of uncertainty about the relative merits of competing drugs, they tend to use the drug which is most familiar. And this frequently means those drugs which have been most heavily advertised and promoted. Doctors are swamped by the outlays of established firms—as Dr. Goddard recently described it, they are "under siege." Their prescribing patterns are undoubtedly affected. While this process may have many effects, an important one appears to be adverse effects on competition; high profits have not led to extensive entry and to competitive price reductions.

What are the most appropriate methods of dealing with such problems? There is some room for dealing with the adverse consequences of heavy advertising and other promotional expenditures within the confines of antitrust law. I have already suggested elsewhere that if it should be deemed appropriate to permit mergers of a particular kind to be defended on the ground that they promote substantial economies of scale, the defense should not extend to promotional economies.

I would also suggest that it would be quite appropriate to impose, for a period of time, an absolute or percentage limitation on promotional expenditures by a firm or firms that have obtained undue market power through violations of the Sherman Act. A classic purpose of a remedial decree in such cases is to dissipate the consequences of unlawful acts, and if limitations on promotional expenditures would help, they are appropriate even though the promotional expenditures as such were and are lawful.

There may be other corrective measures which can be developed under antitrust law, but as of now I believe the most effective remedies are along other lines. One avenue is an expansion of the law on false and misleading advertising. While this may make some contribution, however, regulation of this sort involves terribly difficult problems. Without necessarily subscribing entirely to his pessimism, I believe Professor Johnson has aptly described the difficulties:

> . . . The really difficult problem is the omission or concealment of relevant information, such as that thought it tastes good it will kill you several years before your time or that it makes no noise because it is designed to use considerably more electricity and wears out faster than rival models. Problems of this sort have become especially acute in modern times, in consequence of advancing medical knowledge and the increasing technical complexity of consumer goods, especially those containing machinery, which make it difficult for the consumer even to know what characteristics of a product are important to his welfare. But governmental control or censorship of advertising does not seem likely to be very effective in overcoming this type of deception, because the government cannot readily force advertisers to advertise the defects of their products, and forbidding one type of appeal may simply cause it to be replaced by another of an equally undesirable sort. In the United States, for example, the prohibition of cigarette advertising stressing cancer-risk-reducing qualities has simply led cigarette advertisers to adopt campaigns that insidiously encourage youngsters to smoke. Moreover, government intervention in advertising aimed at preventing misleading appeals ought in fairness to apply also to the alternative of personal selling, and this seems an impossible undertaking.[5]

As Professor Johnson and others have suggested, I believe the most promising approach is to introduce new sources of consumer information. It is the extent of uncertainty about the relative merits of competing products which contributes to the large effect of advertising, and this suggests that Government policies be directed toward neutral vehicles of information which tend to deal directly with the uncertainty. We all know that such consumer research organizations as Consumer Reports tend to promote informed consumer judgment, and we can reasonably surmise that reports of that kind, if generally circulated, would significantly limit the ability of advertising to enhance degrees of monopoly power, to say nothing of enabling consumers to spend their dollars more fruitfully. A similar service exists for physicians in the form of the *Medical Letter*, which is published by a group of physicians, and designed to supply technical information about the therapeutic value of new drugs. In both of these areas, a major difficulty is that these publications are produced by nonprofit organizations and that they frequently face difficulties in obtaining the funds required for adequate testing and evaluation. One prospective solution

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[5] Harry G. Johnson, The Canadian Quandary pp. 283–284.

would be governmental efforts in this direct, either direct government evaluation, or financial support for private organizations of this type. In the case of drugs, for example, there is much to be said for providing government funds to the organization which publishes the *Medical Letter* so that its publications may be supplied free to all doctors. In addition, the letter could be expanded to insure that doctors receive their first information about a new drug from this source rather than from the lips of a detail man.

Let me sum up. Advertising often plays a role analogous to that played by market concentration. We have taken a dim view of excessive concentration precisely because it leads to monopoly results, and this is a major element of the rationale which underlies the laws prohibiting anticompetitive mergers. Current policies which tend to emphasize the role played by concentration may well need to be supplemented by those concerned directly with the adverse influences of advertising and other promotional efforts on competition. We should begin to consider seriously how best we might promote and develop other methods of supplying information to consumers—methods which would give the consumer much better and more useful information than he now gets and at lower social cost; which would thus decrease the impact, profitability, and amount of private advertising expenditures; and which would consequently improve competition in many industries by lowering barriers to entry.

EXHIBIT 3

THE NEED FOR COUNTERADVERTISING

(Presented to the Federal Communications Commission by Beverly C. Moore, Jr.)

I

I am here to defend the proposition that the Fairness Doctrine should require "free" counter-advertising as a result of broadcast carriage of product commercials. I wish to focus primarily upon back-to-back responses to commercials which may not either explicitly or implicitly raise a "controversial issue of public importance," but which allegedly misrepresent, fail to substantiate, or omit material information of relevance to consumers seeking to judge the product's price, quality, benefits, uses, or potential hazards. I will discuss first, and at some length, the enormous harm to the economy and to the consuming public that is perpetrated by the continuing absence of such counter-advertising. Next I will discuss the impact of this proposal upon advertiser financing of the broadcast media. Finally, I will outline criteria to govern the content and standards of counter-commercials and the selection and financing of counter-advertisers.

Counter-advertising must be considered with reference to the fundamental assumptions which underpin and legitimize our free enterprise system, or what remains of it. The cardinal premise of that system is consumer sovereignty—the notion that the sole end of production is to satisfy the desires of consumers. These desires are evidenced by dollar votes for goods and services in the marketplace, where consumers theoretically apply cost-benefit principles to alternative product choices in order to obtain the most value for their money. Capitalist theory assumes that the consumer possesses all the relevant information about each of the competing product choices that confront him. To the extent that he must base his purchases upon less than full information, the consumer cannot maximize the utility of his purchasing power. When that happens, to the extent that the costs of supplying the consumer with the additional information do not outweigh its benefits, the economy is not serving the consumer, which is its reason for existence. When advertising induces a consumer to purchase a nationally advertised gasoline at a price 20 percent higher than an unbranded gasoline which serves his purpose equally well, the consequence will be a reduction in his real income equal to the price difference. That would be an example, not of consumer sovereignty, but of corporate sovereignty, a portion of the consumer's income being transferred, with no tangible benefit to him, to the producer, where it shows up in the form of excessive profits and/or inefficient or wasteful uses of scarce productive resources.

The question, then, is how the consumer is to obtain the relevant product information which will enable him to avoid such income losses. That is the role of advertising, capitalist economic theory tells us. However, it is not in the interest

of the advertiser to provide full and impartial product information to the consumer. As President Nixon's spokesman has told this Commission, the essence of advertising is to put forth only those facts which place the product in the best possible light.

This flaw in capitalist theory has grave consequences. For the producer, consumer ignorance of price and quality factors is a major source of oligopoly power. Because of this ignorance, consumers are forced to rely upon such factors as the size, age, reputation, and service capacity of the corporation, and to equate price with quality. Products are cast to appear unique, thereby limiting the size of the relevant market and the number of competing firms and encouraging collusion. Competition is directed away from price and quality factors and into heavy advertising expenditures which further entrench the brand image and raise high barriers to the entry of new competitors. Then sets in the oligopolistic syndrome of inflationary administered prices, excessive profits, internal inefficiency, planned obsolescence, sluggish innovation, subindustries devoted to repair of product defects, and the over-extension of consumer credit. These tendencies pervade the economy, feeding upon the social virtue of conspicuous consumption that advertising helps to create and sustain.

Advertisers, broadcasters, and the Administration point admiringly to this scenario as "our dynamic economy." But what of the welfare of the consumers who labor in that economy and whose sole interests it theoretically exists to serve? The question is not how well off are American consumers as compared with consumers in less technologically developed societies. The issue is how much more value for their dollars would American consumers receive if the relevant product information omitted by advertising were provided through counter advertising?

The extent to which advertising fails to diminish consumer ignorance can be roughly gauged by the results of two studies which correlated Consumers Union product quality ratings with the prices of the rated products. If consumers' marketplace decisions were adequately informed, one would expect to find a high positive relationship between price and quality, perhaps a correlation coefficient in the range of .80–.90 on a scale of 0.0 to 1.0. The actual results were median correlation coefficients of about .35. The positive price-quality correlations were statistically significant for only one fourth of the products tested. For another one fourth of the sample the cheaper brands were typically of higher quality than the more expensive ones. Professor Oxenfeldt's 1950 study estimated that the average consumer could have increased the value of his purchasing power by 50 percent by purchasing those brands yielding the most quality in relation to price, were the necessary information available to him. He concluded, and other evidence confirms this, the basic tenet of a free enterprise system—that consumers will direct production into channels that yield them maximum satisfaction—is hardly valid. Those who regard the potential benefits of free enterprise as exceeding those of other forms of economic organization would seem to be committed to provide a remedy for this deficiency.

Unless reversed through counter-advertising (and point-of-purchase consumer information), the trend toward corporate control over consumer choice, through the withholding of relevant purchasing information, will accelerate as the private planning mechanisms of the New Industrial State mature. This will happen because consumers, with relatively constant purchasing skills, will be faced with an increasing number of marketplace choices, an increasing complexity of each product, an increasingly limited time availabe for the consuming role, and an increasingly large proportion of their income available for the non-essential new products which tend to be the most heavily advertised.

The foregoing is not to be construed as an attack either upon advertising *per se*, which is a necessary and efficient means of communication between producers and consumers, or upon the consumption of material goods. It is not even necessary to agree that advertising creates needs or manipulates consumers to buy things they don't want. With or without counteradvertising, most consumers want many more material goods than their incomes permit them to purchase. The issue is therefore not whether, with counteradvertising, consumers will continue to spend their money in the marketplace. Rather, it is *which* goods will they purchase. Through counteradvertising's additional product information, consumers' expanded freedom of choice will enable them to make different product choices which will increase their total satisfaction. Indeed, by stretching the value of consumer dollars, counteradvertising information should lead to a substantial increase in aggregate consumption. Moreover, the increase in consumer knowl-

edge should create a more efficient economy by rooting out oligopoly power derived from consumer ignorance and by generating consumer demand for new products lacking the safety and environmental hazards or other defects that counteradvertisements identify in existing products.

Counteradvertising is therefore not only not inconsistent with a free enterprise economic system, it is absolutely necessary to make operative the theoretical model which justifies preferring a market economy to some alternative system. Those who oppose counteradvertising as a threat to the free enterprise system, and who defend one-sided advertising as necessary to generate demand for their products, are in effect subscribing to the system of chronically stagnant monopoly capitalism whose inevitability now forms a central thesis of the Marxist critique of capitalism.

II

Would the threat of "free" counter-advertising induce advertisers to flee broadcasting for the print media? Probably to some extent, but it seems highly unlikely that if the FCC required counter-advertising for broadcasting, the FTC would not extend counter-advertising to other media through a trade regulation rule. Broadcasters and the FCC could petition the FTC for such a rule. Then the question becomes whether substantial advertising revenues would be withdrawn from all media. The answer depends upon the nature of the advertisements in question. If they contain false or misleading statements, omit material information, or appeal to sex, status, or other emotions, and if pointing these aspects out to consumers through counter-advertisements persuades consumers not to purchase the advertised products, so that sales decrease rather than increase, then these types of advertisements will no doubt leave the air. That is precisely the objective. The deterrent of counter-advertising would fundamentally reshape the content of commercial advertising, as advertisers would be forced to provide the most relevant product information in order to avoid being tested in the marketplace of ideas by counter-advertisers. It is because of this deterrent effect that I suggest that only perhaps 10 percent of total advertising time, rather than 50 percent, need be set aside for free counter-advertising of the specific variety that I have been discussing.

Counter-advertising will only deter certain types of product claims, not the advertisement of the same products through the provision of more relevant consumer purchasing information. It may be that, in the context of the additional information supplied by counter-advertising, there might not be much of value for advertisers to say about many of the products that are now heavily advertised on the broadcast media. But to allow these products to continue to be advertised in a one-sided fashion is to continue the drain on consumer welfare that I have already discussed. And to suggest that driving these products from the commercial airwaves through counter-advertising will in the long run substantially diminish broadcast advertising revenues is to suggest that American industry is incapable of producing products which consumers will purchase on the basis of advertising that supplies them with the most relevant information.

In any event, the validity of the argument that "free" counter-advertising would reduce broadcast profits is highly questionable.

The spots presently allocated to public service announcements should be allocated entirely to counter-advertising. The debate should then focus upon whether creating additional "free" time for public service announcements would unduly detract from broadcast revenues, whether the content of such messages should be determined by the Advertising Council, and whether public service material might better be integrated into programming. According to data cited by Professor Levin in the panel discussion last Tuesday, the time reserved for free public service announcements translated into nine percent of broadcast revenues in 1958. To the extent that additional free time is needed for counter-advertising, additional spots could be extracted from existing programming. Enforcement of the NAB Code restrictions against increasing the proportion of advertising time would violate Section 1 of the Sherman Act. Even if counter-advertising did supplant some commercial time, requiring an increase in advertising rates in order to support broadcast profits at existing levels, relative inelasticity of demand would indicate that all commercial time remaining could be sold at higher rates.

What the broadcasters' argument boils down to is not that counter-advertising would reduce their advertising revenues to a point at which present program-

ming, including news and public affairs, could not be continued. Their argument is that their profits would be reduced. And that argument is outrageous. In 1969 the networks and their owned stations reaped a 127 percent return, before taxes, on the net tangible value of their broadcast assets. Their total profits exceeded the average return on investment in manufacturing by $375 million. Broadcast profits *should* be reduced, whether by counter-advertising or otherwise. Of course, the FCC's frequency allocation scheme ensures these monopoly profits by blocking the entry of pay and cable television and by allocating a few VHF channels to each locality rather than seven VHF channels to each region, thus rendering it economically unfeasible for there to be more than three national networks and, according to Brookings Institution economists, depriving television viewers of $8 billion worth of additional programming annually.

Finally, so what if counter-advertising did weaken the quality of advertiser-support broadcasting? Are consumers to continue to suffer the enormous adverse consequences of one-sided advertising in order to ensure the survival of a medium which cannot be supported by revenues from balanced advertising? What doctrine authorizes the FCC to guarantee the market for broadcasting against competition from pay TV anyway? Certainly not the "public interest," since pay TV is substantially more efficient than advertiser supported television in providing the greatest number of viewers with the programs they desire, and doing so at a lower cost.

III

With respect to the mechanics of counter-advertising, I should like first to discuss its financing. It would be somewhat self-defeating of the objective of deterrence if *all* advertisers, including those whose ads provoked no response from counter-advertisers, were forced to pay higher rates in order to provide free time for counter-advertisers. Through the institution of a simple rebate mechanism, those advertisers whose commercials are selected for reply by counter-advertisers should ultimately bear the cost of counter-advertising time. Likewise, these targeted advertisers should jointly bear the cost of counter-advertisement production cost fund initially accumulated through what would be in effect a user tax on broadcast advertising revenues. The fund would disburse to all counter-advertisers an equal and modest sum, proportionate to the amount of time allocated to each, to cover production costs. This would serve as an incentive for counter-advertising groups to keep their costs down.

I have suggested that 10 percent of advertising time be set aside for free counter-commercials of the type that I have been discussing. An additional 5–10 percent should be set aside for other types of free counter-advertising, including those dealing with "controversial issues of public importance." As long as there are sufficient applicants, networks and station licensees would be compelled to disburse all of the time allotted to free counter-advertising. Advertisers would have to make their storyboards and schedules public 60–90 days prior to airing. Once a counter-advertiser has been selected, his counter-ad would automatically be aired back-to-back with the commercial that he alone has selected to reply to. He must make his intentions known 30 days in advance of the air date, during which time the licensee, the advertiser, or some other counter-advertiser could object to the counter-ad on the grounds that it is frivolous, false and misleading, inferior to counter-ads submitted by other parties, not relevant to the product or class of products whose commercial is being responded to, or fails to meet other standards that would apply to all counter-ads. The burden of proof would be upon the objectors, however, and upon the basis of their objections being sustained by the licensee the Commission would say the airing of both the commercial and the counter-commercial, but not one of them alone, for 30 more days pending its own decision. Recoverable attorneys fees and costs would be awarded to the prevailing party as a deterrent to frivolousness.

There is no reason to grant the licensee discretion to veto a counter-advertisement because the licensee has no expertise in matters of consumer economics. Nor is there any reason to suspect that counter-advertisers would be any less "responsible" than advertisers when given complete discretion to frame the contents of their messages, limited only by generally applicable criteria. After-the-fact sanctions can be imposed if the counter-commercial is ultimately found to be deceptive or misleading. These could take the form of free corrective advertising by the original advertiser, who would preempt time allocated to counter-advertising, civil damage suits, and revocation of the particular counter-advertisers' right to respond to any future ads after having been found to have made a certain number of false or misleading statements in previous counter-ads.

Nor is it advisable for advertisers to be allocated free time to respond to counter-advertisements, unless they are adjudged false and misleading. Such responses could be included in the advertiser's future paid ads, at which point the dialogue could continue through a counter-ad to the future paid ad. To suggest otherwise is to suggest that the advertiser has an inherent right to the last word.

Finally, there is the counter-advertiser selection process. All counter-advertisers would have to be precertified by the Commission. To be certified, certain criteria would have to be met. For example, the person or organization would have to be engaged in public interest or consumer research and other activities for a certain period of time prior to the application for certification, with an intention to remain in the field permanently. No certified group could have any connection, financial or otherwise, with any advertising corporation or any business entity. The time allotted for counter-advertising would then be rationed equally among the certified counter-advertisers. Actually, the FTC would be the best-suited agency for the job.

EXHIBIT 4

THE PURDUE BARGAINING STUDY—IMPLICATIONS FOR THE DAIRY INDUSTRY IN THE 1970'S

(Ronald D. Knutson, Purdue University)

One can admire the progress which regional dairy bargaining organizations have made in the 1960's. Yet the study indicates that cooperative bargaining costs can be substantial relative to the benefits. In certain cases while Class I premiums negotiated were as much as 50 cents per cwt., farmers received only a few cents per cwt. in premiums over federal order blend prices. One might excuse a low return to producers during the early stages of the cooperative's operation with the expectation of improvements over time. Yet, during 1968 the proportion of premiums returned to producers did not increase, but actually declined. Cooperatives, and particularly large cooperatives, must watch their expenditures and organizational structure so as not to become tangled in a complex cooperative bureaucracy with overlapping management, procurement, allocation, and processing functions. Some merged cooperative organizations have made considerable progress in guarding against and eliminating such inefficiencies. While I realize that these adjustments take time, they must be made—even though they are painful. For an efficient cooperative is one of your most important sources of bargaining power. . . .

REPORT TO M.I.F. ON PROPORTION OF PREMIUM RETURNED TO PRODUCERS IN SELECTED MARKETS

(By Ronald D. Knutson, Assistant Professor, Purdue University)

The data in this report were obtained from issues of the *Fluid Milk and Cream Report* and *Federal Order Statistics*. Data from both of these sources were checked for reliability. The data cover 7 Associated Dairymen markets and 6 Great Lakes Federation markets. Associated Dairymen markets included Dallas, Des Moines, Kansas City, Memphis, Minneapolis-St. Paul, St. Louis, and San Antonio. Great Lakes markets included Cleveland, Columbus, Detroit, Louisville, Toledo, and Upstate Michigan. The period covered by the data is 1968 with 1960 used as a reference point in some cases.

The problem of determining where the premiums collected by cooperatives are being used is difficult to analyze. Specific data are considerd confidential information by cooperatives. In most cases cooperatives place all milk receipts in a pool. Where this pool includes more than one cooperative—a superpool—market costs such as promotion programs or A.D.A. contributions are taken out of the pool. Where a single cooperative is involved in the pool and where the cooperative covers more than a single market, many additional costs of operating the cooperative may be taken out. Frequently this does not include the costs of operating the cooperative at the local level. The local cost may be taken out of the patrons' checks as a checkoff.

One needs to realize that since 1965 cooperatives, in addition to becoming more active in negotiating premiums, have become involved in many other activi-

ties which have become fairly costly to the cooperative. Cost of intermarket milk transfers, standby pool payments, milk promotion programs, obsolete plant write-offs, as well as management and personnel costs have all been a part of these increased costs.

Table 1 summarized the data for the Associated Dairymen and Great Lakes markets. It indicates that while the Associated Dairymen markets received an average Class I premium of 38 cents during 1968, the average superpool blend premium or the difference between the superpool blend price as reported by the cooperative and the federal order blend price was only 12 cents. This premium would be expected to be lower than 38 cents because the premium is only paid on Class I milk. That is, if Class I utilization was 70 per cent and the premium was 38 cents, one would expect the blend premium to be 21 cents. During 1968 local cooperative or division costs absorbed all of the superpool blend premiums. This left the producer with an average net price which was equal to the federal order blend. It should, however, be realized that the producer receiving the federal order blend price was better off than in 1960 where he generally received a net price which was less—6 cents in May and 10 cents in October—than the federal order blend price.

Great Lakes Federation markets have a better record at returning premiums to producers in the form of cash than Associated Dairymen markets. The average Class I premiums for six Great Lakes markets was 45 cents during 1968. The superpool blend premiums was 23 cents. The producer actually received an average of 14 cents over the federal order blend price. This would be about 24 cents above the price which these cooperatives could pay if there were no premiums in the markets. That is, prior to premiums they paid producers about 10 cents below the federal order blend price.

It is important to note that there is significant variation among cooperatives in the proportion of premiums returned to producers in the form of higher milk prices. This variation is in large part a function of the activities and extra expenditures which these cooperatives have committed themselves to during recent years. It may also be a function of the efficiency with which particular cooperatives have utilized premium funds.

TABLE 1.—AVERAGE SUPERPOOL AND FEDERAL ORDER PRICE AND PREMIUMS PER HUNDREDWFIGHT FOR 7 ASSOCIATED DAIRYMEN AND 6 GREAT LAKES FEDERATION MARKETS, MAY AND OCTOBER 1960, MAY AND OCTOBER 1968, AND 1968.

[In dollars per hundredweight]

Markets by federated cooperative and year	Average class I superpool price	Average class I Federal order price	Average class I superpool premium	Average superpool blend	Average Federal order blend	Average superpool blend premium	Average producer net price	Average superpool producer premiums
Associated dairymen:								
May 1960	$4.52	$4.50	$0.02	$4.02	$4.01	$0.01	$3.95	$—0.06
October 1960	4.93	4.91	.02	4.67	4.66	.01	4.56	—.10
May 1968	6.27	5.88	.39	5.42	5.31	.11	5.30	—.01
October 1968	6.32	5.95	.37	5.89	5.80	.09	5.76	—.04
1968	6.38	6.00	.38	5.57	5.45	.12	5.45	—.00
Great Lakes federation:								
May 1960	4.43	4.19	.24	3.82	3.62	.20	3.73	.11
October 1960	4.90	4.80	.10	4.70	4.64	.06	4.61	—.03
May 1968	6.27	5.88	.39	5.37	5.17	.20	5.29	.12
October 1968	6.32	5.95	.37	5.90	5.71	.19	5.81	.10
1968	6.28	5.33	.45	5.60	5.37	.23	5.51	.14

Effect Upon Producer Prices and Returns

An analysis of what effects bargaining groups are having upon producer prices and returns is of considerable interest to producers, cooperatives, and handlers of milk. Producers and their cooperatives are concerned because they are interested in the size of the return they are receiving for the dollars they spend in bargaining. Handlers are interested because every price increase must be passed on to consumers which in turn, affects the demand for their products.

As time passes more information becomes available on the costs and returns from bargaining. Yet, the effects of bargaining on prices are difficult to sort out from the effects of decreased milk production on milk prices.

To fully analyze bargaining effects, it is necessary to look at price effects all the way from the Class I price to the actual blend price received by producers for milk. These prices must, in addition, be considered relative to some base period. In my study, I chose 1960 as the base period. For purposes of this discussion, I have chosen to compare October 1960 prices with prices in October 1968. Complete data on prices were available for seven Associated Dairymen and six Great Lakes markets. The data were obtained from issues of the *Federal Order Statistics* and *Fluid Milk and Cream Report*. Data from both of these sources were checked for reliability.

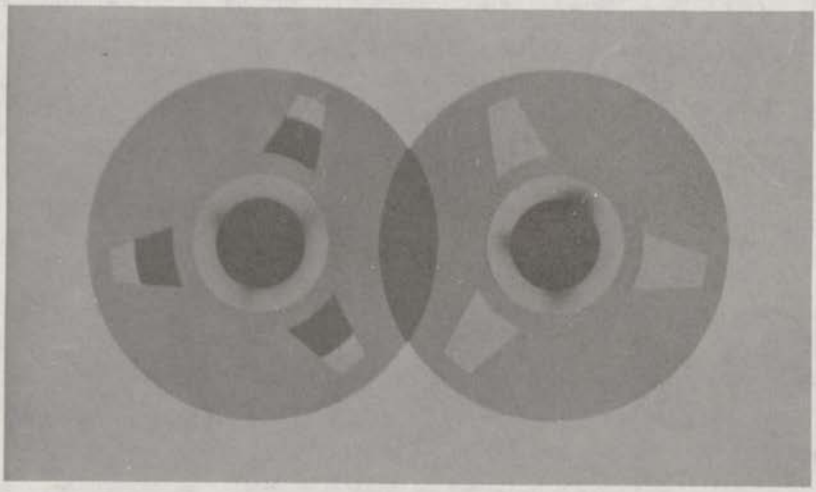
Class I prices and premiums increased substantially from October 1960 to October 1968. In October 1968 the average federal order Class I price was $6.05 per cwt. In 1960 it was $4.85. The average Class I premium was only 6 cents per cwt. in 1960 but in 1968 it had increased six-fold to $.36 per cwt.

In terms of blend prices, the federal order blend in October 1968 was $5.76. This was an increase from $4.66 in 1960. In 1968 the $.36 Class I premium resulted in a producer price which was 4 cents over the federal order blend price. In 1960 the producer blend price was 7 cents under the federal order blend price. Thus as a result of an increase in average premiums from 6 cents in 1960 to $.36 in 1968 producers in 13 markets received a price which was 11 cents higher than the price producers would have received without premiums.

Using the per cent Class utilization in the 13 markets one would have expected the 1968 producer blend price to be nearly 28 cents higher than the 1960 producer blend price if cooperative marketing and bargaining costs were the same in 1968 as in 1960. The difference between 11 and 28 cents represents an increase in cooperative costs associated with the bargaining activities of these multimarket cooperatives and inflation which has occurred during the period. Higher costs have been incurred by cooperatives because of financial support for the standby pool; increased transportation of milk; writing off unneeded plant capacity; exercising legislative, executive, and administrative influence; expanded promotion programs as well as in certain cases the hiring of new management personnel. Some handlers may and do consider such expenditures a waste of money. Producers view these expenditures as an investment in bargaining power necessary to raise producer returns.

EXHIBIT NO. 6

the facts of sami



the facts of sami

Having grown quickly to a position of importance in today's grocery store product marketing, SAMI finds a continuing opportunity to answer interested marketing executives' questions about our services and procedures. The ones most frequently asked are set down in the following:

1 What business is SAMI in?

SAMI is in the business of reporting warehouse withdrawals to food stores in defined marketing areas.

2 Where does the name SAMI come from?

SAMI (pronounced Sammy) stands for Selling Areas-Marketing, Inc.

3 Who owns SAMI?

Time Incorporated—100%.

4 When and how did SAMI start?

Incorporated in January 1966, SAMI spent the two prior years in test in Grand Rapids. During this test, many approaches were tried, i.e., closing inventory, designation of warehouses, percent share based on unit movement, out-of-stock, weekly movement,

etc. Through this, SAMI arrived at its current format which, with minor changes, has proved effective.

5 Working with hundreds of warehouses with different E.D.P. systems and different methods of reporting must have presented problems. How did you determine that you could handle these problems?

TIME INC. has one of the largest commercial E.D.P. facilities in the U. S. at 541 North Fairbanks Court, Chicago, Illinois 60611. This facility handles the circulation requirements for TIME, LIFE, SPORTS ILLUSTRATED and FORTUNE Magazines—also the Book Division, one of the largest book publishers in the U. S.

The E.D.P. experts decided that it was feasible to adapt to the many food operator systems.

6 Who are the food operators who supply SAMI with their warehouse withdrawals?

We clearly identify each operator in each market. Chains, wholesalers, H&BA rack operators, and frozen food warehousemen are included, and their movement figures include the volume retailed by chain supermarkets, "mom and pops", independent supermarkets, food discounters—virtually every type of retail grocery store.

A listing of current participating food operators in each market is available.

7 What information appears in the SAMI reports?

Basically, SAMI reports the movement of all dry grocery and household supplies, frozen food, Health and Beauty Aids and certain warehoused refrigerated items. This means that fresh meat, perishables and store delivered items such as milk, bread, soft drinks, etc. do not appear in the SAMI reports.

This information is broken into 69 product groups and about 400 categories. Product groups refer to broad classifications such as "Soaps and Deter-

gents", or "Baby Foods". Categories refer to the subdivisions of these product groups. For example: "Baby Foods" is broken into the following categories: strained, junior, cereal, juice, formula, and miscellaneous baby food.

8 How many markets are now available?

At present, there are 27 major markets available which add up to 65% of national food sales.

9 Do you plan to add other markets?

Yes, although the final decision on which markets and when has not been made as yet. Generally, we will be guided by the interests of our clients in the further selection of markets.

10 What degree of coverage do you have in these markets?

It varies according to market but food operators reporting to SAMI average about 85% of all commodity food volume.

11 What is the duration of the reporting periods?

28 days. Thirteen reports per year.

12 How fast can you deliver the reports?

Reports are mailed from Chicago within three weeks after the end of each reporting period.

13 Generally speaking, what are your current procedures?

When a food distributor signs a contract, he sends his order book to SAMI, Chicago. In this order book are all items that are stocked in his warehouse. Each item has its own code number and product description—normally, a series of abbreviations. These code numbers are then converted to a spe-

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cial SAMI twelve digit code. The coding process is a continuous one since any given warehouse averages about 300 "new items" per month. Since food operators may change their code numbers without notifying us, we insist that all food operator code numbers be accompanied by a product description.

At the end of each four-week period, a service bureau picks up the movement figures from the given distributor whether it be on cards, tapes or disk packs, and puts the information on magnetic tape in a SAMI format. These tapes are then sent to SAMI where they are combined with the master code tapes and processed.

An elaborate system of controls has been instituted to *insure* accuracy in reporting. Limits of change in volume and price have been established in the computer programs. For example: If an item's volume goes from 1,000 cases to 2,000 cases in one four-week period, the computer automatically kicks this item out and the food operator or operators involved are asked to verify their figures. These limits of change are known as "parameters".

14 Are you planning to improve upon these procedures?

The improvement of these procedures is a continuous operation. Within months SAMI will convert its entire system to a more up-to-date, flexible method. For example, we will shortly have in storage 29 four-week periods of accumulated data as against the current 14 weeks.

As of September 4, 1970, all SAMI markets have had a common closing date for each period. Previously, the markets were divided into four weekly cycles, each with a different closing date.

15 How do you define a market?

SAMI markets are based on ARB's (American Research Bureau's) exclusive county 50% and over "television marketing area definition".

16 Are there any exceptions to this?

Yes, there are a few periphery counties that have been added or deleted to dovetail with warehousing distribution patterns.

For example: Kenosha county is equidistant from Milwaukee and Chicago. From the standpoint of TV coverage, it could be assigned to either market. However, the stores in Kenosha county are warehoused from Milwaukee, and thus Kenosha county is part of the Milwaukee market.

17 What do you do when a warehouse ships to stores outside your defined area?

Withdrawals to retail stores outside the SAMI marketing area are deleted (filtered) by store so that such volume is not included in our figures.

18 How is this filtering done?

The usual procedure requires that the food operators identify each of their stores with a flag indicating whether the store is in or outside of the SAMI defined market. As they process their inventory control field daily, this flag is checked and if the store is a SAMI store, the movement is maintained in a separate SAMI field. Then, at the conclusion of a four-week period, the participant has, in a special field, the entire movement by item to all of the stores that are in the SAMI defined market.

Another approach can be used with food operators who have tape systems. SAMI simply obtains a copy of their daily billing tape and sorts this file and eliminates stores that are outside of the defined market. The information is then summarized and, again, at the conclusion of a four-week period, SAMI has only the movement that should be applied to their reports.

The last approach is, at best, a temporary means of providing defined market data. A number of food operators have switched from this approach to approach #1. This last approach is costly and time consuming and requires the handling of large

amounts of cards. Basically, SAMI obtains from the given food operator their source of order document which is normally a mark sense or key punch card. This document contains store identification and SAMI then eliminates stores that are outside the defined area and matches the order card to a changing page and line number master file. With this approach, SAMI is able to obtain correct movement figures as well as the non-changing information such as description, size and pack. This approach has only one drawback in relationship to accuracy, in that adjustments that are made on the last day of a four-week cycle may not be reported until the following period.

19 May a manufacturer obtain the figures of an individual food operator?

Under no circumstances can an individual food operator's figures be disclosed to a manufacturer or other food operator.

A prime reason that nearly every major food operator is supplying SAMI with their figures is our assurance that this rule will never be violated.

SAMI, at its inception, put into effect certain rules to prevent such disclosure. For example, private label figures are not shown if there are not at least three food operators with private label brands in the category. If two private labels were totaled, one food operator would determine who the other private label brand belonged to, subtract his figure from the total, and thus, determine his competitor's private label movement.

20 How do you determine dollar volume?

The dollar volume figures shown in the manufacturers' reports are based on the retail prices printed in the reports.

Retail price is multiplied by case volume and case pack to obtain retail dollar volume per item.

21 How do you determine retail price?

Basically, there are two methods:

1. The first method is known as "extended retail" price.

   During each day's billing operation, the food operator accumulates extended retail price by simply multiplying the price that is in existence that day by the quantity shipped to SAMI stores. SAMI simply divides the cases into retail dollars to come up with the retail price for that food operator.

2. For the second method, the price that is in existence on the fourth Friday of each period is obtained from the individual food operators. A number of food operators will have different prices for a given item. When this condition occurs, SAMI determines the weighted average price.

The average shelf price that appears in a manufacturer's report is a weighted average retail price computed as follows: each individual food operator's movement is extended; i.e., food operator "A" sold 3,000 cases at $5.70 which equals $17,100; food operator "B" sold 1,000 cases at $5.00 per case which equals $5,000; and "C" sold 100 cases at $6.25 per case which equals $625. Total cases in the market is 4,100. Total retail dollars of $22,725 is divided by 4,100 giving an average retail price per case of $5.54 and an average retail price per item of 23 cents.

22 How did you get the food operators to give you their figures?

It was determined early in the test that money alone would not motivate many food operators to give us their figures. Thus, it became necessary to give the food operators information which would help them to improve their business.

23 What information do you give to the food operators?

Each participating food operator receives every four weeks a large book showing the total movement in a given market of every item in some 400

categories. Next to this information is listed the movement of each item handled by the specific food operator and his share of the total movement of each item.

SAMI also prepares special exception reports for each of its food operators.

One type of exception report is known as the "zero" report. This shows the individual food operator the movement of all items handled by at least three or 30% of his competitors which he does not stock. (The "zero" refers to his share of a given item, which means he is not handling the item.)

Another type of exception report is known as the "100" report. In this case, if a food operator has 20% of the all commodity volume in a market, SAMI shows him all items where he has 60% or more of the movement, or three times his share of all commodity volume. This goes up to 100% which means that he has all the movement of a given item. The minimum share shown for a given item is 30%.

SAMI also prepares private label reports for each food operator. This shows him his share of private label in each category.

24 How is this information used?

The most common use is by the buyers to determine which items they should or should not be handling. They can quickly determine which brand, size, flavor, etc., has a consumer demand in their market. Conversely, they can quickly see the many items they handle which have little or no consumer demand, and thus, should be dropped.

Beyond this, the new products committees can determine which items should be dropped when new items are added. The merchandising committees can determine whether or not they should have a private label entry in specific categories. They can also determine whether or not they receive their fair share of the deal merchandise offered by manufacturers. Some food operators use tne SAMI reports to make decisions as to which items to advertise as weekend specials.

By comparing the movement of various categories, the food operators can allocate shelf space more efficiently.

The only limit to the uses of the SAMI books is the ingenuity of the food operators and manufacturers involved.

25 Do you give the food operators any money?

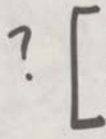
Yes. 25% of SAMI's gross revenue is distributed to the food operators on a pro rata basis.

For example: If manufacturers purchase $100,000 of SAMI reports in a given market, the food operators receive $25,000. The food operator's share of the dollar volume of the SAMI universe determines his share of the $25,000.

26 What are the basic differences between a manufacturer's and a food operator's report?

Product description, size, case pack, case movement (4 weeks and 52 weeks), dollar share of category by item (4 weeks and 52 weeks), number of food operators handling and the dates when items were new or discontinued are the same for both reports.

However, as previously mentioned, the food operator sees his own movement figures and the manufacturer does not.



On the other hand, the manufacturer sees a retail price and retail dollar volume which the food operator does not.

Furthermore, the manufacturer sees 4-week and 52-week dollar share of brand figures which the food operator does not.

27 Why is a share of brand figure important in a manufacturer's report?

For multi-item brands, the manufacturer can quickly spot the importance of flavor, types and sizes within his and competitive brands.

Perhaps, even more important, he can quickly determine the importance of off-label deals to him and his competition on a 4-week and 52-week basis.

28 What about the measuring of consumer promotions?

SAMI specifically designates all consumer deal promotions; i.e., 5¢ off, 7¢ off, with dishrag, etc.

Thus, the manufacturer can determine what plus business, if any, he received from a consumer promotion, how it affected his competition, and how it affected the total market.

Never before has this information been continuously available in complete detail on a market-by-market basis.

29 What about measuring trade promotions?

SAMI cannot give you the specifics on trade promotions since this information is not entered into the inventory control systems of the food operators.

However, SAMI can show you the results of trade promotions. Usually a sharp increase in volume not accompanied by a consumer promotion reflects a trade promotion. Furthermore, if any of the trade discount is passed along to the consumer, this will be reflected in the SAMI average retail price.

30 What about the use of SAMI as a marketing tool?

Marketing problems must be acted upon on a market-by-market basis. Consumers and customers vary widely from market to market.

We have mentioned previously the measurement of local promotions, a vital concern to the marketing man. If he could promote with 5¢ off rather than 8¢ off or not promote at all, he could save large sums of money. To make such a decision, he must have the detailed information on a market-by-market basis that only SAMI can give him.

Different copy approaches or media levels must also be measured on a market-by-market basis.

The consumer acceptance of new competitive products must be determined, and again SAMI can do this quickly, automatically and inexpensively.

The uses of SAMI as a marketing tool are myriad and vary according to the business you are in.

31 **Is there any way to summarize or condense these figures for management use?**

For multi-market purchases, two types of summary reports are supplied.

One is the Brand Share Trend summary report covering the total SAMI universe of about 65% of national food sales. Total brand shares for 13 periods, or one year, are trended across the page followed by "current period one year ago" and "year to date" brand shares. By early 1971 the Brand Share Trend report will project the U.S. total volume and trend rather than the actual figures within the SAMI universe.

The other is the Market Brand Share summary report. In this report, the markets are listed across the top, and the brand shares for all brands in the category are listed for each market. Current 4 weeks, previous 4 weeks, year ago 4 weeks and 52 week shares for each brand are shown.

32 **What happens if a manufacturer wants his share figures based on units, pounds, ounces, etc.?**

This is readily available in the desired unit of measurement.

33 **Are there other types of special reports available to manufacturers?**

Yes. The most commonly used special report is the SAMI Basic Trend report (S.B.T.) which trends data

over 14 four-week periods on a market-by-market basis. Dollar volume, dollar share, equivalent volume, equivalent share and many other capabilities are available.

Multi-market SBT's combining groups of markets or all markets are also in common use. All market SBT's projected nationally are also available.

Ranking reports, reports covering newly defined universes, single brand trends and several other special formats are in common use.

34 **Are national projections or estimates available?**

Yes. For purchasers of markets adding to 45% or more of national food sales in a given category, national projection charts are supplied free of charge.

These charts are prepared by computer and show the total category trend over 14 four-week periods. (13 four-week periods equal one year plus 1 four-week period to show the year ago comparison.) These charts also include bar graphs for up to eight individual brands. The selection of brands to be portrayed is at the discretion of the manufacturer.

35 **What about the use of SAMI by a sales force?**

The fact that the food operator buyer has the same basic information as the salesman armed with a SAMI report has changed the basic confrontation of salesman and buyer. The buyer will believe what the salesman points out in the SAMI report.

There are many ways that this information can be used by a salesman:

A) To close brand distribution gaps by providing the importance of his brand in his customer's marketing area. The SAMI figures show how great the volume and share is without the customer's support —obviously, it will be greater when he also carries the brand.

B) To close item distribution gaps—sizes, flavors, etc., using the same reasoning as above. SAMI figures enable the salesman to compare each item in his line with each competitive item, and to point out the competitive comparisons which most strongly prove his customer's need to take on a specific item in order to maximize his sales in the product area.

C) To increase shelf facings or encourage more favorable shelf positioning. If the salesman's brand is doing as well as or better than another which receives preferential on-shelf treatment, he has all the arguments necessary to improve his shelf placement.

D) To demonstrate expert knowledge about a product group with the aim of reorganizing a client's stocking and shelf arrangement plan for the category. SAMI shows consumer demand and each of the salesman's customers intends his layout and merchandising to reflect consumer preferences.

E) To prove the effectiveness of his consumer deals. SAMI will document rate of sell-through, and amount of increase.

F) To show the effect of new sizes and flavors on the brand's franchise and on the total market, and its profitability.

G) To disprove competitive claims based on less specific, local and up-to-date data.

H) To keep on top of competitive consumer deals, new items, case allowances, distribution, etc.

I) To see local size, flavor, price preferences and to dispel incorrect assumptions about them.

J) To keep tabs on private label in a category and to point out, where applicable, a chain's overemphasis on same.

K) To determine the relative effectiveness of alternative deals or promotional expenditure for a brand.

L) To spot competitive weaknesses and capitalize on them. Also SAMI will show competitive strengths by size, flavor, etc., and thereby suggest new possibilities for a brand.

M) To demonstrate the effectiveness of advertising campaigns, co-op allowances, etc.

N) To prepare a factual new product introduction sheet. SAMI will even show a customer what items he should drop to take on new ones.

O) To see and sell against seasonal trends in the market; in general, to keep up to date with the local, competitive situation.

P) To cut down unproductive time in buyer appointments. No need to "prove" the accuracy or applicability of data.

Q) To be alerted to items which may be dropped. Planning may enable the salesman to develop meaningful reasons for continued stocking. In other cases, it will make sense to initiate such discontinuation so that he can hope to influence the new use of the vacated shelf space.

R) To encourage his customer to think in terms of units, cases, dollars, sizes, flavors, etc., whichever illustrates his brand's performance most favorably.

S) To gain the confidence of his customer by citing fresh local statistics and by using data the customer also receives and upon which he relies.

In case after case, a sales force has paid for their SAMI reports with increased distribution in a matter of months.

36 How is SAMI priced?

A manufacturer may purchase any or all markets in categories where they have an entry. The contract may be a continuous one with a six month requirement for notice of cancellation or it may be for one full year.

The categories are broken down into five classifications—the least expensive being one-fifth as expensive as the most expensive category.

Manufacturers with 5% or less share of a given category in a specific market will pay one-half the price of a manufacturer with over 5% share of the

category. 52-week share figures are used in this determination.

The cost of an individual market is based on its share of national food sales. Thus, New York with 10.46% of national food sales is nearly 10 times as expensive as Buffalo with 1.06% of national food sales.

The more markets a manufacturer purchases in a given category, the less expensive it is per market up to a certain level.

FOOD PRICE INVESTIGATION

THURSDAY, JULY 19, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, Jr. [chairman] presiding.

Present: Representatives Rodino, Flowers, Jordan, Mezvinsky, Hutchinson, McClory, Sandman, and Dennis.

Also present: James F. Falco, counsel; Jared B. Stamell, assistant counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The committee will come to order.

Our first witness this morning is Willard F. Mueller, Vilas research professor at the University of Wisconsin.

Professor Mueller, we are delighted to have you appear this morning and appreciate that it has been a considerable effort on your part to appear here. We know of your expertise and your interest, and your concern in this subject, and we welcome you this morning. You may proceed. I know, Mr. Mueller, that you have a prepared statement which is a rather lengthy one, and I would insert it in the record in its entirety. However, in accordance with our understanding you may summarize, and then go on from there.

TESTIMONY OF WILLARD F. MUELLER, VILAS RESEARCH PROFESSOR, THE UNIVERSITY OF WISCONSIN

Mr. MUELLER. Thank you, Mr. Chairman.

I will go over about the first eight pages of my statement, and on page 8, I list a number of specific recommendations. But I shall merely list them in my oral testimony and be responsive to any questions that you may raise with respect to them following my oral statement.

It is a pleasure to appear before you to testify concerning certain aspects of competition in the food manufacturing and distribution industries. I have conducted research and been concerned with public policy in this area for over 15 years. Today, however, I shall restrict my prepared statement to only a few of the many important developments occurring in these industries. I shall first discuss some recent structural changes in food manufacturing and distribution and then make several legislative recommendations.

The food manufacturing industries comprise a number of separate industries, each with a more or less unique demand for its product. A common characteristic of these industries is that they process raw agricultural products and sell through the same distribution system.

Nonetheless, they operate across a broad range of the competitive spectrum. Meat packing is at one end of the spectrum, and the breakfast cereal industry at the other.

Moreover, there are divergent trends in the level of concentration in the food and related industries. Table 1 shows weighted and unweighted four-firm concentration in the 31 industries for which concentration data are available for the 23-year period 1947–70.

The trend in average concentration for all industries is remarkably stable. Between 1947 and 1970, the unweighted average increased by only 1 percent and the weighted average by 1.6 percent. But these stable averages obscure pronounced differences among various groupings of industries. Table 1 subdivides the industries into so-called producer goods and consumer goods.

I draw your attention to the fact that whereas between 1947 and 1970 average concentration of producer goods industries declined (table 1, col. 2), concentration in consumer goods industries rose (table 1, col. 3).

I next draw your attention to the difference in the patterns of concentration of various subcategories of consumer goods. Each consumer goods industry has been placed in a separate category based on the degree of so-called product differentiation in the industry. Product differentiation is the economist's term for the extent to which a seller is able to differentiate his product in the consumer's mind from the products of his competitors. This is usually accomplished by developing strong loyalty to a particular brand through advertising. For example, fresh meat—where advertising is very small—is included in the low product differentiation category and cereals—where advertising exceeds 10 percent of sales—is placed in the high differentiation category.

You will note that divergent concentration trends occurred in the different categories of consumer goods industries: Whereas the low differentiation industries (table 1, col. 4) experienced a pronounced decline in average concentration, moderate and high differentiation industries (table 1, cols. 5 and 6) experienced increases. Moreover, the average level of concentration was substantially greater in the high differentiation industries than in the other categories.

The preceding contrasting trends in concentration have important implications for consumers and public policy. Quite clearly, those industries whose products lend themselves to extensive product differentiation through advertising, particularly network TV advertising, have experienced sizable increases in concentration over the 23-year period 1947–70. This may adversely affect consumers in two ways. First, the resulting high concentration tends to permit manufacturers to enjoy excessive profit margins which, in turn, become translated in higher costs to consumers. Second, the large advertising expenditures made to achieve product differentiation increase manufacturers' costs.

Table 2 shows the results of an empirical study of the manner in which market concentration and advertising expenditures in an industry affect firm profits in the industry. I will not explain this unless you have some questions on it, but it shows, I think, quite dramatically the way in which these two factors influence the level of profits that firms are able to command in an industry.

Mr. McCLORY. Excuse me. Where is table 2?

Mr. MUELLER. Table 2 is on page 3a. [See p. 334.]

A specific example will illustrate how excessive concentration in industries with advertising-achieved product differentiation imposes heavy costs on consumers. In cereal manufacturing, where both concentration and advertising are extremely high, the Kellogg Co. had the highest profits on net worth of any of the companies in the FTC study—upon which table 2 is based—26 percent. Similarly, in 1972 Kellogg had the second highest profits on net worth—21 percent—of any food corporation listed in the Fortune 500.

But excess profits are only part of the burden imposed on consumers in this industry. In 1970, the largest cereal companies made advertising outlays of about $70 million annually, or equal to 11 percent of sales. It has been well documented that most of this advertising conveys little concerning nutritional value or other information useful to consumers. Indeed, her analysis of TV advertising appeals to children led nutritionist Joan Jussow to conclude that cereal manufacturers advertise almost exclusively their worst—in terms of nutritional value—cereals to children.

Conservatively, the advertising expenditures of cereal manufacturers, plus their excess profits, are costing American consumers in excess of $100 million annually, or over 15 percent of cereal sales revenue. Over the last decade these costs amounted to the staggering sum of over $1 billion.

It should be emphasized that the cereal industry is one of a relatively few industries with very high concentration in the food and related industries. As shown in table 3, there are four industries where four firms accounted for 75 percent or more of sales and 19 where four firms account for 50 percent or more of sales. These 19 industries accounted for over one-half of the value added by these 41 industries. This indicates that there is a significant concentration problem in the manufacturing of food and related products. Moreover, the trends toward growing concentration I mentioned earlier are disturbing. They may require new remedies for solving the problem posed by excessive economic power. I say this because when advertising is a source of increasing concentration and market power. I think it poses special difficulties in terms of relief. However, the cereals case brought by the FTC in 1972 may test the adequacy of existing antitrust laws in dealing with this problem. From what I have been able to observe of that litigation, it seems to be going rather slowly and there is danger that unless it is pursued aggressively no meaningful relief will result.

The concentration trends summarized in table 1 are part of a larger problem in American manufacturing. As shown in appendix table 1, high product differentiation industries generally are experiencing rising concentration. Moreover, there has been no tendency for average concentration levels to be eroded over the 23-year period 1947–70. Therefore, in some of my recommendations I shall be thinking about the excessive concentration problem in manufacturing generally, not just in food manufacturing and food retailing.

Before turning to my recommendations, I shall first make a few observations concerning recent concentration trends and certain practices in grocery retailing.

CONCENTRATION IN GROCERY RETAILING

As summarized in table 4, average concentration in food retailing has followed a persistent upward trend since at least 1954. Some of the early increase reflected the failure of the antitrust agencies to stop expeditiously the enormous merger movement in the industry commencing in the early 1950's. The FTC had devoted inadequate legal resources to this area in the 1950's and I was one of the only senior FTC staff members interested in aggressively pursuing mergers in food retailing in the early 1960's. Ultimately, the FTC brought five cases and issued enforcement guidelines in January 1967. Although mergers by large food chains have virtually halted since then, in many markets concentration is very high and still rising. As shown in table 5, concentration is quite high in many cities.

Washington, D.C., is one of the most concentrated food grocery retailing markets. The top four chains share of grocery store sales in the Washington metropolitan area rose steadily between 1954 and 1967—from 56 percent to 70.3 percent. The largest chains have a strong grip on this market. They have forestalled potential competition entry by engaging in tactics to discourage entry into the market. Although I have no information on current practices, in the 1960's retailers that held a dominant market position in the city received larger advertising allowances from their suppliers than they spent on the products for which they received the allowances.

In other words, they actually enjoyed a profit on their advertising allowances. This situation gives dominant firms a pronounced advantage over smaller rivals, who typically have net advertising costs of 2 percent of sales. This difference in advertising costs of dominant and small chains and independents can be decisive in food retailing where pretax profit margins typically run between 2 percent and 3 percent of sales.

In my view, both of the practices mentioned above raise serious questions under section 5 of the FTC Act and warrant action, especially in a market as concentrated as Washington.

RECOMMENDATIONS

Following are several recommendations that I believe essential to make our economy more competitive. Only the first two areas deal explicitly with the food industry. The remainder are reforms applying to other segments of the economy as well as the food industry. Indeed, in my view, the very survival of competitive capitalism depends on the creation of instruments of social control capable of coping with the vast economic power of many large corporations.

I shall only enumerate at this time the various recommendations, although my prepared statement includes a discussion of each. I shall be pleased to discuss in whatever detail you wish any or all of the following proposals:

1. I believe the regulatory authority of the Department of Agriculture under the Packers and Stockyards Act should be transferred to the antitrust agencies.

2. The Federal Trade Commission should be encouraged to conduct continuing inquiries into the competitive structure and behavior of the food industry.

3. Legislation should be enacted which would facilitate restructuring of excessively concentrated industries.

4. The antitrust laws should be strengthened to deal more effectively with large conglomerate mergers.

5. Unnecessary corporate secrecy should be eliminated.

6. The internal operating procedures of the antitrust agencies should be reformed.

7. The control now exercised by the Executive Office of the President over the independent regulatory agencies should be eliminated.

I will add one more that I did not have in my prepared statement. I believe that the FTC should be required to undertake a program of line-of-business reporting, such as they are attempting to get underway at the present time, and actually have been attempting to get for some years.

That completes my prepared statement, Mr. Chairman.

Chairman RODINO. Thank you very much, Mr. Mueller.

Mr. Mueller, in your statement, and this is a general question relating to excessive concentration and advertising, you speak of these two principal areas in the food industry as bringing about, first of all, high corporate profits without passing on or improving the quality of the food to the consumer, and yet resulting in excessive costs being imposed on the consumer. Is this the kind of anticompetitive practice that you believe can in some way be overseen and somehow eliminated by any of the agencies of Government?

Mr. MUELLER. Well, as I suggested in my statement, it certainly is an extremely difficult problem and does not lend itself to traditional antitrust approaches. For example, just breaking up the cereal companies would not solve the problem if you still have tremendous brand loyalties.

I am not clear in my own mind just what we can eventually accomplish in this area, but some of the experimentation that has been going on in recent years with respect to making advertising more knowledgeable and more responsible, is certainly one route. I am thinking here of the efforts involving affirmative disclosure, corrective advertising and the recommendations that there be counteradvertising. The latter would require that there be ads which would explain the truth with respect to a particular commodity. There has been no way of financing such counteradvertising up to the present time. There have been recommendations to the FCC that television stations provide time for this as a part of their public service responsibilities. As you can imagine, this is not a very popular recommendation. In fact, nothing relating to trying to deal with problems of advertising is very popular. On the contrary, every type of recommendation brings out the most severe kinds of criticism.

So, I do not see any simple approach. I think we should continue to experiment with the alternative forms mentioned. We want to make sure we do not do more harm than good, although when advertising gets as enormous as it is in some products, it is hard to visualize a situation where you could really do any injury to the economy by somehow placing restraints on advertising.

Chairman RODINO. Professor, you list a number of recommendations and you make reference to the fact that only the first two deal explicitly with the food industry, and the others generally with industry

and the economy as such. And you make a very strong statement that indeed the very survival of competitive capitalism depends on the creation of instruments of social control capable of coping with the power of large corporations. Are you suggesting that if we do not have any of the recommendations enacted in some form of legislative restraint there is going to be a breakdown of the system, and would you say that any one of these, if you put it into use and made it effective, could have at least some degree of effect while all of them would, of course, if made effective, bring about the objective that you refer to?

Mr. MUELLER. Well, I think the system has already broken down. The experience of the last 4½ years in trying to deal with the unemployment-inflation problem, and all of the problems associated with it, are symptomatic of this. The presence of great power in parts of the economy have created a variety of problems, but certainly one of these is the way in which it frustrates our efforts to achieve low unemployment without inflation. So, we have been going through a series of experiments. We began the experiments with the two Democratic administrations of the 1960's. President Nixon came in and he believed in free markets to such a degree that he said he was not going to interfere with a single price or wage decision. We have therefore been undergoing a great economic experiment in which conflicting philosophies are being tested. The one that the economy is truly competitive has, I think, been disproven by events. The fact that we had an increase both in unemployment and in prices during the 27 months following January of 1969 is to me clear evidence that market power is a very serious problem. That is just one manifestation of it. There are others as well.

So, I think that we face a choice in that particular area. It is one of either extending the area of economic controls, or expanding the areas of competition. And this is why the legislation that has been proposed by Senator Hart, for example, his Industrial Reorganization Act, provides that alternative. And I think people simply have to make up their minds, either they want a market economy or they want an economy, or are willing to have an economy, which is not adequately competitive, and consequently one that requires continuing controls in many parts of the economy.

Chairman RODINO. Professor, in your statement you refer to studies that show that industries that are characterized by extensive product differentiation through advertising have experienced sizable increases in concentration during the period 1947 to 1970, and you also go on to state that these increases in concentration may adversely affect the consumer in two ways. First, by permitting the manufacturers to enjoy excessive profit margins which become high costs to the consumers; and, second, by increasing the manufacturer's cost through large advertising expenditures. You also make reference to excessive profit margins. Now, just what do you mean by excessive profit margins, and how do these become translated into high costs to the consumer?

Mr. MUELLER. Well, by excessive profit margins, we, as economists, generally mean profits above that required to draw adequate capital into an industry. This level, of course, varies over time depending on the cost of money, and so on. But, studies have shown that firms that operate in industries with a structure, say where four firms have 40 percent or less of the industry, that they tend to average profits in a

range of say 6 to 8 percent on net worth, and they get adequate capital at that level. Farming, for example, generally gets, you know, lower returns than that a good part of the time.

So, although you cannot draw the line precisely, on the other hand it is quite clear that when one industry is earning 8 percent, and another, which is very concentrated, and has very extensive advertising, earns profits on the order of 20 percent, and these profits tend to persist year in year out, that is clearly more than is required to bring adequate capital into that industry. It is not a matter of being critical of profits as such. They are an integral part of our system. But, it is the size of the profits, and this is, you know, the basis for the concern.

Chairman RODINO. Is it not true, Professor, that advertising is considered to be a nonprice form of competition, and, therefore, one of the things that the antitrust laws are designed to promote and protect? And as you suggest, do you not make a qualification distinction between a legitimate competitive tool and the abuse of that tool that can be called economic waste, and, therefore, added cost to the consumer?

Mr. MUELLER. Well, if you are asking whether we can make that distinction under the antitrust laws, the answer is probably no. If the practice is anticompetitive, however, as we define that under the various statutes, that would be considered illegal. However, if it just resulted in waste, I do not think you could bring a case under the antitrust laws. There might be other evidence, of course, in such an industry that you could base a case on. But it could not be just based on the fact that it was wasteful, or in some sense that it was not efficient. One of the greatest costs of monopoly, of market power, is the sort of the dead-handed monopoly that exists in many industries. And historically we have seen many instances of this where firms have not been subject to competitive pressures and they tend to become inefficient. But that is not a good enough reason to bring an antitrust case, although from a public policy standpoint it is a reason to be very concerned and look for other evidence that the industry violates the law.

Chairman RODINO. One final question, Professor. In the statement and testimony before this subcommittee by the National Association of Food Chains, it was claimed, and I quote:

> And so, on a nationwide basis the food retailing industry reflects an effective level of competition, even from a purely structural, market share standpoint.

Does this statement to you seem to be misleading on its face, or does it really have any basis in fact? In my judgment it would seem to be, at least, misleading, because from the industrial reorganization principles, food retailing must be looked at as a local and not a national market. Is that not so?

Mr. MUELLER. That is correct. It is misleading to talk about food retailing nationally unless you are looking at, say, procurement practices where the chains are buying products that are sold essentially at a national market. But, in food distribution, in selling food, the relevant economic market is a metropolitan area at most. Census Bureau statistical metropolitan areas which I used in tables 4 and 5, often are larger than the relevant retail food store markets. But, as I show in summarizing the statistics from table 5, whereas there are, of course, a good many markets which have quite low concentration in food retailing, there are some that are very high, and Washington, D.C., has, I believe, the highest market concentration.

Chairman RODINO. All right; thank you, Professor.

Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. Our concern here is with the subject of the sharp rise in food costs, primarily between 1972 and 1973, and to what extent these may have occurred as a result of violations of the antitrust laws or practices which the antitrust laws should be amended to cover in order to remedy this situation.

The graphs that I have seen indicate that food costs did not rise as fast as other costs, until 1972, and in between 1972 and 1973 they rose at a very high rate. Is there anything in your statement that has anything to do with the sharp rise in food costs between 1972 and 1973?

Mr. MUELLER. Nothing; I am concerned with longer run problems in this.

Mr. MCCLORY. You make reference to the concentration of markets and the concentration of power, particularly making reference to the cereal manufacturers. Is there any information in your statement, or do you have any other information which would indicate, that there is any kind of a conspiracy, any kind of agreement, tacit or expressed, between these companies that share a large portion of the dry cereal market?

Mr. MUELLER. No; I do not. And the important point to grasp here, while I did not mention it in my statement, is that the reason profits and prices tend to be higher in industries where there are very few sellers is the fact that they inevitably take one anothers' actions into account in their behavior, and consequently it is unnecessary for them to conspire to maintain high price levels.

This is not to say that we have not found instances where they have. There have been conspiracies even where there are few firms. But, I think the explanation, and this is based on economic theory and supported by industrial experience, is that where there are very few firms you tend to get very interdependent behavior among them, so that while they may compete in nonprice terms, they do not compete on price terms as they would, say, in an industry that is as competitively structured as the meat packing.

Mr. MCCLORY. Are you suggesting that there is not keen competition between these large producers of dry cereals, for instance?

Mr. MUELLER. Not price competition.

Mr. MCCLORY. Well, sales competition?

Mr. MUELLER. Through advertising they are attempting to get a larger share or to maintain their share of the market.

Mr. MCCLORY. And the large advertising expenditures are designed to increase sales and to augment profits, are they not?

Mr. MUELLER. That is the incentive.

Mr. MCCLORY. And there is very keen competition between these competitors for sales, is there not?

Mr. MUELLER. The individual firms are engaging in these forms of nonprice competition, and the inevitable result is that this makes it difficult, if not impossible, for others firms to challenge the dominance of the leading companies, and consequently, even though they spend enormous amounts for advertising, they enjoy very large profits.

Mr. MCCLORY. Now, you recognize in your statement that large expenditures for advertising do result in large sales and large profits, do you not?

Mr. MUELLER. I say that is the——

Mr. MCCLORY. The more you spend for advertising, in a sense, the more you sell and the more money you make.

Mr. MUELLER. Well, it is not quite that simple, as you know. It is not, you know, just that. You may increase your advertising, but there also has to be something about the product that lends itself to advertising, and this is the sort of problem you have.

Mr. MCCLORY. But your table 2 shows that an increased amount of advertising does increase sales and increases profits.

Mr. MUELLER. It does not show that it increases sales. It shows that it increases profits.

Mr. MCCLORY. Now, on page 3 you state that some large food chains make money on their advertising. In other words, they do not spend as much as they might or that in some manner, they make a profit on their advertising by not expending all that they are allotted.

Mr. MUELLER. Well, no; I am not sure I said that. But——

Mr. MCCLORY. On page 7, you say, "In other words, they actually enjoyed a profit on their advertising allowances."

Mr. MUELLER. Oh, that does not relate to this item. That reference is to the fact that in the food retailing industry most advertising done by food retailers involves cooperative advertising. Food manufacturers give food retailers a certain amount of money to spend on advertising, and, in fact, they have contracts with them that say; for example, if you sell clorox bleach or advertise Kellogg's corn flakes, we will give you this amount of money, and these are given on the basis of the volume of sales involved. And the point I made there, very briefly, is that in Washington, D.C., during the 1960's, at least, when I studied some of this, the largest food chain in this area was actually getting more in allowances than it spent, so that it was making money on its advertising. In other words, if it received $50,000 in advertising, it spent less than that on the products involved. This obviously creates a serious problem for firms that compete with such a dominant chain because advertising ordinarily costs a couple of percent of sales for a smaller retailer in this market.

Mr. MCCLORY. Well, I could not help but conclude from that that there is no definite relationship between the amount that they spend on advertising and the amount of sales, because, obviously, the chain-stores are certainly trying to increase their sales. If they feel that their sales are satisfactory without expending all of the money for advertising, that is an indication that the advertising allowance is not needed, or is unrelated to the profits that do accrue.

Mr. MUELLER. The reason is very simple. I am afraid I have confused you by these two tables. This table on page 3a does not refer to food retailers, but to food manufacturers. But, I think the general principle applies.

Mr. MCCLORY. You made reference——

Mr. MUELLER. But in the case of food retailing, the reason a dominant food chain, which, say, has 30 percent of the market, does not spend all of its advertising allowances is that it has such a strong position in the market that it simply need not spend all of this on advertising.

Mr. MCCLORY. Your position is that advertising increases sales at one level, but not on another.

Mr. MUELLER. Well, I do not think I ever said that it increases sales, one way or another. In my statement I say it increases the profits of firms that are in industries that have this characteristic.

Mr. MCCLORY. You make frequent reference to the subject of excess profits.

Mr. MUELLER. Right.

Mr. MCCLORY. Who is to judge what excess profits are? What is the amount of profit that you think is normal, and who is to decide what is a normal profit?

Mr. MUELLER. As I indicated to the chairman's question, it is a very difficult question to answer. But, as I said, when someone is making 20 percent as opposed to say 10 percent in industries that are competitively structured, I think it is fair to say that the former industry is receiving excess profits. And, of course, we face that issue in the rate regulation all the time.

Mr. MCCLORY. So, in other words, there should be some Federal regulation of profits?

Mr. MUELLER. No, I am not suggesting that. I am not an advocate of Federal regulation unless essential. I am an advocate of trying to make competitive capitalism work, and if you have sufficient competition in an industry, you need not be concerned with this issue from a regulatory standpoint. The whole thrust of what I was trying to demonstrate is that a relationship does exist between the magnitude of profits as a return on investment, and these two so-called structural variables, the level of concentration and the level of advertising. If we had less concentrated industries, we would not have these kinds of disparities in returns on investments that exist between concentrated and unconcentrated industries today.

Chairman RODINO. Mr. Flowers.

Mr. FLOWERS. Thank you, Mr. Chairman. I apologize for being late.

As I came in you were talking about the amount of advertising that the breakfast food industry utilizes, resulting in a form of nonprice competition. I gather the proliferation of various brands, sundry spectacular crunch berries, et cetera, et cetera. Sir, from your research, are you telling us that the breakfast food industry perhaps employs more advertising than any other food industry?

Mr. MUELLER. I am not sure if it is the top one, but offhand, I cannot think of any other that is that large.

Mr. FLOWERS. What other industries would be similarly operated?

Mr. MUELLER. Well, another is in beverages. As I said earlier, in 1972 Kellogg's was the second most profitable firm of food and related companies in the Fortune 500. The top was Coca-Cola, which has, as you know, a very strong position. I do not know, I cannot pick a number off my head as to its advertising expenditures, but they are quite substantial.

If you take a small industry, chewing gum——

Mr. FLOWERS. Well, it is awfully difficult to separate value in terms of food and nutritional value, which is something we can measure, and other kinds of extrinsic values that inure to the ultimate consumer of these foods and beverages on account of the advertising.

Mr. MUELLER. Right.

Mr. FLOWERS. The advertising that makes one want to chew Doublemint as opposed to Spearmint, may—of course, not be competing,

if they are operated by the same firm, but suppose some other peppermint gum may become a more valuable commodity to the ultimate consumer, because that person enjoys it more after he has been exposed to the advertising, so that, in a sense, advertising does add value to the article, perhaps, does it not? I am not an adman, and I do not claim to be.

Mr. MUELLER. Well, the main thrust from the firm's standpoint, and this relates to some of Mr. McClory's questions, is there is nothing irrational at all about what they are doing, and from their standpoint there is nothing malicious about it, or dishonest necessarily. They are following what they consider to be sound business practices. But, looking at it from a public policy standpoint, you just, I think, increasingly have to ask yourself just how many times do you have to be told about Doublemint gum and what psychic satisfaction do you get out of it? How much more do you get out of it if they spend the equivalent of 1 percent of sales or 2 percent? And the reason why?

Mr. FLOWERS. Well, why doesn't someone come in and sell a nickel pack of gum these days?

Mr. MUELLER. I am sorry.

Mr. FLOWERS. Why doesn't someone come in and sell a nickel pack of gum?

Mr. MUELLER. I think this is one of the major structural effects of advertising. It is to create so-called barriers to entry, to give established brands such strong consumer acceptance that it is not possible for other firms to compete. And this is a point I think that is terribly important, and it does not just relate to the food industry, as I suggested. When you look at all manufacturing industries, the ones that are experiencing increasing concentration as a group are the consumer goods industries, and particularly those lending themselves to advertising. It is not the industries as a group that are technologically sophisticated and so on, where capital requirements are much greater than consumer goods. It is the industries where advertising is the key, and in these industries it seems as though we are experiencing ever increasing concentration.

Another industry that is heavily advertised, that did not used to be as heavily advertised, is coffee.

I cannot see, from my own standpoint, to be getting more and more psychic satisfaction out of the fact that Mrs. Alson, in the Folger's ad, persuades young wives that switching to Folger's may save their marriage. The expenditures on coffee advertising have increased substantially year after year.

Mr. FLOWERS. But, there is still some price competition, at least from the layman's point of view, as I see it. Do you not find that the kind of articles that lend themselves to what we might call excessive advertising, for want of a better word, are mostly the small unit items that are easily packaged and sold in large quantities? Where there is a great deal of use of them all of the time, and they are not necessarily food—they are cosmetics, toothpaste, and all of these things that require daily use, where a large turnover exists and taste can change very easily?

Mr. MUELLER. Well, that is the area where you generally get the greatest advertising-to-sales ratio, all the way up to, say, 30 percent where advertising exceeds the cost of making the products. But, there are other items.

Mr. FLOWERS. It seems to me, the actual cost of ingredients are less and the advertising necessarily gets greater, does it not, when the profit incentive is there; is that correct?

Mr. MUELLER. Yes, it is the characteristic of the product as such, and for some of the reasons you mentioned impulse buying of products tends to lend itself to more advertising, but advertising also is common outside of some of the ones we have been talking about. Even cereals, you know, is a billion-dollar industry. It is not insignificant. Refrigerators and other appliances, generally, which are very sizable, semidurable items purchased by consumers, also involve very substantial increases in advertising and concentration. And something seems to be changing, and the changes seem to occur with TV advertising, which is costly, and consequently creates these higher barriers to entry. It seems as though the items that are becoming differentiated today are expanding. You may have seen Howard Cosell advertising Fruit of the Loom underwear. People never used to advertise men's underwear. But there seems to be nothing, you know, no consumer item that is too insignificant to be advertised heavily. I think in the food industry we have some prize examples of what happens when you do not have advertising. One is fresh meat, where we have, I think, USDA grades. Consumers buy on the basis of these grades. Although periodically some meatpacker attempts to try to advertise fresh meat, and get a consumer franchise for their particular beef; it just never works. And the same is true of butter, as opposed to margarine. Butter is graded and people know it. Meatpacking, which used to be one of the major monopoly trouble spots in foods for decade after decade, concentration has declined. The reason, I think, is that barriers to entry are very low, because there is no advertising barrier to entry. Consequently, more and more companies have come into it. The industry is much more competitive today than it ever has been, and it is all price competition.

Mr. FLOWERS. I thank you, sir.

Mr. Chairman, I have no further questions.

Chairman RODINO. Mr. Dennis.

Mr. DENNIS. Thank you, Mr. Chairman.

Professor Mueller, I am sorry that I did not hear all of your testimony. We have heard some people testify who, as I understand, seem to them, say that most of the problems that exist can be cured by active enforcement of the antitrust laws we already have. If I understand the thrust of your remarks, you disagree and believe instead that we need some new laws. Is that a fair statement?

Mr. MUELLER. That is correct.

Mr. DENNIS. Now, would you mind stating what your recommendations are in that field of new legislation?

Mr. MUELLER. Well, there are several. One that I think is essential if we are really serious about doing something about excessive concentration in American industry is to have legislation that makes it possible for the Government to undertake such a program. The Antitrust Division at the present time, in my view, and the Federal Trade Commission really lack the capability to try very many large suits, and it is not all a matter of money.

Mr. DENNIS. What would you do to increase that capability?

Mr. MUELLER. The recommendation that I mentioned was that legis-

lation something along the lines that Senator Hart has proposed in S. 1167, his Industrial Reorganiztion Act, be provided.

Mr. DENNIS. What basically is in the proposed bill?

Mr. MUELLER. Well, it has a number of features that are different from the present law. One of the main problems with the present law is that it focuses on issues of intent to monopolize, the abuse of monopoly power, and other aspects of business conduct and performance, so there is an endless search for documents and looking for practices where someone or other was beaten to the ground. Where firms have really substantial market power, they need not engage in predatory practices and so on. They simply have substantial power. The thrust of Senator Hart's proposal would be to make it a rebuttable presumption that firms in an industry have monopoly power if certain conditions existed, and one of these is a certain level of concentration. Another is pricing conduct that was not of a competitive nature. This does not mean that such industries are per se illegal; but, it would essentially shift some of the burden of proof to the defendant, requiring they show that they did not have excessive market power. There would still be big cases, because when you deal with big and powerful companies, naturally they are going to fight hard for the interests of their management and stockholders. And they have got the resources to do it. But, in this act, it would change the existing law in this respect. Also, it would set up a separate Reorganization Commission which incorporates sort of a self-destruct mechanism. At the end of 15 years it would go out of business. And it has the virtue of listing some seven specific industries to which this Commission would be directed to give top priority. This would insure that they not spend a lot of time on less important matters.

Mr. DENNIS. What industries?

Mr. MUELLER. Well, as I recall, this included the petroleum industry, the automobile industry, the steel industry, the drug industry, and electrical machinery industries. Off the top of my head, I cannot recall the others, but they are all substantial industries.

Now, the act does not—although the title of the act refers to industrial reorganization—mean, and at the hearings on this Senator Hart made very clear this point, the act does not view as the only remedy breaking up all of these industries. And it certainly does not contemplate a turning back the clock to the 19th century. But this Commission would have broad power to try to come up with various forms of relief and suggestions for legislative change and so on. To me, this is an important part of the proposed new legislation. By the way, the Justice Department officials themselves have said they do not really have the authority to handle these big cases. I do not know what they have testified to here. But the important point, I think, is that we are at one of those critical points in history where the Congress has to give us some new mandate in this area, or we will have inaction, which is another form of action.

Mr. DENNIS. I have heard it said in the past that bigness is not necessarily badness where the antitrust laws are concerned. Is the Senator advancing in the direction of saying that bigness is at least prima facie badness?

Mr. MUELLER. If you know Senator Hart, as I am sure you do, this would be farthest from his mind. He believes very strongly, as cer-

tainly I do, that a market economy has enormous virtues and benefits, and we all receive some of its fruits when it is working well. But, what he is proposing, as I understand it, is to truly make a competitive capitalism work, not just to say that we have free enterprise. Private enterprise is not enough. We need free enterprise, competitive enterprise, and it is possible to have it. There are not, in my view, any technological imperatives that make it inevitable that we have ever increasing concentration or that we maintain the existing levels of concentration. There is considerable evidence to the contrary. We can afford the luxury of having a competitive economy. If we were some small Latin American country, you know, we obviously could not, but our enormous markets permit us to have competitive capital.

Mr. DENNIS. I am sympathetic with your objective, but nevertheless, it seems to me that these concentrated industries have grown up more or less by natural evolution and efficiency. You raise a very fundamental question of whether superior market position naturally achieved is an evil and whether Government should penalize such success.

Mr. MUELLER. Well, I think the issue is really as simple as this. In dealing with this problem in a system such as ours, where you have private enterprise and a democratic society, and believe in the principle of consumer sovereignty in such a system, either you have firms that have their power constrained by the marketplace, or you have Government intervention. We have seen Government intervention on a massive scale in recent weeks, in a very blundering and tentative way. So, I, like you, am concerned about the problems involved in Government dealing with these problems. But, to me the alternatives are much, much more horrible than this. Reorganization is not that painful. We have had some examples of that.

Chairman RODINO. I am sorry, the gentleman has had more than 12 minutes.

Ms. Jordan.

Ms. JORDAN. Thank you, Mr. Chairman.

Professor Mueller, in response to a question of Congressman McClory, you indicated that your concern was not with the long-run problems of market structure and not with the inflation that we have experienced over the past and preceding year. But, would you conclude that the general inflation which we have seen causing higher prices over the past year somehow reflects the disregard on the part of concentrated industries to exercise their market power without regard to public recrimination or fear of what the public might think?

Mr. MUELLER. I agree. I believe that commencing in January 1969 we had a clear-cut experiment premised on the assumption that markets were sufficiently competitive that all we needed to do was have the proper fiscal and monetary mix. This would bring about, as President Nixon explained in his original game plan, full employment without inflation. During those 15 to 18 first months under this game plan the responses were quite dramatic in industries such as agriculture and other competitive food industries, where prices responded to the contraction of the aggregate demand by going down. Supply did not go down. But in steel and other concentrated industries there was a virtual orgy of price increases. In my statement I did not single out the current problems of food. I was rather concerned with long-run prob-

lems. But I agree this basic problem of concentration, which is not unique to the food industry, but cuts across all, is very directly related to the unemployment-inflation problem.

Ms. JORDAN. Professor Mueller, I would like you to comment on vertical integration and its effects, on the competitive dangers inherent in that, and whether the consumer benefits from it at all? We have had testimony from several witnesses before the committee that vertical integration is an anticompetitive development in the food industry, which ought to be looked at by antitrust. Would you comment on that?

Mr. MUELLER. Vertical integration may be an anticompetitive practice. But as a generalization, I would not say one way or another. Were they mentioning some specific industry? For example, in farming it clearly is a problem where canners integrate into growing their own crops. This completely undermines the bargaining power of farmers. They cannot have bargaining associations or effective ones if the canners integrate into growing their own crops. Even the mere threat of increasing such acreage immediately strikes fear in the heart of every grower who fears that he will not get a contract next year. So it is a great device for destroying a bargaining association. Now, that may not be the reason, and I know it is not the sole reason that canners engage in vertical integration. There are some special reasons that they do so. But canning crops happens to be an industry where I think vertical integration poses substantial potential problems.

Ms. JORDAN. But it does not necessarily have inherent dangers? It could be beneficial depending?

Mr. MUELLER. Yes; there are efficiency reasons. I know a canner who is sympathetic to this problem of growers. He says, however, that he grows an early crop and a late crop that farmers do not want to because it is very risky. So that there are some sound business reasons for doing this, quite apart from the problem I mentioned. And in many of these things, you know, it is not that the businessman has an intent that is contrary to the public interest. It is the effect of the practice, and often with vertical integration it becomes a problem not when just one company integrates vertically in a market, where there are lots of alternatives. But what is sound business practice and not contrary to the public interest when engaged in by one businessman, may become a problem if all do it, thereby completely foreclosing the market.

Ms. JORDAN. Professor Mueller, I have one other question about the Federal Reports Act. FTC and others have suggested that that act needs to be amended so that FTC can gather data without the approval of OMB, and I note in your testimony you talk about the need for disclosure of corporate profits and corporate data so that we can get a handle on the whole question of market concentration and high concentration as related to prices. Would you agree that the Federal Reports Act should be amended and comment on that?

Mr. MUELLER. Well, I feel very strongly about that. I have been at the short end of that argument myself. When I was Chief Economist of the Federal Trade Commission for a number of years I had some very unfortunate experiences. From my standpoint, I view it as a very serious violation of the principle of independence of regulatory agencies. Most people have forgotten what this issue is all about. These agencies were created to be independent from the Office of the Presi-

dent, and yet the Executive Office of the President, in a variety of ways, as I have mentioned, exerts great power over them. They are supposed to be arms of the Congress, but the Congress does not always exercise its responsibility in this regard. The OMB goes over these agencies budgets in executive session, and in the process of this they review their programs in executive session. They review the organization, and while it is always desirable to increase efficiency in Government, it is conceivable they have other things in mind. I do not know what the practice is today, but in the past they have cleared speeches of chairmen of agencies that come to testify before the Congress on legislation that is of interest to the administration. If there is one part of the Government that the Congress should expect to express an independent view, it should be the independent agencies, and yet that was a common practice during the 1960's and long before, as I understand of review of such testimony before congressional appearances.

On the clearing of reports, this I think is horrendous situation. The original intent of this under the Federal Reports Act of 1942 was to relieve businessmen of unnecessary burdens of duplicate questionnaires and this sort of thing during wartime, a laudatory objective. It was never clear that it was to apply to the independent agencies. They went along with it as part of the war effort because they were given some special wartime responsibilities. But, it was viewed as a technical matter intially. They were just to review the technical competence and see if it duplicated data elsewhere in Government. But, it has gone far beyond that. There is a Business Advisory Council, a very elaborate system in which when you come with a report you appear before this group, and, in fact, they are concerned not just with the technical aspects, unless it is a most trivial kind of thing, but with the policy issues. I recall one experience where we attempted to do something like the FTC is doing today, and we were met with like 60 people, and they were corporate vice presidents and general counsels, obviously not persons competent on the technical details of the questionnaire.

More recently, and I have followed the recent FTC efforts to obtain profit line reporting. I have been advocate of trying to get is public representatives at those meetings, and to open them up to a much greater extent because such a ventilation of them would get rid of some of the inevitable insolence that results from them. For example, I attended a conference recently at which a senior official of the Financial Executive Institute took credit for having, and these were his words, "squelched the FTC effort."

Now, in subsequent discussion, he clarified his statement by adding that he did not take sole credit for this accomplishment. Indeed, he reported that "when the Business Advisory Council met with OMB officials on the FTC proposal, over 20 of the businessmen present objected to the program."

This is hardly surprising when you look at the composition of the representatives. There were 29 present, 20 were from the top 50 corporations, 26 from the top 100, and the remainder 3 from the 150 corporations. This was a very select group indeed: no consumer representatives, no user representatives, and no small business representatives were present.

I think the whole system is very bad. They use it as a window to look

into Government, and inevitably exercise influence over actions that are going to be taken by the independent agencies. One of the results is that an agency often will send out only nine questionnaires instead of more, because they do not have to go through the OMB when they ask for 10 or fewer special reports. This is not a partisan matter. It has been invoked under all administrations since 1942 and it is time that something be done about it.

Chairman RODINO. Mr. Sandman.

Mr. SANDMAN. I only have a couple of questions. And, first of all, I must apologize that I was not here to hear your testimony earlier.

At our last hearing Mr. Ralph Nadar made quite a point that food prices were inflated as much as 16 percent, caused by what he termed as over-advertising. Do you subscribe to that thinking?

Mr. MUELLER. I did not read his testimony. I, in my testimony, pointed out that in the case of cereal for example, 11 percent would be a conservative figure. For food prices generally, it would vary from product to product, some not at all, and some quite substantially.

Mr. SANDMAN. He also made quite a point of the fact that the various regional markets, which are set up for milk control, are not workable because of what he termed as the abnormal amount of money spent by the co-ops for administrative costs and to prepare the people for price increases. Can you comment on that?

Mr. MUELLER. Well, I do not think that that problem is peculiar, at least to me, to agriculture. Whenever it is done I think that it is extremely improper. It is a political and social issue of great concern, and certainly to the extent that the co-operatives exercise undue political influence by that act, if that is what is ultimately demonstrated, I find that just as reprehensible as if it were in a nonfood industry. But, I should say generally I am sympathetic to the efforts of co-operatives in many, many respects, but it seems to me that if those charges are correct, that is improper.

Mr. SANDMAN. There is not any question that it is improper, if it is true. But, do you know of any evidence that would point to the truth of such a statement?

Mr. MUELLER. I do not have any. I have never studied that. Mr. Nader has. He is more qualified than I.

Mr. SANDMAN. Did you present any evidence during my absence pointing to abnormal profits for manufacturers of food products?

Mr. MUELLER. Well, on table 2 on page 3a, I showed the results of a study which shows that the general tendency of profits to increase as industries become more concentrated, and as the industries spend more on advertising. So, in the two extremes, in an industry where four firms do 40 percent of the business and only spend 1 percent on advertising, during the period of this study they would have made profits of about 6.3 percent of net worth. At the other corner of that table, an industry where the four firms did 70 percent of the business, and the industry spent 6 percent on advertising, it earned profits of about 17 percent, or nearly three times as great as the other extreme. This showed the general tendencies in the food industries for profits to be much higher in industries that are concentrated.

Mr. SANDMAN. In my area there have been quite a few complaints by the producers in the poultry and egg business that the chainstores control the price of both products. Do you agree with that statement?

Mr. MUELLER. I have not read it. I mean, I have not studied that particular area.

Mr. SANDMAN. I have no further questions.

Mr. MEZVINSKY [presiding]. Mr. Mueller, I was very interested in your remarks concerning the focus that antitrust agencies of the Government should have. Would you want to be a little more explicit and suggest those segments of the food industry that ought to receive the closest and the most intense scrutiny by Justice and the FTC in view of your background in FTC as well as your other research efforts?

Mr. MUELLER. Well, I think there should be continuing scrutiny and investigation of food retailing, not that I think that food retailers are necessarily such bad guys. However, I have got the reputation of having stopped the merger movement in food retailing, which was not, as it turned out, all that painful. The Commission was not that aggressive and did not require the kind of divestiture of past acquisitions that I think should have occurred.

On the other hand, I certainly do not believe in, you know, meddling around with every decision, and I think the food industry under the price freezes and price controls has been unduly criticized by many people. I see problems in this industry, but you have to be honest about these things. It certainly is not true today that food retailers are gouging the consumer. They may, at times, but we just have to look at their last quarterly reports to note that they are not now; of course, it is because of the control system that their profits have been squeezed. But I assume this is a temporary matter.

There are, you know, these highly concentrated markets in food retailing. There also is this problem of the way in which they spend or fail to spend their advertising allowances. I have written the FTC on this. The retailers are either violating their contracts with the grocery manufacturers or they must be, and very probably are, violating one of the acts enforced by the Commission. I should say that the Commission has subsequently come out with their advertising guides in which they scold people for that practice and said they should not do it. But, the evidence is there for them to go and get and see if the chains today are getting more in allowances than they are spending, and, if so, see if that violates the law.

So, I guess I am a little concerned about the FTC, which has done a lot of good things in the area of advertising, affirmative disclosure, things of that kind, in recent years. They seem to have let up in the food industry. And one of my recommendations is that they attempt to carry out the recommendation of the Food Commission, which was that they conduct continuing studies in the food industries. And you just have to, especially in dealing with something as complicated as advertising, you have to have a lot more sophisticated understanding of the problem than we have now. And you only get that from investigating and getting the facts from the companies.

Mr. MEZVINSKY. We have had a lot of testimony here, especially yesterday, concerning the grain companies of the commodity exchange, and had the view that in some respects they have been responsible for soaring grain costs. A book has been written about this "Great Grain Robbery." Have you looked at the manipulative and now monopolistic practices within that particular segment of the food industry as a contributing factor to food price increases?

Mr. MUELLER. I have not conducted any special studies. I think studies have come out. A study did come out recently which did indicate, I believe, that those markets are not as competitive as we would generally like to believe, that there are large buyers who can exercise an influence on the price. This is one of those areas where we should be getting the facts rather than just going on the assumption that they are competitively structured, because historically they seem to have been.

Mr. MEZVINSKY. My last question now concerns your reference to the cereal case. You quoted some figures in your testimony on page 5 that excess concentration in the cereal industry costs consumers in excess of $100 million annually, or over 15 percent of cereal sales revenue. Over the last decade these costs amounted to the staggering sum of over $1 billion. The cereal case has been going on for several years, and we have just heard about a new FTC action brought against the oil industry on basically the same theory as the cereal case. Does your comment on the cereal case with respect to no meaningful relief in sight, indicate that we are going to face a similar lack of aggressive action concerning the oil cases as well? Is this a syndrome that exists within the FTC today concerning vigorous and aggressive action in the area of antitrust enforcement?

Mr. MUELLER. I am eternally optimistic. I think the lawyers that started that case certainly intended to make it effective. There is a question of resources, and there is the question of judgment though on the part of the Commission. It was originally issued, you know, on a very slim margin, 3–2. New Commissioners have been appointed, and it is a question of just how they come out on this issue. It is not just, a matter of case law. If you look back in the case law, there is little on this problem. This includes the so-called shared monopoly theory, and it depends on how this Commission responds. I do not have any evidence to present today that they are not going to bring this thing off. In the case of the petroleum industry, I believe there is some legislation to give the FTC $2 million to pursue it. I think that this is sort of a minimum amount. People just have no conception of what it costs to bring a big case. An indication of this is the IBM settlement with Control Data. They paid Control Data $15 million for legal fees and that was for a partially completed case. That $15 million is greater than the total budget of the Antitrust Division. But as I said, it is not just a matter of money. Part of it is. But, under the present laws all big cases consume enormous legal effort looking for the kind of evidence that is required. So, I think we need a change in the law to make it easier to bring these kinds of cases if we want to, if we really want to do something about this. And the Congress first has to make up its mind whether it wants to.

Mr. MEZVINSKY. That is the reason we are trying to get the testimony, and I certainly thank you for your testimony and answering the questions. I am certain that some of us may have further questions that we may want to direct to you in writing later.

Thank you very much.

Mr. MUELLER. Thank you. It has been a pleasure to testify before this committee.

[The prepared statement of Professor Mueller follows:]

STATEMENT OF WILLARD F. MUELLER, VILAS RESEARCH PROFESSOR, UNIVERSITY OF WISCONSIN

Mr. Chairman and members of the Committee. It is a pleasure to appear before you to testify concerning certain aspects of competition in the food manufacturing and distribution industries. I have conducted research and been concerned with public policy in this area for over 15 years. Today, however, I shall restrict my prepared statement to only a few of the many important developments occurring in these industries. I shall first discuss some recent structural changes in food manufacturing and distribution and then make several legislative recommendations.

STRUCTURE OF FOOD MANUFACTURING

The food manufacturing industries comprise a number of separate industries, each with a more or less unique demand for its product. A common characteristic of these industries is that they process raw agricultural products and sell through the same distribution system. Nonetheless, they operate across a broad range of the competitive spectrum. At one extreme is fresh meat packing with its over 2,000 firms, the top four of which account for only 23 percent of sales. At the other extreme is breakfast cereal manufacturing with only 30 companies, the top four of which control 90 percent of sales and the top eight about 97 percent.

Moreover, there are divergent trends in the level of concentration in the food and related industries. Table 1 shows weighted and unweighted four-firm concentration in the 31 industries for which concentration data are available for the 23-year-old period, 1947–1970.

TABLE 1.—AVERAGE WEIGHTED AND UNWEIGHTED 4-FIRM CONCENTRATION IN 31 FOOD AND RELATED INDUSTRIES, 1947 TO 1970.

		Producer goods	Consumer goods: Degree of differentiation			
	31 industries[1]		All	Low	Moderate	High
		N=10	N=21	N=4	N=7	N=10
	(1)	(2)	(3)	(4)	(5)	(6)
Average unweighted 4-firm concentration:						
1970	46.0	47.4	45.4	22.5	34.0	61.4
1967	45.6	47.7	44.7	21.8	33.9	61.3
1963	45.6	48.7	44.1	22.5	33.9	60.0
1958	45.1	50.2	42.7	23.0	34.1	56.5
1954	45.9	51.1	43.4	25.0	34.3	56.2
1947	45.0	50.9	42.2	28.5	33.3	53.0
Change 1947 to 1970	+1.0	−3.5	+3.2	−6.0	+.7	+8.4
Averaged weighted 4-firm concentration:[2]						
1970	39.3	40.6	39.1	23.0	29.0	53.0
1967	38.6	40.5	38.2	24.2	27.1	52.0
1963	37.9	41.2	37.3	27.7	24.8	50.2
1958	37.2	41.6	36.4	29.5	24.9	47.5
1954	38.0	42.0	37.3	34.2	23.9	48.0
1947	37.7	40.7	37.1	37.8	21.5	47.8
Change 1947 to 1970	+1.6	−.1	+2.0	−14.8	+7.5	+5.2

[1] Concentration ratios based on Annual Survey of Manufacturers, 1970, Value of Shipments Concentration Ratios. 1970 concentration ratio data were not available for 6 industries; 1967 concentration ratios were used for these industries. The industries included are all food and kindred product industries (SIC 20) and tobacco manufacturers (SIC 21) for which data were available.

[2] Weighted by value added in 1970.

The trend in average concentration for all industries is remarkably stable. Between 1947 and 1970, the unweighted average increased by only 1.0 percent and the weighted average by 1.6 percent. But these stable averages obscure pronounced differences between various groupings of industries. Table I subdivides the industries into so-called producer goods and consumer goods.

I draw your attention to the fact that whereas between 1947 and 1970 average concentration of producer good industries declined (Table 1, Col. 2), concentration in consumer good industries rose (Table 1, Col. 3).

I next draw your attention to the difference in the patterns of concentration of various subcategories of consumer goods. Each consumer good industry has been placed in a separate category based on the degree of so-called product differentiation in the industry. Product differentiation is the economist's term for the extent to which a seller is able to differentiate his product in the consumer's mind from the products of his competitors. This is usually accomplished by developing strong loyalty to a particular brand through advertising. For example, fresh meat (where advertising is very small) is included in the low product differentiation category and cereals (where advertising exceeds 10 percent of sales) is placed in the high differentiation category.

You will note that divergent concentration trends occurred in the different categories of consumer good industries: whereas the low differentiation industries (Table 1, Col. 4) experienced a pronounced decline in average concentration, moderate and high differentiation industries (Table 1, Cols. 5 and 6) experienced increases. Moreover, the average level of concentration was substantially greater in the high differentiation industries than in the other categories.

The preceding contrasting trends in concentration have important implications for consumers and public policy. Quite clearly, those industries whose products lend themselves to extensive product differentiation through advertising, particularly network TV advertising, have experienced sizable increases in concentration over the 23-year period 1947–1970. This may adversely affect consumers in two ways. First, the resulting high concentration tends to permit manufacturers to enjoy excessive profit margins which, in turn, become translated in higher costs to consumers. Second, the large advertising expenditures made to achieve product differentiation increase manufacturers' costs.

Table 2 shows the results of an empirical study of the manner in which market concentration and advertising expenditures in an industry affect firm profits in the industry. The profit figures in the body of the table are estimates resulting from a statistical analysis of food manufacturing firms for the years 1949–1951. (Although this study is based on data for the immediate post-war period, a more recent study based on experience during the 1960's came to very similar conclusions.[1]) The table shows the profit rate firms tend to enjoy when they operate in industries with various levels of concentration and advertising expenditures. For example, if a firm operated in an industry with a concentration ratio of 40 percent and advertising expenditures of 1 percent of sales, it would tend to earn a profit of about 6.3 percent on its net worth. On the other hand, if the firm were in an industry where four firms controlled 70 percent of sales and made advertising expenditures equal to 1 percent of sales, it would tend to enjoy an average profit rate of about 11.5 percent on net worth. Thus, when advertising is held constant, increasing concentration from 40 to 70 percent results in a near doubling of the profit rate. If both advertising and concentration are increased, the results are even more spectacular. A firm in an industry with a four-firm concentration ratio of 70 percent and a 6 percent advertising-to-sales ration would tend to earn 16.9 percent, or over two and one-half times as great as the first example I gave.

A specific example will illustrate how excessive concentration in industries with advertising-achieved product differentiation imposes heavy costs on consumers. In cereal manufacturing, where both concentration and advertising are extremely high, the Kellogg Company had the highest profits on net worth of any of the companies in the FTC study[2]—upon which table 2 is based, or 26 percent. Similarly, in 1972 Kellog had the second highest profits on net worth—21 percent—of any food corporation listed in the Fortune 500.[3]

But excess profits are only part of the burden imposed on consumers in this industry. In 1970 the largest cereal companies made advertising outlays of about $70 million annually, or equal to 11 percent of sales. It has been well documented that most of this advertising conveys little concerning nutritional value or other information useful to consumers. Indeed, her analysis of TV advertising appeals to children led nutritionist Joan Gussow to conclude that "cereal manufacturers advertise almost exclusively their worst [in terms of nutritional value] cereals to children."[4]

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[1] B. Imel and P. Helmberger, "Estimation of Structure-Profit Relationships with Application to the Food Processing Sector," American Economic Review, September 1971, pp. 614–27.

[2] Economic Report, The Influence of Market Structure on Profit Performance of Food Manufacturing Companies, Staff Report to the Federal Trade Commission, September 1969, p. 7.

[3] "The Fortune 500," Fortune Magazine, May 1973.

[4] Testimony of Joan Gussow before the Subcommittee on the Consumer, Senate Commerce Committee, March 2, 1972.

TABLE 2.—PROFIT RATES OF FOOD MANUFACTURING FIRMS ASSOCIATED WITH LEVELS OF INDUSTRY CONCENTRATION AND ADVERTISING-TO-SALES RATIOS

	Associated net firm profit rates as a percent of stockholders' equity					
Advertising-to-sales ratio (percent)	1.0	2.0	3.0	4.0	5.0	6.0
4-firm concentration:						
40	6.3	7.4	8.5	9.6	10.7	11.8
45	8.0	9.1	10.2	11.3	12.4	13.5
50	9.3	10.4	11.5	12.6	13.7	14.8
55	10.3	11.4	12.5	13.6	14.7	15.8
60	11.0	12.1	13.2	14.3	15.4	16.5
65	11.4	12.5	13.6	14.7	15.8	16.8
70	11.5	12.6	13.7	14.8	15.9	16.9

Source: Economic Report of the Influence of Market Structure on the Profit Performance of Food Manufacturing Companies, staff report of the Federal Trade Commission, September 1969, p. 7.

Conservatively, the advertising expenditures of cereal manufacturers, plus their excess profits,[5] are costing American consumers in excess of $100 million annually, or over 15 percent of cereal sales revenue. Over the last decade these costs amounted to the staggering sum of over $1 billion.

It should be emphasized that the cereal industry is one of a relatively few industries with very high concentration in the food and related industries. As shown in Table 3, there are four industries where four-firms accounted for 75 percent or more of sales and 19 were four-firms accounted for 50 percent or more of sales. These 19 industries accounted for over one-half of the value added by these 41 industries.[6] This indicates that are is a significant concentration problem in the manufacturing of food and related products. Moreover, the trends toward growing concentration I mentioned earlier are disturbing. They may require new remedies for solving the problem posed by excessive economic power. One of the most troublesome problems to deal with are products that lend themselves to extensive advertising. The FTC's cereals case brought in January 1972 may test the adequacy of existing antitrust laws in dealing with the problem.[7] However that litigation seems to be going very slowly and there is danger that unless it is pushed aggressively no meaningful relief will result.

TABLE 3.—4-FIRM CONCENTRATION IN 41 FOOD AND RELATED MANUFACTURING INDUSTRIES, BY QUARTILES, 1970

	Number of industries		Value added by manufacturers	
4-firm concentration ratio (percent)	Number	Percent [1]	Billions	Percent [1]
75 to 100	4	9.8	$3.1	21.1
50 to 74	15	43.9	5.6	38.0
25 to 49	18	36.6	8.1	26.3
Below 25	4	9.8	4.5	14.6
Total	41	100.0	21.3	100.0

[1] Percentages may not sum to 100 due to rounding error.

Note: The products of these industries are sold in essentially national markets. Excluded are 6 industries where products are sold in regional or local markets. These are SIC 2024, 2026, 2042, 2051, 2082, and 2086. For 8 industries 1967 concentration ratios were used because 1970 was not available.

Source: Same as table 1.

[5] In this estimate I have assumed that about one-half of their profits are "excess" profits. A Food Commission study found that in 1964 advertising equalled 15.2 percent and pretax profits equalled 14.1 percent of the sales of cereal makers. Studies of Organization and Competition in Grocery Manufacturing, Technical Study No. 6, National Commission on Food Marketing, June 1966, p. 214. Total cereal sales were $625 million in 1963 and $953 million in 1970. Average annual sales over the past decade were in excess of $750 million.

[6] Six industries are excluded from Table 3 because the firm in them sell in local or regional markets. Thus, their calculated concentration ratios understate the level of concentration in relevant economic markets.

[7] *In the Matter of Kellogg Co., et al.*, Federal Trade Commission File No. 711004, January 1972.

The concentration trends summarized in Table 1 are part of a larger problem in American manufacturing. As shown in Appendix Table 1, high product differentiation industries generally are experiencing rising concentration. Moreover, there has been no tendency for average concentration levels to be eroded over the 23-year period 1947–1970. Therefore, in some of my recommendations I shall be thinking about the excessive concentration problem in manufacturing generally, not just in food manufacturing and food retailing.

Before turning to my recommendations, I shall first make a few observations concerning recent concentration trends and certain practices in grocery retailing.

CONCENTRATION IN GROCERY RETAILING

As summarized in Table 4, average concentration in food retailing has followed a persistent upward trend since at least 1954. Some of the early increase reflected the failure of the antitrust agencies to stop expeditiously the enormous merger movement in the industry commencing in the early 1950's. The FTC had devoted inadequate legal resources to this area in the 1950's and I was one of the only senior FTC staff members interested in aggressively pursuing mergers in food retailing in the early 1960's. Ultimately the FTC brought five cases and issued enforcement guidelines in January 1967. Although mergers by large food chains have virtually halted since then, in many markets concentration is very high and still rising. As shown in Table 5, concentration is quite high in many cities.

TABLE 4.—UNWEIGHTED AVERAGE MARKET SHARES HELD BY THE 4, 8, AND 20 LARGEST GROCERY COMPANIES IN 205 STANDARD METROPOLITAN STATISTICAL AREAS, 1954-67

	1954	1958	1963	1967
CR4	45.3	49.2	50.0	50.9
CR8	54.3	59.8	61.9	64.5
CR20	64.2	70.9	74.2	77.4

Source: Special tabulation prepared by the Bureau of the Census for the Federal Trade Commission and placed in the record of these hearings.

TABLE 5.—*Four-Firm Concentration in Grocery Retailing in 205 Standard Metropolitan Statistical Areas in 1967*

Four-firm concentration:	Number of cities in group
20 to 30	3
30 to 40	26
40 to 50	63
50 to 60	73
60 to 70	35
70 to 80	4
80 to 90	1
Total	205

SOURCE: Special tabulation by the Bureau of the Census for the Federal Trade Commission introduced in these hearings.

Washington, D.C., is one of the most concentrated food grocery retailing markets. The top four chain's share of grocery store sales in the Washington metropolitan area rose steadily between 1954 and 1967—from 56 percent to 70.3 percent. The largest chains have a strong grip on this market. They have forestalled potential competition entry by engaging in tactics to discourage entry into the market.[8] Although I have no information on current practices, in the 1960s retailers that held a dominant market position in the city received larger advertising allowances from their suppliers than they spent on the products for which they received the allowances. In other words, they actually enjoyed a profit on their advertising allowances. This situation gives dominant firms a pronounced advantage over smaller rivals, who typically have net advertising costs of 2 percent of sales. This difference in advertising costs of dominant and small chains

[8] Economic Report on Food Chain Selling Practices in the District of Columbia and San Francisco, Staff Report to the Federal Trade Commission, July 1969, p. 4.

and independents can be decisive in food retailing where pretax profit margins typically run between 2 percent and 3 percent of sales.

In my view both of the practices mentioned above raise serious questions under Section 5 of the FTC Act and warrant action, especially in a market as concentrated as Washington.

RECOMMENDATIONS

Following are several recommendations that I believe essential to make our economy more competitive. Only the first two areas deal explicitly with the food industry. The remainder are reforms applying to other segments of the economy as well as the food industry. Indeed, in my view, the very survival of competitive capitalism depends on the creation of instruments of social control capable of coping with the vast economic power of many large corporations.

I shall only enumerate at this time the various recommendations, although my prepared statement includes a discussion of each. I shall be pleased to discuss in whatever detail you wish any or all of the following proposals:

Transfer of the regulatory authority of the Department of Agriculture under the Packers and Stockyards Act to the antitrust agencies.

Encourage the Federal Trade Commission to conduct continuing inquiries into the competitive structure and behavior of the food industries.

Enact legislation that will facilitate restruction of excessively concentrated industries.

Strengthen the antitrust laws to deal more effectively with large conglomerate mergers.

Eliminate unnecessary corporate secrecy.

Reform of the internal operating procedures of the antitrust agencies.

Eliminate the control now exercised by the Executive Office of the President over the independent regulatory agencies.

Transfer the Department of Agriculture's responsibilities under the Packers and Stockyards Act to the antitrust agencies

After an extensive investigation of meat packing in 1917–20, the Packers and Stockyards Act was enacted in 1921. Vested interests succeeded in placing enforcement of the Act in the Department of Agriculture in the expectation that the Department would enforce the Act less aggressively than the FTC. History has proved these expectations correct, as the Agriculture Department's enforcement has been lackadaisical at best. In 1966, after its extensive study of the enforcement activity of the Department, the National Commission on Food Marketing stated:

"We conclude that regulatory jurisdiction over transactions in meats, dressed poultry, and products processed from them should be removed from the Department of Agriculture and exercised only by the Department of Justice and the Federal Trade Commission." [8a]

Economic studies of the food industry by the FTC

Historically, the Federal Trade Commission has made numerous economic inquiries in the food industry. Recognizing the FTC's expertise in the area, in 1966 the National Commission on Food Marketing concluded:

"In order that the Congress, the executive branch, and the public will be fully informed we believe that the Federal Trade Commission should be charged with making a continuing review of market structure and competition in the food industry and report annually thereon to the Congress." [9]

The Food Commission went on to add that the value of this effort would be enhanced "if the appropriate committees of the Senate and the House of Representatives hold public hearings as necessary to inquiry into the cause and implications of the developments revealed by [FTC] reports. We also think it would be helpful if the Federal Trade Commission would provide in its administrative structure for specialization in the economics of the food industry." [10]

During the 1960's the Commission prepared a number of important reports on the food industry and sought funds to implement the recommendation of the Food Commission. In the 1970's there have been no new studies initiated nor, to

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[8a] Final Report of the National Commission on Food Marketing, Food From Farmer to Consumer, 1966, p. 108.

[9] Final Report of the National Commission on Food Marketing, Food From Farmer to Consumer, 1966, p. 108.

[10] *Ibid.*, p. 107.

my knowledge, has the FTC sought funds for this purpose. I therefore urge this committee to encourage the FTC to adopt the recommendations of the Food Commission.

Restructure concentrated industries

Economists may quibble over the degree and trends of industrial concentration, but it is an indisputable fact that in many industries production is concentrated in a few hands, has been highly concentrated for many decades, and will in all probability remain so unless some explicit public policy initiatives are taken to change things.

Certainly over eighty years of experience with the enforcement of the Sherman Act make it clear that the traditional antitrust approach is not adequate to cope with the task before us. I seriously question whether the antitrust agencies have the capacity to do the job, even if they have the will. The revelations regarding the IBM case initiated by the Justice Department in January 1969 are instructive. In that case the Control Data Corporation (CDC), which had a private suit quite closely resembling the Justice Department's complaint, was carrying most of the burden of the case. When IBM and CDC reached a settlement in the matter, IBM destroyed a computerized index to the 27 million documents collected by CDC, allegedly hampering the Justice Department's efforts in the case. An indication of the costs involved in trying a case of this magnitude under existing law is that in its settlement with CDC, IBM agreed to pay CDC $15 million for attorneys' fees and other expenses. This is greater than the annual budget of the Antitrust Division.

Donald I. Baker, head of the Antitrust Division's policy planning section shares the view that the Justice Department cannot effectively cope with the concentrated industry problem. He recently stated:

"My own view is that the Section 2 standard is probably inadequate as a practical matter to deal with the broad oligopoly situations we've got across the country. . . . The burden of proof on the Government will just turn out to be too great. . . . These Section 2 'big firm monopoly' cases are just enormously draining of our resources, . . . and we just simply do not have the kind of resources that would be needed to pursue the Section 2 standard against the broad range of oligopoly markets." [11]

If we are serious about industry restructuring, new approaches are needed: (1) a new mandate from the Congress indicating that it does indeed support a public policy designed to improve the effectiveness of competition in the economy and (2) a new statute that permits both effective and expeditious steps to bring this about. It is for these reasons that I find great merit in Senator Hart's recently introduced Industrial Reorganization Act (Industrial Reorganization Act, S1167, 1973).

Because of its length and complexities, I shall comment only on my overall reactions to the proposal's various provisions.[12]

Its passage would constitute a clear mandate from the Congress that it supports a vigorous procompetition policy through judicious industrial restructuring in key industries.

It would expedite the enforcement process by articulating standards that go to the heart of the matter: the possession of monopoly power. The existing case law focuses on issues of intent to monopolize, the abuse of monopoly power, and other aspects of conduct and business behavior rather than market power as such.

It establishes an organizational and procedural framework that could expedite relief in the most important segments of the economy by: (1) establishing an Industrial Reorganization Commission for the sole purpose of enforcing the Act; (2) directing it to give top priority to seven important industries, and (3) establishing a special Industrial Reorganization Court that would provide a panel of judges to deal specifically with cases originating under the Act.

The Act encourages the Commission and Court to explore a variety of ways for reorganizing an industry to enhance competition. The Industrial Reorganization Commission may explore methods of increasing competition beyond those available to the Industrial Reorganization Court. For example, in some cases it might recommend that government actions be taken to encourage new entry in

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[11] Interview of Donald I. Baker, Antitrust & Trade Regulation Report, Bureau of National Affairs, Washington, D.C., March 27, 1973, p. AA–2.

[12] I testified on this proposal March 27, 1973, before the Senate Subcommittee on Antitrust and Monopoly, United States Senate.

an industry; in others, it might consider the desirability of establishing government-owned enterprises in highly concentrated industries much as Sweden has done with apparent success in the drug industry.

Strengthen section 7 of the Clayton Act in dealing with large mergers

A great merger movement swept across American industry during the 1950's and 1960's, reaching unprecedented heights in 1968 and early 1969. It increased greatly the share of American industry controlled by the largest corporations. The top 200's share of assets of corporations engaged primarily in manufacturing rose from 48 percent in 1950 to 61 percent in 1968.[13] This increase is almost entirely attributable to the numerous mergers of those companies.[14] The merger movement slowed appreciably since 1969, partly because several large conglomerate mergers were challenged in 1969 and partly because bear stock markets always are unfavorable to merger activity. Nonetheless merger activity has continued, and there is every reason to expect it to continue, perhaps accelerating once more with the return of a bull stock market. For example, the chief target of the 1969 merger cases, ITT, has acquired at least 55 companies valued at $575 million in the 20 months following the settlement of the ITT cases in the fall of 1971.

In view of the mounting evidence that enormous conglomerate corporations pose political as well as economic dangers transcending the economist's narrow view of a merger's impact on an isolated market, there is need for new legislation that imposes much stricter rules for conglomerate mergers.[15] I favor legislation requiring that before a large corporation could make an acquisition of significant size, the Federal Trade Commission make an affirmative finding that (1) the merger does not have the effect of substantially lessening competition under the existing law and (2) the merger is in the public interest because it promises to increase competition, efficiency, or provide other economic benefits in which the public would share. For this purpose, a large conglomerate could be defined as one with sales in excess of $500 million and the acquired or merging company one with assets of $10 million. A conglomerate that acquired during a 12 month period a number of smaller companies with combined assets of $10 million might also be required to obtain such approval. Evidence concerning the issues involved would be developed before the FTC in a public hearing to which the Antitrust Division of the Department of Justice could be a party. FTC decisions could be appealed by either the merging parties or the Department of Justice. I also favor procedures whereby private parties could intervene in such proceedings.

The purposes for this procedure are twofold: First, to establish special standards for mergers by large conglomerates that may pose serious economic and social dangers without offsetting benefits to the public interest and, second, to require the antitrust authorities to account publicly for their decisions to permit or reject such mergers.

Placing stricter curbs on mergers will not solve problems posed by existing conglomerates. The major benefit will be insurance of more decentralized industrial structure, which will be desirable on both economic and political grounds.

Eliminate unnecessary corporate secrecy [16a]

It is fundamental that a market functions properly only in an atmosphere of extensive knowledge concerning financial and other aspects of corporate behavior. Contrary to the assertions of many corporate spokesmen, corporate secrecy—not corporate disclosure—is the great enemy of a market economy in a free society. Ironically, American businessmen today operate under two sets of rules with respect to the disclosure of corporate financial information—one set for large corporations and another set for smaller ones.

We know a great deal about small and medium corporations because, almost invariably, they are quite specialized. One need only glance at the annual report of almost any industrial company with annual sales under $50 milion to learn

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[13] Staff Report of the Federal Trade Commission, Economic Report on Corporate Mergers, 1969, p. 173.

[14] *Ibid.*, p. 195.

[15] See: "Conglomerate Mergers: A Crisis in Public Policy," Reprinted in the Hearings before the Antitrust Subcommittee of the Committee on the Judiciary, House of Representatives, 91st Congress, 2nd Session on Government and Private Witnesses, May 13, 14, and 15, 1970.

[16a] For a fuller discussion of this problem see, Willard F. Mueller in "Corporate Disclosure: The Public's Right to Know," in A. Rappaport and L. Revsine (ed.), Corporate Financial Reporting, Northwestern University, 1972, pp. 67–94.

its strengths and weaknesses in a line of business. But not so with a large conglomerate corporation whose annual report masks more than it reveals. Not surprisingly, therefore, it is the large corporation that invariably resists steps to strengthen disclosure requirements—steps that in practice would, at most, place it on a par with small corporations. This is yet another example where allegedly equal treatment under the law results in grossly unequal treatment among those covered by the law. One is reminded of Anatole France's bitter characterization of this anomaly: "The law with majestic impartiality forbids the rich and poor alike from stealing bread and sleeping under bridges."

The need for more adequate disclosure of corporate financial affairs grows as American corporations grow in size and complexity. Our economic intelligence about many aspects of business organization is worse today than it was around 1900, when Roosevelt made his plea for opening to public view the "mammoth" corporations of his day. It was self-evident to Roosevelt that "Great corporations exist only because they are created and safeguarded by our institutions; and it is therefore our right and our duty to see that they work in harmony with these institutions." He therefore argued that, "The first requisite [of corporate accountability] is knowledge, full and complete; knowledge which may be made public to the world."

Although many Americans around 1900 were concerned with the need for full disclosure of what they viewed as vast corporations, these corporations were pigmies compared to today's giants. In 1972 the two largest industrial corporations had combined sales of $50 billion, which was greater (in constant dollars) than those of all manufacturers in 1900. Clearly the need for public disclosure is much greater today. Among the types of information that large corporations should be required to make public are the following:

Much more extensive public reporting of the sources of investment, revenues and profits than is now required by the SEC.

Extensive public disclosure of the volumes of all products manufactured and sold, including such information corporations currently supply the Bureau of the Census under strict rules of confidentiality.

Public disclosure of corporate federal income tax returns.

Disclosure of certain social costs.

Disclosure of intercorporate financial ties.

Disclosure of publicly owned facilities operated or leased by private corporations.

Disclosure of various details of the corporation's foreign operations.

The justification for reducing secrecy in corporate affairs is premised on what Justice Louis Brandeis emphasized as "the essential difference between corporations and natural persons." I fear too many Americans have forgotten which was self-evident to those first grappling with the problem of corporate power.

Reform internal operating procedures of the antitrust agencies

At the outset of the Kleindienst hearings regarding the circumstances surrounding the ITT settlement, President Nixon said, "We want the whole record brought out because [Kleindienst] wants to go in as Attorney General with no cloud over him." Not only did the hearings fail to lift the cloud over Kleindienst, but the cloud darkened and grew until it overshadowed Pennsylvania Avenue from the Department of Justice to the White House. The hearings documented the process by which the large corporation brings its influence to bear on government and how government responds.[16b]

Although the full story may never be known, the hearings developed disturbing facts concerning the operations of the Justice Department. The public had been misled in the summer of 1971 as to the actual reasons for the ITT settlement, and Kleindienst was not telling the truth when he said the entire settlement had been "handled and negotiated exclusively" by antitrust chief McLaren. Kleindienst and White House aides were very much involved in the entire process. The hearings also made public for the first time that Kleindienst and Mitchell had overruled other legal actions recommended by McLaren.

The handling of the ITT settlement and other antitrust matters inevitably reduce the public's confidence in the Department's integrity How, then, can public confidence be restored? The answer, in part, is to eliminate the heavy blanket of secrecy that covers so much of the public's business. This requires opening more government and corporate behavior to public scrutiny.

[16b] See Willard F. Mueller, "The ITT Settlement: A Deal with Justice?" Industrial Organization Review, Vol. 1, No. 1, 1973, pp. 67–86.

One of the most disturbing aspects of the ITT settlement is that Kleindienst, Mitchell and McLaren repeatedly insisted that the entire process followed in the ITT settlement negotiations was standard operating procedure at the Justice Department. Insofar as this is true, it is the essence of the public's lack of confidence in much antitrust enforcement.

This problem can be solved only if officials of the Department of Justice and the Federal Trade Commission are held more publicly accountable. This is especially true in the over 80 percent of the antitrust cases that end in out-of-court settlements.

Legislation (S. 782) recently introduced by Senator John V. Tunney would go far toward opening up the consent settlement process to wider public and judicial scrutiny. It would, among other things, require the Justice Department to document publicly the considerations that influence the terms of a settlement, including an evaluation of the impact of the settlement. In this respect it is similar to the environmental impact statements required of the National Environmental Protection Act.

Additionally, the bill would require that corporate defendants list all oral or written communications between themselves and any member of government. Although such legislation is no cure-all for political corruption or administrative bungling, it could be an important step in restoring the public's confidence that ours is a government run according to rules of law rather than by arbitrary decisions of men.

Eliminate control by the Executive Office of the President over the independent regulatory agencies

At the present time the Office of Management and Budget may exercise considerable control over the independent agencies, including approval of budget requests prior to submission to Congress, review of enforcement and other programs, clearance of all special reports seeking information for purposes of economic and related types of inquiries, and clearance of speeches and statements of agency chairmen. These various acts inevitably deprive the regulatory agencies of the independence from the President the Congress intended in establishing them. I have had personal experience and knowledge of situations where the OMB and its predecessor the Bureau of the Budget frustrated the effectiveness of the FTC. I therefore feel very strongly that the Congress should cut clean the ties between the independent agencies and the Office of the President.

APPENDIX 1

AVERAGE UNWEIGHTED AND WEIGHTED 4-FIRM CONCENTRATION RATIOS BY DEGREE OF PRODUCT DIFFERENTIATION FOR 166 MANUFACTURING INDUSTRIES, 1947–70

	166 industries	Producer goods (N=97)	Consumer goods: Degree of differentiation			
			All (N=69)	Low (N=20)	Moderate (N=33)	High (N=16)
Average unweighted 4-firm concentration:						
1970	42.7	42.8	42.4	28.2	41.4	62.3
1967	41.4	41.9	40.8	26.0	39.7	61.6
1963	41.3	42.4	39.9	25.8	38.8	59.8
1958	40.3	42.4	37.4	23.8	36.7	55.9
1954	40.6	43.3	37.1	25.3	35.8	54.6
1947	40.9	44.1	36.3	27.8	35.0	49.6
Change 1947–70	+1.8	−1.3	+6.1	+.4	+6.4	+12.7
Average weighted 4-firm concentration:[1]						
1970	42.6	40.1	45.1	27.0	30.7	58.8
1967	42.0	39.6	44.5	25.9	28.6	59.1
1963	41.9	40.2	43.7	28.0	26.9	58.1
1958	41.8	41.2	42.5	28.5	25.7	56.5
1954	42.5	42.1	42.5	30.4	25.6	56.0
1947	40.5	42.8	38.2	34.0	24.2	47.8
Change 1947–70	+2.1	−2.7	+6.9	−7.0	+6.5	+11.0

[1] Weighted by each industry's value added in 1970.

Source: Unpublished study by Willard F. Mueller and Larry G. Hamm.

Extracts From "Marketing Competition on Oligopolistic Industries: The Attack on Advertising"[1]

(By Willard F. Mueller[2])

THE CEREAL CASE

Let us turn finally to the latest action by regulatory authorities to cause great consternation in some circles, and the chief target of Professor Brozen, the FTC's so-called cereal case. On January 5, 1972, the FTC issued a proposed complaint against the four largest manufacturers of ready-to-eat (RTE) breakfast cereals. This is a potentially precedent setting case because it attacks under Section 5 of the FTC Act four firms in a highly concentrated industry for exercising monopoly power, and asserts that the chief source of this power rests on enormous advertising expenditures and certain anticompetitive promotional strategies.

In his highly emotional "analysis" of the available facts, Professor Brozen finds not a shred of evidence to support the FTC charge of monopoly. Indeed, in his Alice in Wonderland World, cereal companies behave as keen competitors and the industry's performance is exemplary. Because his is the first published and widely disseminated evaluation of this action, it should be scrutinized carefully.

Brozen begins his attack by asserting the Commission staff made a number of factual errors in discussing the proposed complaint. He claims a staff member gave the news media inaccurate data concerning cereal industry advertising expenditures. Brozen says that had the staff bothered to check the facts, it would have found that "advertising expenditures for cereals declined from 11.3 percent in 1954 to 10.9 percent in 1970." Brozen should have read the complaint itself, which cites the actual advertising expenditures by cereal makers as averaging 12.6 percent for the top six companies in 1970. The complaint further shows that between 1950 and 1970 advertising expenditures of the four defendants rose from $26 million in 1950 to $81 million in 1970.

He next criticizes some undisclosed FTC staff member for stating that prices would be lower if cereal companies spent less on advertising. Brozen attempts to make the case that increased advertising for cereals has resulted in lower production and marketing costs. He says that prior to the advent of TV advertising, RTE cereals had greater seasonal swings in consumption than today, and that smoothing out these seasonal swings has "contributed to keeping the price of cereals low." He gives neither the source of his statistics nor estimates the size of the savings. Nor does he square his claim of keeping prices low with the fact that cereal prices rose at an astronomical rate during the period cereal companies made increasing use of TV advertising, and allegedly lowered costs. Network TV advertising had its greatest growth between about 1950 and 1963. Over this period, cereal prices rose by nearly 60 percent whereas all processed foods declined slightly in price. So if cost savings resulted from reducing the cyclical nature of RTE cereal consumption, cereal manufacturers evidently did not pass forward these savings in the form of lower prices to consumers.

Brozen next asserts that "if cereals were not advertised, the distribution and selling costs to manufacturers would be much higher." To prove this allegation, he compares the advertising and distribution costs of cereal companies with those of makers of cookies and crackers. He states that cookie and cracker companies averaged only 2.2 percent of sales on advertising in 1964 in contrast to the 14.9 percent spent by cereal companies. He thought it significant that whereas cookie companies spent 19.7 percent of sales on other selling costs, cereal companies spent only 7.7 percent. He attributes the cost difference to the fact that cookie companies provide store-door delivery service, check shelves for out-of-stock items and help stock store shelves. On the other hand, because advertising has presold RTE cereals, it is not necessary to provide these services to retailers.

Although not necessarily making a brief for the cookie companies' methods of distribution, it is improper to imply, as does Brozen, that real economies result when retailers rather than suppliers perform certain distribution func-

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[1] Paper presented at the American Market Association, Marketing Practices and Public Policy Issues Conference, Northwestern University, June 12–13, 1972.

[2] Vilas Research Professor of Agricultural Economics, University of Wisconsin, Madison, Wisconsin.

tions. Also, Brozen is incorrect when he says that prior to 1950, and the advent of extensive TV advertising, cereal companies spent much more on distribution costs. Whereas in 1940 their distribution costs were 9.5 percent as great as their total manufacturing costs, by 1964 they had risen to 17.5 percent (Table 1). Conversely, whereas advertising expenditures for cookies went down over the period (in contrast to the sharp rise in cereals), selling expenses also dropped in cookies. The "other selling, general and administrative" expenses for cereals rose sharply over the period—from 36.7 percent to 63.0 percent—in contrast to a significant drop in cookies—from 57.1 percent to 46.0 percent. Thus, the available data do not support Brozen's assertion that increased advertising has reduced distribution costs. The facts do support the conclusion that increased advertising of cereals increased both concentration and barriers to entry, which in turn permitted cereal companies to widen their profit margins; in contrast, both advertising and profit margins of cookie and cracker companies declined (Table 1).

TABLE 1.—SELLING AND OTHER ITEMS EXPRESSED AS A PERCENT OF TOTAL MANUFACTURING COSTS AND EXPENSES, 1940 AND 1964

Items	Breakfast cereals		Crackers and cookies	
	1964	1940	1964	1940
Selling expense	17.5	9.5	32.5	41.1
Advertising expense	28.8	20.4	2.7	4.6
Administrative and general expense	8.2	5.2	7.6	8.3
Other selling, general and administrative expense	8.5	2.0	3.2	3.0
Total selling, general and administrative expense	63.0	36.7	46.0	57.1
Net profit before Federal income taxes	26.8	19.3	12.7	20.2

Source: Derived from grocery manufacturing, op cit., p. 214.

Brozen next turned to the FTC complaint's allegation that extensive advertising creates barriers to entry. Nonsense, says Brozen, "the [high] level of advertising in cereals indicates vigorous competition." Brozen points out that a single-firm monopoly advertises less than do oligopolists; indeed, if a cereal company had a complete monopoly, it would not have to advertise at all. Ergo, since cereal companies advertise a great deal, the industry must be very competitive.

Admittedly, a monopolist and, indeed, a group of oligopolists need not engage in advertising if there are other formidable barriers to entry. But the heart of the FTC complaint is that the cereal companies' "practices of proliferating brands, differentiating similar products and promoting trademarks through intensive advertising result in high barriers to entry in the RTE cereal market." A number of empirical studies lend strong support to the allegation that advertising-created product differentiation results in substantial barriers to entry. Brozen attempts to refute this evidence by using a special definition of entry. He lays the foundation for his argument by misstating the FTC's allegations on this point. He says the FTC asserts that "advertising is a barrier to entry by firms new to the market and *by new products*." (Emphasis added.) The FTC complaint does not define entry in terms of "new products" but in terms of new competitors. Brozen apparently has added this language so as to judge the case on his own definition of entry. For he argues that, "If advertising were a barrier to entry, we would expect low product turnover in industries with high levels of advertising." Citing a study by his fellow Chicagoan Lestern Telser, he says the reverse is true. But in cereals, as in many other consumer goods industries with high advertising and brand proliferation, Telser simply measures the rapidity with which existing competitors change their brands because of obsolescence. He says nothing about brands introduced by new competitors. Product turnover cannot be used as an index of competition. For brand proliferation, as the FTC complaint charges, may itself be the source of high barriers to entry by new firms. As Peter O. Steiner has observed with respect to Telser's argument, "rapid brand obsolescence (in toiletries, etc.) is a response to the needs of advertising, and not the other way round."

Advertising, of course, can be a procompetitive marketing strategy where it is imperative to entry by a new firm. But this has not happened in the cereal industry, where for decades no significant new competitors have hurdled the high

advertising-created entry barriers. Moreover, in cereals there is persistent advertising for long-established brands, contrary to Brozen's claim that "It is new products which are heavily advertised, not old ones." This is another example of Brozen's misrepresentation of the facts. Although cereal companies spend vast amounts introducing new brands, they spend even more on their leading, long-established brands. In 1970, the three leading cereal makers spent well over two-thirds of their advertising budgets on products introduced before 1959.

The most heavily advertised brand in 1970 was Cheerios ($7.1 million), which was introduced over 30 years ago. The second and third most heavily advertised brands were Rice Krispies ($5.3 million) and Kellogg's Corn Flakes ($5.2 million), which were introduced in 1928 and 1906, respectively. Significantly, General Mills spent more for advertising its famous Grape Nuts brand ($4.4 million) than for any of its other brands, despite the fact that Grape Nuts is the oldest of the popular brands, having introduced in 1898.

Quite clearly, cereal makers engage in persistent high advertising expenditures to maintain the market share of their established brands. In addition, of course, they often spend enormous amounts when they introduce new brands. Of five brands introduced during 1962 and 1963, annual advertising expenditures averaged $2.8 million, which represented 39 percent of the sales value of the new product. New brand introduction involves enormous cross-subsidization made possible by the high profits cereal makers enjoy from their established brands.

Brozen musters a variety of other questionable evidence to support his view that the massive advertising of RTE cereals is in the public interest. He points out that the Russians engage in some advertising to reduce retail distribution costs. Brozen implies that this is a devastating criticism of the FTC complaint because, "While advertising as such is being attacked in the free economy of America, it is being put to fruitful use in the controlled economy of Russia." This is the worst sort of sophistry. As I said at the outset, advertising as such is not under attack in America. It is fundamental that some advertising is essential in many industries to permit consumer sovereignty to play its proper role in a market economy. The point at issue in the FTC's complaint is whether or not advertising by cereal makers goes far beyond that required to inform consumers, thereby resulting in both deception and increased barriers to entry.

Brozen concludes with what he believes is a real clincher. He cites the findings of another fellow Chicagoan, Professor Lee Benham, to demonstrate "the effect of a ban on advertising—or requirements which effectively eliminate advertising as a competitive tool. . . ." Benham's study demonstrates that the prices of eye glasses are lower in states which permit some advertising than in those that prohibit all advertising. Benham's study, while valid so far as it goes, sheds no light on the relevance of the role of advertising in the cereal industry. As I pointed out in my review of this original paper, "Benham has studied an extreme case, in that very few industries are prevented from engaging in any form of advertising, even of an information character [as is true with eye glasses in some states]. . . . Thus his analysis, while interesting as a case study, involves a special case and sheds no light whatsoever on the vast majority of industries where varying amounts are spent annually on noninformation advertising."

Brozen said he was "startled" by Benham's findings: "I had no idea that advertising could produce such a large impact." Apparently Brozen was among a group of economists and business school professors at the University of Chicago interviewed by Benham, who found that 40 percent of the economists and 100 percent of the business school teachers interviewed believed that eye glass prices would be lower if advertising were prohibited. As I said in my review of Benham's original paper, "If this [survey] truly reflects the Chicago School's view of the price impact of informational advertising, the American free enterprise system has few friends in its own house.

Brozen concludes with the warning, "the FTC must be stopped before its anti-advertising zeal stops competition dead in its tracks." So ends Brozen's decision in the matter before the FTC has had an opportunity to place any evidence in the public record. Although I am not prepared to offer a final verdict until all evidence is in, I think all objective analysts will agree that Brozen's preliminary decision in the matter should be summarily dismissed. And his sponsors would be well advised to stop further mass distribution of such economic drivel. The public is becoming sufficiently sophisticated to recognize prepackaged, special interest economic pleadings even when they are not truthfully labeled.

Advertising Age summed up well the adverse effects of Brozen's undisclosed ties with ITT: "It isn't only the business world that suffers when full disclosure of these consultancies is not made. The academic world's reputation also is diminished in people's eyes. . . . Any affiliation between an academic "expert" and a company whose views he publicly defends should be clearly announced at the outset so that people can form their own opinions based on all the facts."

Mr. MEZVINSKY. The next witness will be Mr. James Hightower, director of the Agribusiness Accountability Project. You may want to introduce whoever else is with you. I am sorry, Mr. Hightower, with the time element, that although your statement and whatever you wish to submit will be placed into the record in full, we hope you can summarize your testimony, and then we will open it up for questions. I know the Agribusiness Accountability Project has spent a considerable amount of time, effort, and research on its testimony and I am familiar with your work and want to commend you for the efforts that you have taken in the past.

TESTIMONY OF JAMES HIGHTOWER, DIRECTOR, AGRIBUSINESS ACCOUNTABILITY PROJECT; ACCOMPANIED BY NANCY MILLS

Mr. HIGHTOWER. Thank you very much. It is a pleasure for us to be here this morning. With me is Nancy Mills, an associate in the Agribusiness Accountability Project.

We have submitted three basic documents to the committee members as our testimony. [See p. 355.] I will submit those for the record and, in the interest of time, summarize our views.

There are two logical ends of the food chain. There are growers and there are eaters. In today's food economy, however, neither is doing very well. Food costs are at an all-time high, but farmers are averaging only 40 percent and less of the consumer's food dollar. The House Agriculture Committee says that the consumer is paying 43 percent higher prices for food today than he did in 1952, but family farmers have only had a 6-percent rise in the price that they have been paid.

It is corporate America that is taking the big bite. A highly concentrated processing and merchandising industry has arisen between the field and the dinner table. There were 32,500 food manufacturing firms counted in the 1967 census of manufacturing, but a mere 100 of those had 71 percent of all industry profits. That is where food power is located today, and it is with those giants that both farmers and consumers must deal.

A study of the Federal Trade Commission finds that the American consumer is being overcharged more than $2 billion a year because of monopolies in just 13 food lines. Meat and poultry prices are going up this year in part because just three corporations are holding 95 percent of last year's soybean crop. Brand name food products are held by fewer and fewer corporations, and their pricing practices rely on advertising rather than on such competitive factors as efficiency and product quality.

A thousand farmers a week, Mr. Chairman, are forced out of business. Increasingly, those are efficient farmers, highly productive. They are squeezed on one side by input corporations that are enjoying record profits—these costs to farmers have skrocketed by 122 percent since 1952. Those farmers are squeezed on the other side by oligopsonistic

corporate power that leaves the farmer little room for bargaining. There may be 1,200 canners of fruits and vegetables in the country, but farmers must deal with the four powerhouses—Del Monte, Libby, Stokely, and Green Giant—that account for a quarter of production and that determine industry practices. Del Monte alone accounts for 16 percent of canned fruit and vegetable sales, with much higher concentration in certain lines.

Corporate power is coming down hard on America's family farmers. Nearly a quarter of the American food supply is produced today through vertical integration—which is what food corporations do either when they become a farmer on when they rent a farmer. Ninety-seven percent of broilers, 95 percent of processing vegetables, 70 percent of potatoes, 54 percent of turkeys, and 51 percent of fresh vegetables are produced under contract to the likes of Pillsbury, Del Monte, French's, L–T–V, and Tenneco.

Now farmers are being crushed by the noncompetitive force of conglomerates. There is more behind Sunday dinner than meets the eye. The chicken is from Greyhound, or the ham from ITT; lettuce salad is by Dow Chemical, with fresh vegetables from Tenneco; potatoes by Boeing are placed alongside a roast from John Hancock Mutual Life; Southern Pacific pours the wine, and there are after-dinner almonds from Getty Oil.

It is raw economic power and favorable Government treatment, not superior efficiency, that those conglomerates bring into agriculture. The family farmer cannot get the preferred capital treatment offered conglomerates, nor does the farmer have access to the enormous non-farm resources of the conglomerate. Boeing might be an inept potato farmer, but its ability to merge, to vertically integrate, to advertise, to differentiate its product, to invest huge sums of money and to attract Government subsidy is enough to overwhelm real potato farmers. The corporation cannot out-farm the farmer, but it can out-muscle him.

By controlling production, corporate agribusiness is in a position to control the price and quality of food delivered to the consumer. It is a narrowing number of corporations that control the flow from farmers to consumers—in a word, it is oligopoly. Consider broilers, lettuce, canned vegetables, and any other foodline in which corporations have become dominant. Prices have gone up and quality has gone down. How has the consumer benefited from that? Our food is produced under integrated factory processes, filled with additives and sold on the basis of advertising.

It is the brave new agriculture, in which a few corporations are accountable for America's dinner. If you doubt that it is happening now, you might be surprised that many brand names in the supermarket are held by a narrowing number of parent corporations. Ingrid Jones of our staff has prepared a paper on brand name concentration. We submitted that paper to the committee, and we have a few samples to give you a visual idea of the concentration that is occurring.

You can take this bag of groceries that we bought last night. Fleischmann's, which is known for its margarine, also makes these Fleischmann's egg beaters. Curtis Candy Co., makes these marshmallows as well. Blue Bonnet margarine, Southern Belle peanuts, Royal pudding, and Royal pie filling and desserts, and Tenderleaf tea are some of the products we have. We have Chase and Sanborn coffee. We have Plant-

er's peanuts and other nut products that it sells. We have such candies as Baby Ruth and Butterfinger, and then again Fleischmann's with its yeast. All of these, and many more, are products of one parent corporation. You look at these on the grocery store shelves, you could go down the line of those shelves in the supermarket and think, my God, what a wonderful competitive economy we have in food. Not so. These are all the products of Standard Brands Corp., one giant food conglomerate.

We can show it to you in the brand name products of another corporation.

This is Regina red wine vinegar. Hamm's beer belongs to this particular corporation. Us beer drinkers are very sad to find out that beer is becoming one of the most concentrated items in the country today, with many local beers being merged into national firms. We have A–1 sauce, Grey-Poupon mustard, Escoffier sauces, Snap-E-Tom tomato cocktail juice, and finally the big colonel himself, Kentucky Fried Chicken. These are all part of one big conglomerate, Heublein, Inc.

We have one more that is particularly interesting to us and maybe to you. This is Good Humor ice cream. We all remember the Good Humor truck, with its tinkling bell, coming into our neighborhoods. But, Good Humor today belongs to the T. J. Lipton Corp., which makes Lipton soups and Lipton tea. Well, that is an interesting thing in itself, but the T. J. Lipton Corp., in turn, belongs to a corporation called Unilever. Unilever is a British-Dutch corporation. Now, we are coming upon the bicentennial of this country. We fought a revolution 200 years ago that in part was based on English control of our tea. England again has control of our tea 200 years after the Boston Tea Party.

Mr. Chairman, this kind of power has its hands on the food supply all along the production and selling stages—"from seedling to supermarket" is the way Tenneco puts it. Del Monte says that it can take care of your food needs "from womb to tomb."

In the absence of product competition, profit can be pursued with only minimal attention to taste, texture, and nutritional quality. America's food manufacturers have not been content merely to tamper with nature's work. They have entered into direct competition with nature by making ersatz "food" in the laboratory.

Such stuff is the rage of the food industry and a harbinger to consumers. Given a laboratory and an advertising budget, food manufacturers are willing to remake the American diet. Given a concentrated food economy, they will be in a position to do just that. The same factory techniques and the same selling gimmicks that Detroit brought to automobiles now are being applied to food.

Is this what Americans want? If our electric shavers are breaking down, if our children's toys are unsafe, if our family car is being recalled, if our headache remedies are deceptively advertised—why let corporations mess with our dinner? I don't think that farmers want to turn this corporate power loose in their fields, and I don't think that consumers want to turn it loose in their pantries.

Mr. Chairman, the consumers and farmers of this country have been feeling the impacts of concentrated corporate power for a long time. I hope that you will respond to them in a significant way. This committee has the power to make a difference—you can get the FTC and

the Justice Department to take action under existing law, or you can make any adjustments in that law that are necessary to get action.

Given the complex nature of antitrust law, and given the even more complex nature of the agricultural economy, it is easy to hide in the confusion, easy to take no action at all. But you have—here on this committee and in the executive branch—the tools to deal significantly with concentration. What we need is a will to deal with it. Lawyers and economists can find a lot of ways to tell you no. But you are politicians—every member on this committee is a politician—and it is my belief that consumers and farmers are looking to you to say yes.

There are a number of general recommendations that are steps toward less concentration in the food industry. We can endorse most of the recommendations that were made this morning by Mr. Mueller. Our recommendations include:

Bargaining legislation for farmers that must negotiate with processors and merchandisers which have enormous power, particularly in a regional setting.

We think there ought to be a prohibition against farming by large-scale, nonfarm corporations.

We need to beef up FTC with a larger staff, power to bring its own actions in court, stronger fines, much in the way Mr. Mueller stressed in his testimony.

I think we need to restrict severely the granting of consent decrees; at the very minimum those consent decrees ought to be negotiated publicly, and the public ought to be allowed to comment on those.

There is a critical need for much stronger disclosure requirements of corporations in the food industry, detailing shares of production and markets that they control, by crops and by market.

I think it is time for a long-range, hard-nosed, independent investigation of the degree of corporate concentration within the food industry, especially looking at grain, meat and fruits and vegetables—to be conducted by this committee or conducted by FTC with strong oversight by this committee.

We need special action on the anticompetitive impact of food advertising, and I hope that the committee will give special attention to the testimony that has been presented here on advertising.

We call for a special examination of concentration in the agricultural input industry, including credit availability, farm machinery, chemicals, feed and seed.

For the information of the committee, I have a number of additional papers that should be useful in your consideration of the impacts of concentration, and I submit them now for the record and the later reading of this committee.

I hope you will read them because I think they are very good presentations. First, we have the paper from which this array of food products was taken—a study done by Ingrid Jones, entitled "Some Corporations and Conglomerates That Are Marketing Brand-Name Food Products." We have another document prepared by a member of our staff, A. V. Krebs, which is titled "Summary Report on Major U.S. Corporations Involved in Agribusiness." This is a very interesting report and directory, revealing the extent of corporate power, the size of the corporations that are involved in some degree either directly

in agricultural production in the input stage or in the output stage of agriculture. You will find the largest corporations in America listed here.

In support of our recommendation for more corporate information, more disclosure, I submit two documents that we have prepared in the past. One is "Counting Out Farmers," which is a look at an effort to eliminate the Census of Agriculture, an effort to lessen the amount of information that is available to the public.

Second, I submit testimony that we gave a couple of years ago before Senator Nelson and his Select Committee on Small Business on the issue of corporate secrecy. This document contains our recommendations on the kind of data that we think should be reported by corporations involved in agriculture.

Then we have a couple of articles that I think are particularly relevant to the issue of corporate power being applied to farmers. One is "Issues in Concentration Versus Dispersion" by Dr. Harold F. Breimyer and Dr. Wallace Barr, Professor Breimyer from the University of Missouri, and Professor Barr from Ohio State University. Both are agricultural economists and this article is taken from a 1972 publication of the North Central Regional Extension Service. There is another publication of that same extension region, a series of six pamphlets on the question of who will control U.S. agriculture. I am submitting two of these pamphlets—one entitled "A Dispersed, Open Market Agriculture," by Dr. Breimyer, again, and Dr. Barry L. Flinchbaugh of Kansas State University. The other, entitled "A Corporate Agriculture," by Dr. James Rhodes of University of Missouri and Dr. Leonard Kyle of Michigan State University.

I have just a couple more, a talk that was prepared for the February Outlook Conference of the Economic Research Service of the U.S. Department of Agriculture by Dr. William T. Manley and Dr. Donn A. Reimund on the topic of "Interrelations in Our Food System." This is the most informative Government publication that I have seen on the nature and extent of vertical integration in agriculture today.

Finally, or well, almost finally, we have the complaint that the Federal Trade Commission issued in the *United Brands* case. Perhaps you have seen this. It deals with the impact on the production sector of concentration, specifically relating to various mergers by United Brands. I think it raises the kinds of questions that ought to be raised in this committee.

And, finally, there is an article that was in, I believe it's the Antitrust Review, that is entitled "FTC and Phase II: The 'McGovern Papers'." This is the document from which the figure was drawn of $2 billion in monopoly overcharges within 13 food lines.

[The documents referred to are in app. 11, at p. 667.]

Mr. HIGHTOWER. Thank you, Mr. Chairman. That concludes our testimony and Ms. Mills and I will be very happy to answer questions.

Mr. MEZVINSKY. Thank you. I am just going to ask two brief questions since time is of the essence, and then I will defer to the other members.

The first question would be in view of what you have submitted, and in view of your testimony, and your research, do you believe that the Department of Agriculture, that deals with this problem, is representing the family farmer or it is representing those large groups that you

have pointed out, the conglomerates? Whose voice is being heard within the Department of Agriculture, in your opinion?

Mr. HIGHTOWER. It is very clear that it is corporate agribusiness that is represented in the Department of Agriculture. Now, I do not want to get partisan in this. It was also true in Lyndon Johnson's administration——

Mr. MEZVINSKY. You do not have to mention one administration versus another.

Mr. HIGHTOWER. All right. I think there is a substantial difference in the two administrations, but the impact on family farmers, I think, is the same. For 30 years now we have simply not had a policy that focused on family farmers. Instead our policy has been focused on the middle structure, or the corporate agribusiness that has arisen. There is evidence of this in recent statements of the Secretary of Agriculture, clear indication that corporate coordinated food systems will be the new agriculture. That is where we are going; that is the policy-direction of the Federal Government. The family farmer is only going to be one phase of a totally integrated food system, and his control of production, his control of supplies, his control of quantity, and even his control of food quality will be shifted to corporate hands. Family farmers are we know them, in the sense that they are entrepreneurs and retain decisionmaking power, are going to be eliminated.

Mr. MEZVINSKY. Now, my last point, time being what it is, your testimony as well as previous testimony focused on the need for taking a local and more divisional, regional look at concentration in food retailing. Would you apply that same approach concerning antitrust enforcement looking at it from that perspective to the other side, to production and processing, up and down the chain? Do you think that is where we should focus our attention, not just on a national, but maybe more on a local and regional perspective?

Mr. HIGHTOWER. I think you certainly should, and Nancy Mills, here, has been doing a good deal of specific research in that area, and I would like for her to answer.

Ms. MILLS. Absolutely, Mr. Chairman. I can only underscore that point. The fact is that the relevant market for farmers, particularly in fruits and vegetables is localized. In those growing regions, there often are very, very few processors available to farmers to which they can take their crops. And therefore, the bargaining position of those farmers is severely limited. If there are only one or two corporations, the prices that are being set by those processors are not susceptible to normal competition and the farmer has no real alternative. He does not have the economic resources to ship his peaches or his peas across State lines to another processor in order to secure a better price for his products. What he has got to do is to take that price or let those peas rot in the field, which does happen frequently in the processing industry.

Mr. MEZVINSKY. Thank you.

Mr. McClory.

Mr. MCCLORY. Thank you very much, Mr. Chairman. I will try to phrase my questions so that you may give an extremely brief answer.

There are two antitrust exemptions at the present time which affect the cost of food. One is the Capper-Volstead Act, which exempts certain farm co-operatives and permits certain anticompetitive practices.

Do you favor eliminating the exemptions granted by the Capper-Volstead Act?

Mr. HIGHTOWER. I cannot, unfortunately, answer that as briefly as you would like. No; I do not favor that. I think if you look at the exemption, as I understand it, it is not from the antitrust law. The exemption essentially allows collusion in the organizational stage of a co-op. It allows farmers to get together to decide to form a co-operative, but once that co-operative is formed then the co-operative is subject to the same antitrust legislation that corporations are. In fact, there has been Federal Trade Commission action taken against co-operatives. And there has been a major case involving Sunkist I believe, that required devistiture of some of Sunkist's holdings. There are other co-operative cases as well.

I am glad that you asked the question. I just want to note that I have been following these hearings and that there has been a good deal of eagerness, it seems to me, on the part of the committee to go after co-operatives. I can understand that, since some of their activities have recently been prominent in the newspapers.

Mr. MCCLORY. There are others who would say that we have been after the huge corporations.

Mr. HIGHTOWER. I have not found that to be true in following the hearings of this committee. That is unfortunate, for I think the power of co-operatives, in no sense compares to corporate power in agriculture. Sunkist is a powerful co-operative, but in terms of what is happening to consumers and farmers the issue of concentration is corporations and not co-operatives. In fact, I think co-operatives are a major part of the answer for farmers and consumers. Now, we have problems with the structure of many of the big co-operatives. We have to reassert the principal of one man-one vote in the co-operative movement. We have to retain farmer ownership and control of those co-operatives.

Mr. MCCLORY. Well, I will interpret your answer as no.

Now, with regard to the labor exemption that also affects the cost of food and other products, would you favor legislation which would subject labor unions to the antitrust laws?

Mr. HIGHTOWER. No.

Mr. MCCLORY. And the only other point that I am interested in is this: Would you favor the recommendation of legislation that would prevent these food companies from having that kind of diversification in food production and marketing?

Ms. MILLS. No, certainly not, Mr. Congressman. I think our point was that we would be opposed to basically nonfarm corporations engaging in farming. We are opposed to the extent of vertical integration within the food industry to the extent in which Del Monte or Libby farms, either directly or indirectly.

Mr. MCCLORY. You are opposed to contract arrangements whereby the produce of a large number of family farmers is brought up?

Ms. MILLS. Yes, sir; and then also, our point in showing the various brand-name products held by conglomerates is that there already is more concentration among food manufacturing firms than is apparent just from visiting a supermarket. Farmers and consumers are not dealing with the independent companies of Wonder Bread, Hostess Twinkies, Profile Bread, Gwaltney Smithfield Ham, Morton

Frozen Pot Pies, Butter Tap Bread and Pearsons Candies—rather they are dealing with ITT, the parent corporation for all of those brand names. Not that we should prohibit companies generally from developing different food lines, but we certainly should investigate the impact of this level of concentration on competition. Also, we ought to look into what it means to independent farmers and consumers for unilever or standard brands to develop foods that require more chemists than farmers.

Mr. McCLORY. In general, you are supporting what is referred to as the Family Farm Act?

Ms. MILLS. Yes, sir.

Mr. HIGHTOWER. Act? Do you mean the present Family Farm Act?

Mr. McCLORY. We had some hearings on that.

Mr. HIGHTOWER. We are supporting the general thrust of that act, not necessarily all details of the act itself.

Mr. McCLORY. Thank you.

Mr. MEZVINSKY. Ms. Jordan.

Ms. JORDAN. Thank you, Mr. Chairman. I listened with interest to your defense of the Capper-Volstead Act, and your thought that perhaps this committee had some reasons for going after co-ops. Now, is it not a fact that the farmer does not really own many of these co-ops, but the very large business interests that you are concerned about are concentrating in the food industry and do own, organize, and run these co-ops?

Mr. HIGHTOWER. Well, that is the problem. I think that we have to get back to the basic principles that have been laid down for cooperatives. We must not do away with the legislation that allows farmers to form co-ops, because I think they are one of the only protections that the farmer will have against conglomerate power coming down on them. I think we need to assure that cooperatives formed under the Capper-Volstead Act are owned and controlled by farmers. That is the requirement in the law now, but that has not been enforced, and I think that is the kind of thing that we have to reassert. We have to enforce the intent of the Capper-Volstead Act. I do not think doing away with the act is the answer.

I do think we have to prohibit corporations, and take a hard look at the practice of joint ventures whereby a corporation "joins" a cooperative in some undertaking. Also, in some cases, a corporation has organized a cooperative of its own. I think that has to be prevented.

Ms. JORDAN. The original intent of the Capper-Volstead in many instances is being subverted, is it not?

Mr. HIGHTOWER. That is right.

Ms. JORDAN. By paper co-ops that are really not authentic?

Mr. HIGHTOWER. That is very true.

Ms. JORDAN. Could you tell me what portion of agricultural production is under agribusiness ownership?

Mr. HIGHTOWER. That is an impossible figure, as a matter of fact, to come up with. In terms of farming the land, agribusiness corporations do not constitute a large percentage of the number of farms. They hold a large percentage of the acreage, and they account for a larger percentage of the production, but still their share is not huge. But agribusiness control of this production, through vertical integrated contracts, already is approaching a quarter of the total production,

and within certain food lines, as indicated in my testimony, it is dominant. Ninety-seven percent of broilers, for example. But, to say what amount of production is controlled by corporations is a figure that we have not been able to come up with.

Ms. JORDAN. Is that because information is just not available?

Mr. HIGHTOWER. That is right.

Ms. JORDAN. You cannot get it.

Mr. HIGHTOWER. That is right, and I think that is another important thing that the committee should look at, the disclosure issue. You can look at the annual report of a corporation and not know anything about its farming operations.

Ms. MILLS. For example, Del Monte Corp., a company that we all know fairly well as a canner of fruits and vegetables, operates about five cattle feeding stations in this country, which we learned by happenstance, really. Because its cattle feeding operations and its meatpacking operations are an "insignificant" portion of its total business revenues, it does not have to disclose the extent of that operation. What may be insignificant to Del Monte is perhaps not insignificant to the cattle ranchers of this country.

Ms. JORDAN. Would that same lack of information be true in terms of what proportion of agricultural production is under contract with your farmers in agribusiness?

Ms. MILLS. Absolutely.

Ms. JORDAN. Thank you, Mr. Chairman.

Mr. MEZVINSKY. Mr. Sandman.

Mr. SANDMAN. I want to compliment you on a good bit of your testimony. I agree with a lot of it.

Mr. HIGHTOWER. Thank you.

Mr. SANDMAN. But, it would seem to me that somewhere we are losing sight of the fact that because of the ever-increasing cost of labor, the tremendous increase in the value of land, and other expenses, the smaller farmer can no longer exist. Is that not so?

Mr. HIGHTOWER. I do not think it is so. In the first place, we are not talking only about the inefficient, small farmer, or the part-time farmers.

Mr. SANDMAN. Well, what do you call a small farmer?

Mr. HIGHTOWER. We are talking about the family farms, which we do not define in terms of acreage or in terms of their sales. We define that in terms of their entrepreneurship.

Mr. SANDMAN. Well, you have got to have an identifiable difference between a big farmer and a little farmer.

Mr. HIGHTOWER. Well, we will use the USDA figures, and the USDA says that a small farmer is $5,000 in sales, gross sales.

Mr. SANDMAN. $5,000 in sales?

Mr. HIGHTOWER. That is right, that is what the USDA says is a small farmer.

Mr. SANDMAN. I do not know of any small farmer that makes only $5,000 in sales that stays in business.

Mr. HIGHTOWER. Well, sir, that is half of the farmers in the country.

Mr. SANDMAN. They sell only $5,000 worth of merchandise?

Mr. HIGHTOWER. That is right. That is 56 percent of the farmers in the country.

Mr. SANDMAN. Well——

Mr. HIGHTOWER. They are not as numerous in New Jersey as they are down in Georgia and Texas.

Mr. SANDMAN. New Jersey used to be known as the Garden State, and still is, but truck farming and so forth is hardly done there any more. But, the point is that I have lived there all of my life and have seen the farming industry slowly deteriorating. In each case the huge groups have changed hands so many times that they can hardly be called a profitable business. I am talking about Seabrook Farm, one of the biggest in the country: I am talking about Ritter tomatoes and ketchup and tomato soup. They have all gone out of business, and as time goes on——

Mr. HIGHTOWER. Ritter did not go out of business. It merged.

Mr. SANDMAN. Ritter has merged, yes: but the Ritter family itself had to give up because they could not survive. And so it has been with so many of the others. Dairy farming is not entirely nonexistent in the State, notwithstanding the fact that the largest dairy farm in the world, Walker-Jordan, used to be there. Now, all of this, I think, underscores the fact that you have to be big to survive, and this seems to be the same everywhere.

Mr. HIGHTOWER. I do not think that is true, sir; and in our long statement we have a considerable discussion about that. There is, I think, a general myth in this country that bigness is good, and that somehow or other you have to be big in order to make it, and that small men cannot make it; but, if you were a huge corporation, a huge conglomerate, then you could do it better and more efficiently. That is not the case. Now, the only study that has been done by the Department of Agriculture on efficiency in agriculture today shows that family farms are the efficient size, and that the one- and two-man operation can achieve all of the economics of scale that are going to be achieved. You take those Midwest corn farms, and you look at the vegetable farms——

Mr. SANDMAN. But, how can they afford this highly mechanized, expensive equipment?

Mr. HIGHTOWER. Exactly; this is where Government policy comes in.

Mr. SANDMAN. How can people who sell only $5,000 worth a year afford this kind of equipment?

Mr. HIGHTOWER. That is a huge part of the problem.

I think that the Government policy, as I said earlier, for 30 years at least, has been focused on technology and on bigness in agriculture. There has not been a policy in the land-grant colleges; there has not been a policy in the research apparatus of the Department of Agriculture; there has not been a policy in procurement programs; there has not been a policy in our water reclamation projects; and there has not been a general policy in a number of programs where we have focused on the family farm. Instead we have focused on the technology for the Del Montes rather than developing it to a scale or level that the smaller operation, which is an efficient operation, can achieve, can work within.

We have not done anything to develop the cooperative model in this country except to allow them to get bigger. The current head of Farmer's Cooperative Service, Mr. Thor says that one of the biggest issues facing cooperatives is that they must get big, and the biggest issue he sees is that the average executive salary in corporate agri-

business is $65,000 a year, and that the cooperatives average executive salary is only about $40,000 a year. He wants cooperative management to get up to the salary level of corporate management. So, I think our governmental emphasis has been on bigness, which is an inefficient emphasis.

Mr. SANDMAN. Well, now, wait a minute. What you said sounds great, but tell me, how do you do it? How do you put the small farmer into an efficient operation? How do you supply these 56 percent of the farmers with the type of machinery that they need to have? What do you recommend?

Mr. HIGHTOWER. First of all, you are the one that is talking only about the little-bitty fellow under $5,000. I am talking about them plus many of the family farmers who range up to $100,000.

Mr. SANDMAN. And, I will tell you that I have never seen one, wherever they exist——

Mr. HIGHTOWER. I will see if I can line you up to meet one sometime. I think that it is possible that the land-grant colleges through the Extension Service and through the experimental stations could have focused on this man. We could have developed machinery that was adaptable to smaller acreage. We could have developed a better credit system.

Mr. SANDMAN. Well, stop there. You are telling me what we could have done. What do you propose to do now?

Ms. MILLS. One thing, for example, one of the reasons the farmer cannot afford the machinery is that his prices that he has received for his crops in the last 20 years have only gone up 6 percent, and his input for his machinery, pesticides, fertilizer, and everything else has gone up 122 percent. One of the things that we can do is to look at the concentration within the input industries; look at the levels of concentration there; look at the profit margins within the farm machinery corporations, for example, and see whether, in fact, if we could have a less concentrated economy in farm machinery, those input prices might not go up so high and squeeze the farmers so hard.

The next thing is to put that small farmer in a position where he can bargain more effectively for higher prices. In the 20 years since 1952, retail food prices went up 43 percent, but the price paid to farmers went up only 6 percent. Right now, because of the oligopolistic power of processors, that farmer is in a position where he cannot get those higher prices, so he has got to pay the 122-percent increase for input and receive only a 6-percent increase in the amount paid to him by middlemen. He goes out of business.

Those are some of the things that we could do.

Mr. SANDMAN. Yes. But, what is your recommendation for putting this into effect? Are you talking about some large program where we would put a lot of money into that area?

Ms. MILLS. We are talking about reorienting the priorities of public policy and to start looking at all of those areas, the USDA, the land-grant colleges, antitrust, and to look at how public policy is being made to benefit corporate middlemen as opposed to family farmers in this country.

Mr. MEZVINSKY. I just want to, before we recess, just ask a quick question. You are aware that section 3 of the Clayton Act deals with the contractual kinds of control that you are talking about, are you not?

Mr. HIGHTOWER. Yes.

Mr. MEZVINSKY. Are you also saying that it has not been adequately enforced?

Mr. HIGHTOWER. We certainly are.

Mr. MEZVINSKY. Now, one other brief point. I am sure you are aware that large groups like Tenneco come in and buy land for production with the idea in mind that if it is a losing venture they will sell the land for real estate, and I understand you have it with produce growers in California specifically. Are you concerned that this is actually a continuing facet that is taking place where large corporations are coming in, getting involved and then dropping out? When you have a company like Purex which is going out of fresh produce growing, does its land get back into the hands of the farmers? Do you think that will happen? Do you think that that trend will continue and we can hope that if the Purex's get out of the business, its land will go back into the hands of the small farmers?

Mr. HIGHTOWER. No; the history is that it does not go back to the farmers. Certainly the classic example is Ralston Purina, with its vertical integration of the poultry industry in the South in the sixties. In a 10-year period, poultry production went from 4- to 97-percent integration, and it was done by Ralston Purina, Pillsbury, and a couple of other feed and processing operations. Now, when Ralston Purina got out of the poultry business 2 years ago, primarily because they were not able to get enough of the market to control the fluctuations in the industry, then Ralston Purina did not sell this land back to the farmers, because those farmers were no longer there. They were destroyed, and they were in the cities and they were mad. But, Ralston Purina sold to other corporations. The Danforth family, which is the Danforth who is on the board of Ralston Purina, made a major bid to buy the poultry operation himself. It did not work out that way, but they sold to, I believe, four other corporations which bought up Ralston Purina's poultry operations. It did not go back to the family farmer.

I think you will find for every corporation getting out that there are a couple that are going in.

Mr. MEZVINSKY. Thank you very much for your testimony.

And if there is anything further that you care to submit at a later time before the hearings are closed, I certainly hope you will.

Mr. HIGHTOWER. Thank you very much. We will do that.

[The prepared statement of Mr. Hightower follows:]

STATEMENT OF JAMES HIGHTOWER, DIRECTOR, AGRIBUSINESS ACCOUNTABILITY PROJECT

FARMERS AND CONSUMERS IN A CONCENTRATED FOOD ECONOMY

Mr. Chairman, the Agribusiness Accountability Project appreciates this Committee's invitation to present testimony on the issue of economic concentration in the food industry. I am Jim Hightower, director of the Project. With me at the table are Nancy Mills and Susan DeMarco, associates of the Project.

Our purpose here today is to try to give you a sense of the corporate power that dominates today's food economy. It is our position that consumers and family farmers alike are abused by a narrowing number of food corporations operating in a food economy that is significantly non-competitive. Because of this concentration, corporate America increasingly is in a position to set prices paid to farmers on one hand, and to administer prices to consumers on the other hand.

Family farmers continue to go out of business, despite their efficiency and despite the inefficiency of the integrated systems that are replacing them. As the food industry becomes more concentrated, food prices are going up and food quality is going down. Real people are being hurt. The Federal Trade Commission, the Justice Department, the Department of Agriculture, the Anti-trust committees of Congress and members of Congress generally have done nothing substantial to protect the American people against an agriculture that grows highly-capitalized, highly-integrated, highly-industrialized and highly-concentrated.

Our testimony is extracted primarily from a longer paper that we have prepared for the information of this Committee. Titled "Food, Farmers, Corporations, Earl Butz . . . And You," a copy of the paper has been submitted for each of you.

The focus of our testimony is on corporate power. We think that ought to be your focus too. Certainly it is the dominant force in the food economy. We have found that 25 of the top 38 corporations in America are engaged in agricultural inputs; that 25 of the top 70 corporations are engaged in agricultural outputs; and that 25 of the top 139 are engaged in agricultural production. For the Committee's information, we submit a copy of a report and directory that Al Krebs of our staff recently completed, entitled "Major U.S. Corporations Involved in Agribusiness."

CORPORATE AGRIBUSINESS AND FAMILY FARMERS

In a normal year, the farm family averages only a third of the consumer's food dollar. The rest of it goes to middlemen that separate the farmer from the consumer. The House Agriculture Committee reports that retail price of food has increased 43 percent since 1952, but the price paid to the farmer has increased only six percent. The corporate structures that process, package, transport and market the farmer's product have sopped up the difference.

The 1967 Census of Manufacturers counted 32,500 companies engaged in food manufacturing—a 13 percent decline in numbers from 1963. That rate of concentration not only is continuing, it is accelerating. But it is not their shrinking numbers that is most significant, it is their relative power. A 1966 study by the Federal Trade Commission showed that the 100 largest food manufacturers (three-tenths of one percent of the total number) accounted for 71 percent of the total profits of all food manufacturing firms.[1] In fact, the 50 largest companies had 61 percent of the profits.

This concentrated power can come down hard on family farmers. These farmers operate in a dispersed segment of the agricultural economy. Each farm is an autonomous, economic unit (one of 2.8 million) with no real economic power beyond its boundaries. Because these farmers are spread widely throughout the countryside, and because they traditionally have valued their freedom as independent operators, they generally are not organize to bargain effectively with the concentrated power of processing and marketing corporations.

Even when prices are strong, the farmer finds it impossible to keep up with the maneuverability of these giants. In a recent Wall Street Journal article it was noted that Ralston Purina "has a good deal of leverage" over the price it pays to farmers for feed grains. "When the price of one grain rises, local buyers are instructed to switch their purchase to cheaper substitutes or to buy in nearby regions where prices are lower." This corporate hopscotching allows the Ralston Purina to set prices pretty much to their liking. With an abundant crop of perishable grains on their hands, farmers usually have to like it too.

Fruit and vegetable farmers technically could bargain with any of 1200 U.S. canners of fruits and vegetables, but in fact they must deal with the four canners that account for a quarter of production and that determine industry practices. Just one of those corporations—Del Monte—boasts of making "roughly 16 percent of total U.S. sales" of all canned fruits and vegetables. Within selected commodities, market control frequently is much tighter. For example, a Tenneco subsidiary controls 70 percent of the date industry, while nearly half of canned peach production is accounted for by Del Monte. A farmer who does not want to deal peaches on Del Monte's terms can look forward to a long winter of peach eating.

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[1] Those 100 firms also accounted for 46 percent of value added in the food industry and for 60 percent of the industry's assets.

Vertical integration

The most significant trend in the structure of agriculture is toward vertical integration of farming by agribusiness firms. In simple terms, this means that a corporation that either sells to or buys from a farmer decides to become a farmer itself.

In most cases, vertical integration is being accomplished through contracts with farmers—the corporation does not become a farmer, it rents one. Enticed by the prospect of a guaranteed market, farmers sign an advance contract to sell to a corporation a certain amount of a certain commodity for a certain price.

Under contractual integration, the farmer is able to pass on some of the risk of farming. But he also passes on his power of decision-making, his entrepreneurship. "The contracting firm," wrote economists Breimyer and Barr, "generally decides who shall produce the product, how it shall be produced, and how much production shall be allotted to each contractee." The farmer becomes a hired hand of the corporation, and he ends up hiring out cheaply.

Ralston Purina, Pillsbury, Swift and a few other corporations used these contracts in the 1960's to rule broiler production in the South, finally destroying thousands of chicken farmers—a USDA economist found that contracted poultry growers in Alabama were making *minus* 36 cents an hour. In the sordid history of poultry integration there have been cases of corporate blacklisting, leaving farmers who balked without a market.

Repeated low prices for their product, unavailability of credit and the sheer market power of the corporate integrator are factors that force farmers into signing these insidious contracts. Corporations can lock up an entire market, forcing farmers to contract or go under. It is a matter of corporate power over individual choice—studies of farmer attitudes invariably find that the vast majority of farmers oppose integration, preferring to retain their own independence. Despite the farmers' preference, vertical and contractual integration are on the rise, approaching a fourth of total farm output. Integration of certain food commodities has gone much further than the average, encompassing:

A leading corporate integrator and crop:	*Percent*
Tenneco (fresh vegetables)	51
Del Monte (processing vegetables)	95
French's (potatoes)	70
Coca Cola (citrus fruits)	85
Purex (seed crops)	80
Pillsbury (broilers)	97
Ling-Temco-Vought (turkeys)	54

Conglomerates

Pressed from one side by input corporations that exact too heavy a price, from another side by output corporations that pay too low a price, and from top and bottom by corporations bearing vertically-integrating contracts, family farmers in many areas of the country now are being pressed with the crushing weight of another corporate force—the conglomerate.

Sunday dinner just isn't what it used to be: the turkey is from Greyhound and the ham is from ITT; the fresh vegetable salad is from Tenneco, with lettuce from Dow Chemical; potatoes by Boeing are placed alongside a roast from John Hancock Mutual Life; and there are after-dinner almonds from Getty Oil.

It is raw economic power and favorable government treatment, not superior efficiency, that these conglomerate competitors bring into agriculture. Dr. Philip Raup, agricultural economist at the University of Minnesota, wrote in March that: "It is difficult to justify most types of large corporations in farming by conventional economic tests of efficiency in resource use and management. Those we now have are largely a consequence of farm price support and tax policies, which were aimed at family farmers and badly missed the target."

The family farmer cannot get the preferred capital treatment offered conglomerates, nor does the farmer have access to the enormous non-farm resources of the conglomerate. Boeing might be an inept potato farmer, but its ability to merge, to vertically integrate, to advertise, to invest huge sums of money and to attract government subsidy is enough to overwhelm real potato farmers in the American Northwest. As agricultural economists James Rhodes and Leonard Kyle wrote recently: "The capacity of the giant corporation to grow and grow, despite the lack of any really competitive edge over individual farmers in a traditional accounting sense, is the crucial difference between the corporate and

the individual competitor." More and more, the family farmer is up against this irrational competition.

Corporate government

The average family farmer stands there virtually alone, without significant support from a government that spends billions of dollars annually in his name. Income and price support payments are based on volume and acreage, thus putting an incentive on bigness and awarding the largest payments to those least in need. Tax-supported research and extension programs have developed a technological arsenal that largely is not adaptable to the family farmer's scale of operation and that leaves him competitively disadvantaged. Tax laws, written to protect the farmers, instead have attracted the non-economic competition of rich, urban investors looking for a tax loss in agriculture.

USDA's food procurement program, designed to improve farm income, pays millions of dollars in hard cash to agribusiness middlemen while offering only a "psychological boost" to farmers. Irrigation water from federal reclamation projects is supposed to go only to farm units under 160 acres, but that limitation has never been enforced, allowing some of the largest landholders in the country to prosper and grow huge on subsidized water. A massive wheat deal was made with Russia in the name of farmers, but that information was withheld from farmers until they had sold their wheat cheaply to grain exporting corporations. Even though 50 percent of the farms in the country hire no labor, farm workers are denied full minimum wage benefits, thus subsidizing the wage bill of corporate farmers that hire thousands of farm workers each year.

While tirelessly praising the family farmer during the past thirty years, and while basking in his productivity and efficiency, government has been selling him out to corporate America. Primarily, it has been a passive sellout—a simple refusal to put the government solidly behind the efficiency of the family farm.

CORPORATE AGRIBUSINESS AND CONSUMERS

Gwaltney Smithfield hams and sausages are packaged and advertised to give off a feeling of the old farm place and the unrushed process of a southside Virginia smokehouse. The reality is not nearly as down home as the image—Gwaltney is owned and managed by the world's biggest conglomerate, ITT. Country goodness, made the old fashioned way, is the advertising pitch of Pepperidge Farm bakery products. The company is owned by the food conglomerate, Campbell Soup. Is regional beer, brewed the local way, a source of enjoyment for you? Maybe a Burgermeister, a Hamms, a Waldech or a Buckhorn? They all are now a product of Heublein Inc., a Connecticut conglomerate.

A narrowing number of these giants are gaining control of a variety of brand names. Grocery shelves and bins are laden with hundreds of brand name products, but the processing and marketing of those can be traced back to fewer and fewer parent corporations. As an appendix to this testimony, I attach a copy of a paper by Ingrid Jones of our staff, offering a glimpse of this product concentration. We have assembled a few samples for you this morning. (ITT, R. J. Reynolds, Standard Brands, Unilever).

A very few powerful processing and marketing corporations increasingly are able to tie the entire food system together "from inputs through retailing," as USDA economist John Lee put it. Tenneco—which not only makes farm machinery, chemicals, fuel and food containers, but also grows, packages, markets and retails food—has an appropriate slogan to sum up its pervasiveness: "Seedling to Supermarket", they boast. Del Monte corporation assures consumers that it can take care of food needs "from womb to tomb."

Nor is it just the farming phase that is being locked into single corporate structures. "Wholesale functions are more and more being integrated with retailing," noted economists Kyle, Sundquist and Guither. "Four out of five firms in the supermarket industry have their own central warehouses or else are affiliated with a retailer-owned cooperative or a wholesaler-sponsored voluntary chain." In a position to grow food, process it, package and ship it, wholesale and retail it, the same corporations increasingly are cooking it for you. Nation's Restaurant News, a trade publication, counts more than 40 major food manufacturers and processors that now own restaurants. Pillsbury (Burger King), General Mills (Red Lobster Inn), Quaker Oats (Magic Pan), Campbell Soup (Hanover Trail Steak House), Ralston Purina (Jack-in-The-Box), General Foods (Burger Chef), and Green Giant (Henrici's) are just a few of the food middlemen with arms that reach all the way to the dining table.

Food prices

In a concentrated, integrated food system, prices do not go down, they go up. Competition is replaced by a new spirit of cooperation and coordination. As has happened in many manufacturing industries, agricultural efficiency will decline as market concentration enables food corporations to pass on to consumers the cost of inefficiencies and excess profits. "As concentration increases," says a study of the Federal Trade Commission, "the opportunities for waste and the motivation toward deception both increase."

The Federal Trade Commission found in a 1972 study that consumers are being overcharged more than $2 billion a year for food because of monopolies within just 13 food lines.

The added costs of concentration—such as burgeoning administrative staffs, increased advertising budgets and inflated management salaries—most certainly will be rung up on the consumer's tab at the checkout counter. Less credible are assurances that any savings from a concentrated food system will be passed along to shoppers. Del Monte corporation, for example, recently, has abandoned its white asparagus operations in California, Oregon and Washington and moved those operations to Mexico, where cheap labor has reduced the corporation's production costs by 45.1 percent. But the price of Del Monte asparagus has not gone down—none of the corporate savings lightened the consumer's load.

These days, food rarely flows directly from farmers to consumers. Rather it is funneled from millions of farms into the hands of a few corporate buyers that eventually peddle it to millions of consumers. Increasingly, those middlemen have the power to hold back production of food or to store huge supplies of food, thereby limiting the amount that gets to market at any one time. With this ability to manipulate supplies corporations have the power to boost prices.

At this moment, the consumer is getting a taste of such power. There is a booming demand here and abroad for soybeans, which are fed to cattle and other livestock. The constant rains in the Midwest, however, put this year's soybean crop in doubt, thus putting a premium on soybeans that are held from last year's crop. The government is not holding any old-crop soybeans—those supplies are in the storage facilities of the highly-concentrated grain trade. In fact, it is reported that only three giant exporting corporations—Cargill, Continental and Cooke—are holding 95 percent of all the old-crop soybeans still in existence. But rather than selling soybeans now to American cattle ranchers and feedlots, these corporations are holding them, while increasing global demand steadily drive up soybean prices. One of the corporations, Continental, is reportedly shipping some of its soybeans to Europe for use there by its integrated poultry subsidiary. The corporations will do well, but American consumers will be saddled with higher prices for beef and poultry.

With market power in the hands of fewer and fewer food corporations, pricing is becoming more and more artificial. The food industry model might well be ready-to-eat breakfast cereals. In that food line, four corporations—Kellogg, General Mills, General Foods and Quaker Oats—control 91 percent of the market. There is no competition on price or quality of the product, nor on the efficiency of the manufacturers. The cereals are essentially the same, with only such artificial differentiations as color or shape. The only "competition" that exists is on merchandizing techniques—animated television commercials, radio jingles, package designs, contests and other promotional gimmicks.

Del Monte Corporation, with an advertising budget in excess of $15 million a year, has succeeded in selling the line that its canned goods are of superior quality. But any shipment of Del Monte peaches, for example, contains the same USDA grades as those shipped under many labels that sell cheaper. A 1969 study by the Department of Agriculture found that in half the items sampled, Del Monte canned products contained less fruit and more liquid than was in any of the competitive brands checked. Despite these facts, and because of its advertising campaign, Del Monte can sell its goods for more than other brands on the shelf.

Economists Leonard Kyle, W. B. Sunquist and Harold Guither stated the situation frankly in a recent article: "The old simple concept of food as a staple, basic commodity and of a sovereign consumer with a clearly defined demand for differentiated products—and then to tailor the marketing and production process accordingly. This is a process that has been used effectively in the production and marketing of automobiles, television sets, and numerous other consumer items."

It gets down to this: packaging and advertising of food are becoming more important pricing factors than the food itself. It is one thing for gasoline or soap to be priced and sold by such artificial gimmicks—but food? Already, food corporations have become the biggest spenders on television advertising.

Food quality

Higher prices may not be the greatest cost that consumers pay for concentration in agriculture. The greatest danger may be the loss of the high-quality food supply that we have from family farmers.

Corporate tomatoes today are assembled as though they were bars of soap—genetically tailored, these beauties are mechanically harvested, chemically ripened, electronically sorted and mechanically wrapped in cellophane. Rutgers University recently announced development of a new breed of tomato for this assembly-line process, naming it the "Red Rock." Harvard's Dr. Jean Mayer, former nutrition advisor to President Nixon, was horrified by a Purdue University tomato that was being heralded as the new commercial comer because of its particularly red color and uniform shape. "Yet, when ripe," Professor Mayer complained, "it will contain at best approximately half the vitamin A content of the varieties of tomatoes presently on the market."

"He's got a way with women" go the lyrics of a popular country song, "And he just got away with mine." Consumers might be singing their own version of that refrain if corporate bureaucracy is allowed to work its will on the taste of the American food supply.

The assembly line is not geared for a variety of tastes—it takes the national average and produces that over and over again. The objective is not to produce bad-tasting food, just inoffensive food. Nothing will be too spicy, too saucy, too pulpy, too chunky—nor too tasty. It is the McDonald's hamburger standard that is creeping into the American pantry—you probably won't get poisoned, but you certainly won't get excited.

The Williams Companies is an Oklahoma conglomerate that makes pipelines, chemicals, steel and other products. Now, through its Nutrico subsidiary, Williams is making food. The conglomerate presently is merchandising a new product called "Fishrimps." The stuff is shaped like a shrimp and advertised as having "shrimp-like flavor." But it is not shrimp. It is made from the rocadina or croaker, a salt water fish that eats shrimp. The corporation is busy now in its Tulsa laboratory researching other such products. A company official said: "Our basic criteria applied to the selection of projects is profitability. New products must either have a mass market appeal, a wide profit margin or both. They must also be free of competition."

In the absence of product competition, profit can be pursued with only minimal attention to taste, texture and nutritional quality. Ralston Purina, for example, is a major producer of feeds for livestock. The Wall Street Journal reports that this company uses computers to "determine the least expensive ingredient mix for their feeds that will meet nutritional standards." As in automobiles or any other manufactured product today, food corporations produce for the lowest level of consumer acceptability that will meet government standards—the rest is up to the advertising departments.

America's food manufacturers have not been content merely to tamper with nature's work. They have entered into direct competition with nature by making ersatz "food" in the laboratory. Even the U.S. Department of Agriculture cafeteria has quit offering milk (much less cream) for coffee drinkers—now its a sterilized, non-dairy coffee "lightener" that is poured into the cup. Lemon ice box pie without lemons, hamburger without meat, tomato juice without tomatoes and cheese without milk are just a few of the synthetics offered for sale today, many of them under old and trusted brand names.

Such stuff is the rage of the food industry and a harbinger to consumers. Given a laboratory and an advertising budget, food manufacturers are willing to remake the American diet. Given a concentrated food economy, they will be in a position to do just that. The same factory techniques and the same selling gimmicks that Detroit brought to automobiles now are being applied to food.

Is that what Americans want? If our electric shavers are breaking down, if our children's toys are unsafe, if our family car is being recalled, if our headache remedies are deceptively advertised—why let corporations mess with our dinner? It is at least questionable that consumers really want to turn this corporate power loose in their pantries.

Before the family farmer is discarded—while this efficient productive and competitive alternative still exists—we ought to take a hard look at where we are being led. It is not just the family farm that is threatened by corporate agribusiness—it is the price and quality of the American food supply.

FOOD, FARMERS, CORPORATIONS, EARL BUTZ . . . . AND YOU

(By Jim Hightower)

Consumers, urban congressmen and editors of big city newspapers finally have discovered the relevance of agricultural policy to the daily life of average Americans. All it took was the sharp pinch of the highest meat prices in memory. The consequent howl launched a nation-wide consumer boycott, caused food executives to shudder an even pierced the sound proofing of the White House.

But consumers are in danger of winning the food battle and losing the war. While there has been public outrage over today's meat prices, there has been practically no notice of steps by the Nixon Administration to restructure American agriculture in a radical way. The issue can be put this simply: Who will control farm production? The answer to that will have a profound and far reaching affect on food prices, dwarfing today's meat counter skirmishes.

It will affect the quantity, quality, taste and nutrition of food, as well as having massive economic social-cultural consequences. It is no overstatement to say that the changes proposed in agriculture will change us all.

Agricultural power traditionally has rested in the hands of the public, with agricultural policy focused on the family farmer. President Nixon and his Secretary of Agriculture, Earl Butz, would change that. "We are at a hinge year in farm policy and farm legislation," exulted Secretary Butz in April. "We have an unequaled opportunity to step boldly into the future and break with the past."

Since World War II, corporate power and governmental programs have been at work to transform agriculture from a family farm base to a factory base. But, even though more than 3,000,000 farms have been eliminated in the three decades since 1943, and even though corporate power has become dominant in much of agriculture, the family farmer has hunkered down, become still more efficient and is clinging to his control of agricultural production. Now, the Nixon Administration has plans to break his grasp once and for all. If the plans are adopted, America will be stepping "boldly" away from the family farm, probably the most efficient unit of production in the country.

FAMILY FARMERS

Agricultural efficiency (output per man hour) on farms has increased by 330 percent since 1952, compared with a 20-year increase of 160 percent in manufacturing industries. That is an unmatched record for efficiency. And it is a record that has been set on average size family farms, not on the ponderous landholdings of conglomerates.

The family farm in 1973 is not an anochronism, not the simple yeoman of Jefferson's ideal, struggling along with 40 acres and a mule. In size it ranges from a 5-acre tobacco allotment in North Carolina to a 5,000-acre wheat spread in Nebraska. It is not defined in terms of acreage or sales but in terms of independent entrepreneurship. It is small-scale capitalism, alive and performing well—if not flourishing—throughout the countryside.

Americans have a persistent faith in bigness, an unreasoned assumption that if it's bigger it's better. Nowhere is this faith applied with less questioning than in agriculture—it simply is taken for granted that large, corporate units would make more efficient farmers than do family units. Not so.

"Farming offers no great operating efficiency from large-size units," wrote extension service economists Harold Breimyer and Wallace Barr. "Scale economy in crop production is handicapped by space and distance—there are cost advantages in farming acreages located far from headquarters." Any gains in scale of operation or in integration of economic function are offset by such cumbersome and inefficient factors as absentee decision-making, added levels of management, employment of administrative staff, increased labor bill and heavier capital investments. An official of Ralston Puria Company, which is a corporate farmer, admitted recently that "The individual farmer or family corporation can meet, and many times surpass, the efficiency of the large units that operate with hired management."

Apologists for bigness in agriculture are fond of trotting out the phrase "economies of scale," which is used by academics to express the relationship between farm size and efficiency. The phrase, actually expresses a very simple economic concept—for every crop there is an optimum size for efficient production. Certainly, there will be inefficiencies if acreage is too small, but just as certainly there will be inefficiencies if acreage is too large.

Optimum size turns out to be family farm size. In the only official report issued on the subject, the U.S. Department of Agriculture (USDA) found that maximum efficiency generally is achieved "at a relatively small size of operation and remains more or less constant through the very large size range." The 1968 study concluded that the highly-touted economies of scale existed on today's "modern and fully mechanized 1-man or 2-man operation."

It will surprise most folks that farming inefficiencies today are more a product of bigness than of smallness. For example, in materials submitted to a U.S. Senate subcommittee in 1972, USDA reported that the optimum size for a California vegetable farm was 440 acres. Yet, the average size of the corporate farms that dominate vegetable production in California is 3,206 acres—eight times greater than the efficient scale! Such corporate giants as Tenneco, Del Monte, Purex and Getty Oil each are producing thousands of acres of vegetables in California. Seventy-three percent of California vegetable production is on farms that are much larger than optimum size.

An abundant, high-quality crop—whether a field of tomatoes or a brood of chickens—simply cannot be reduced to impersonal, factory techniques. Agricultural production is not a 9 to 5 job. Farming requires commitment, a personal involvement in quality of work that one will not find either in the corporate board room of an auto factory in Detroit or on the assembly line of an electronics plant in Dallas. Professors Breimyer and Barr, wrote recently that: "Farmers have a genuine love of the land, a respect for it, and a desire to protect and preserve it. This attitude is not mercenary: it has roots that are almost religious."

That is not mere sentimentality, it is a real factor of production and an essential element of agricultural efficiency. The price taste and nutritional value of our food supply depends on the farm family's willingness to plow a bit of themselves into the land. Confucius said it centuries ago: "The best fertilizer is the footsteps of the landowner." No amount of chemical spray will do as well.

Technology can be applied and management systems can be imposed, but farming finally gets down to one or two skillful people who instinctively know what to do at the right time and are there to do it: Corporations sometimes can buy that ability by hiring family farmers, which is what the most successful corporate farmers have done, but the corporations cannot out-farm the farmer.

Despite his productivity and efficiency, the family farmer doesn't pocket much of a reward. Hardly a year goes by without some region or commodity suffering drought, flooding, freezing, blight, virus or some other natural disaster. Even when the crop is good, chances are there will be overproduction, accompanied by disastrously low farm prices. Bad weather, bad prices and general bad luck have to be expected. But in the last thirty years, the farmer also has had to contend with the steady rise of corporate power in agriculture and with a government that relentlessly has pressed for bigness, technology and integration in the food system.

THE CORPORATE PRESENCE

Corporate America surrounds the independent family farmers. On one hand are agricultural input suppliers, selling such necessities as capital land, seed, fertilizer, machinery, feed, pesticides, drugs and fuel. FORBES annual directory of business shows that 25 of the 45 most profitable corporations in 1972 were involved to some extent in agricultural inputs, including such names as Standard Oil, duPont, Tenneco, BankAmerica, Dow Chemical, Chase Manhattan and Getty Oil.

It's a bullish market today for all corporate inputs into farm production, even if it's the farmer who is being bullied. Farm equipment sales for John Deere & Company, for example, exceeded $1 billion in 1972. The company's annual report notes that "It was the first time any company reached this level of farm equipment sales in a single year." In 1973, a year modestly termed "promising" by Deere's chairman, first quarter earnings on farm equipment are up 36 percent over last year's record.

Those soaring corporate profits are dragging the farmer down. While the price farmers receive for their products has increased only six percent since

1952, the farmer's production expenses have overwhelmed him with a 122 percent increase. Input corporations are profiting handsomely, but average family farmers have had to mire themselves in debt to stay in business—debts owed by farmers have increased 355 percent since 1952.

This squeeze helps to explain the farmer's pique at President Nixon's ceiling on meat prices. The day after the meat price ceiling was announced, National Farmers Union president Tom Dechant called on farmers "to join in demanding a rollback of farmers' production costs for such items as fuel, fertilizer, machinery, and interest rates." The demand went nowhere.

In a normal year, the farm family averages only a third of the consumer's food dollar. The rest of it goes to middlemen that separate the farmer from the consumer. The House Agriculture Committee reports that retail price of food has increased 43 percent since 1952, but the price paid to the farmer has increased only six percent. The corporate structures that process, package, transport and market the farmer's product have sopped up the difference.

Dr. Robert E. Wagner, director of Maryland's extension service, said that ten dollars worth of food today would pay middlemen $5.55. The farmer would get $4.45, but $3.36 of that would pass right through his hands to pay for production expenses. Thus, says Wagner: "Of the $10 for the original purchase, a farmer receives $1.09 for his labor, management and executive abilities, and his investment." And that is before taxes, with no deductions taken to cover medical expenses, unemployment benefits or pension plan.

On the other side of the farmer are the output corporations that process, market and retail the farmer's product. This is a highly concentrated, oligopolistic industry, involving such brand names as Del Monte, General Mills, Ralston Purina, Minute Maid, Kraft, United Brands, Dole, A&P and Holly Farms.

The 1967 Census of Manufacturers counted 32,500 companies engaged in food manufacturing—a 13 percent decline in numbers from 1963. That rate of concentration not only is continuing, it is accelerating. But it is not their shrinking numbers that is most significant, it is their relative power. A 1966 study by the Federal Trade Commission showed that the 100 largest food manufacturers (three-tenths of one percent of the total number) accounted for 71 percent of the total profits of all food manufacturing firms.[1] In fact, the 50 largest companies had 61 percent of the profits.

This concentrated power can come down hard on family farmers, who must sell their vegetables, hogs, feed grains, fruits and other commodities to these corporate processors, marketors, and retailers. Family farmers operate in a dispersed segment of the agricultural economy—each farm is an autonomous, economic unit (one of 2.8 million) with no real economic power beyond its boundaries. Because these farmers are spread widely throughout the countryside, and because they traditionally have their freedom as independent operators, they generally are not organized to bargain effectively with the concentrated power of processing and marketing corporations.

Obviously, it is in the interests of corporations to pay the lowest possible price to the farmer. To prevent food shortages, there is a national policy for over-production, which frequently adds to the headaches of disorganized farmers trying to peddle their surplus in the concentrated world of corporate buyers. Even when prices are strong, the farmer finds it impossible to keep up with the maneuverability of these giants. In a recent Wall Street Journal article it was noted that Ralston Purina "has a good deal of leverage" over the price it pays to farmers for feed grains. "When the price of one grain rises, local buyers are instructed to switch their purchase to cheaper substitutes or to buy in nearby regions where prices are lower." This corporate hopscotching allows the Ralston Purinas to set prices pretty much to their liking. With an abundant crop of perishable grains on their hands, farmers usually have to like it too.

Fruit and vegetable farmers technically could bargain with any of 1,200 U.S. canners of fruits and vegetables, but in fact they must deal with the four canners that account for a quarter of production and that determine industry practices. Just one of those corporations—Del Monte—boasts of making "roughly 16 percent of total U.S. sales" of all canned fruits and vegetables. Within selected commodities, market control frequently is much tighter. For example, a Tenneco subsidiary controls 70 percent of the date industry, while nearly half of canned

[1] Those 100 firms also accounted for 46 percent of value added in the food industry and for 60 percent of the industry's assets.

peach production is accounted for by Del Monte. A farmer who does not want to deal peaches on Del Monte's terms can look forward to a long winter of peach eating.

Vertical integration

The most significant trend in the structure of agriculture is toward vertical integration of farming by agribusiness firms. In simple terms, this means that a corporation that either sells to or buys from a farmer decides to become a farmer itself. Thus, Libby McNeill and Libby not only processes and markets peas, but it also grows its own peas. USDA's Economic Research Service has undertaken an analysis of some of the firms that are integrating farms or farmers. Of 262 corporations examined so far, "21 percent are basically farm input suppliers, 48 percent are agricultural processing and distribution firms, but 31 percent are primarily engaged in non-agricultural manufacturing or service industries."

In most cases, vertical integration is being accomplished through contracts with farmers—the corporation does not become a farmer, it rents one. Enticed by the prospect of a guaranteed market, farmers sign an advance contract to sell to a corporation a certain amount of a certain commodity for a certain price.

Under contractual integration, the farmer is able to pass on some of the risk of farming. But he also passes on his power of decisionmaking, his entrepreneurship. "The contracting firm," wrote economists Breimyer and Barr, "generally decides who shall produce the product, how it shall be produced, and how much production shall be allotted to each contractee." The farmer becomes a hired hand of the corporation, and he ends up hiring out cheaply.

Ralston Purina, Pillsbury, Swift and a few other corporations used these contracts in the 1960's to rule broiler production in the South, finally destroying thousands of chicken farmers—a USDA economist found that contracted poultry growers in Alabama were making minus 36 cents an hour. In the sordid history of poultry integration there have been cases of corporate blacklisting, leaving farmers who balked without a market.

Repeated low prices for their product, unavailability of credit and the sheer market power of the corporate integrator are factors that force farmers into signing these insidious contracts. Corporations can lock up an entire market, forcing farmers to contract or go under. It is a matter of corporate power over individual choice—studies of farmer attitudes invariably find that the vast majority of farmers oppose integration, preferring to retain their own independence. Despite the farmers' preference, vertical and contractual integration are on the rise, approaching a fourth of total farm output. Integration of certain food commodities has gone much further than the average, encompassing:

	Percent
Fresh vegetables	51
Processing vegetables	95
Potatoes	70
Citrus fruits	85
Other fruits and nuts	40
Sugar cane and sugar beets	100
Seed crops	80
Fluid-grade milk	98
Eggs	40
Broilers	97
Turkeys	54

Conglomerates

Pressed from one side by input corporations that exact too heavy a price, from another side by output corporations that pay too low a price, and from top and bottom by corporations bearing vertically-integrating contracts, family farmers in many areas of the country now are being pressed with the crushing weight of another corporate force—the conglomerate. Farmers can look across their fields to such new neighbors as Standard Oil, Gulf and Western, Prudential Insurance, Ling-Temco-Vought, Southern Pacific and other conglomerate competitors.

Sunday dinner just isn't what it used to be: the turkey is from Greyhound and the ham is from ITT; the fresh vegetable salad is from Tenneco, with lettuce from Dow Chemical; potatoes by Boeing are placed alongside a roast from John Hancock Mutual Life; the strawberries are by Purex, and there are after-dinner almonds from Getty Oil.

It is raw economic power and favorable government treatment, not superior efficiency, that these conglomerate competitors bring into agriculture. Dr. Philip Raup, agricultural economist at the University of Minnesota, wrote in March that: "It is difficult to justify most types of large corporations in farming by conventional economic tests of efficiency in resource use and management. Those we now have are largely a consequence of farm price support and tax policies, which were aimed at family farmers and badly missed the target."

The family farmer cannot get the preferred capital treatment offered conglomerates, nor does the farmer have access to the enormous non-farm resources of the conglomerate. Boeing might be an inept potato farmer, but its ability to merge, to vertically integrate, to advertise, to invest huge sums of money and to attract government subsidy is enough to overwhelm real potato farmers in the American Northwest. An agricultural economists James Rhodes and Leonard Kyle wrote recently: "The capacity of the giant corporation to grow and grow, despite the lack of any real competitive edge over individual farmers in a traditional accounting sense, is the crucial difference between the corporate and the individual competitor." More and more, the family farmer is up against this irrational competition.

Corporate government

The average family farmer stands there virtually alone, without significant support from a government that spends billions of dollars annually in his name. Income and price support payments are based on volume and acreage, thus putting an incentive on bigness and awarding the largest payments to those least in need. Tax-supported research and extension programs have developed a technological arsenal that largely is not adaptable to the family farmer's scale of operation and that leaves him competitively disadvantaged. Tax laws, written to protect the farmer, instead have attracted the non-economic competition of rich, urban investors looking for a tax loss in agriculture.

USDA's food procurement program, designed to improve farm income, pays millions of dollars in hard cash to agribusiness middlemen while offering only a "psychological boost" to farmers. Irrigation water from federal reclamation projects is supposed to go only to farm units under 160 acres, but that limitation has never been enforced, allowing some of the largest landholders in the country to prosper and grow huge on subsidized water. A massive wheat deal was made with Russia in the name of farmers, but that information was withheld from farmers until they had sold their wheat cheaply to grain exporting corporations. Even though 92 percent of the farms in the country hire no labor, farm workers are denied full minimum wage benefits, thus subsidizing the wage bill of corporate farmers that hire thousands of farm workers each year.

While tirelessly praising the family farmer during the past thirty years, and while basking in his productivity and efficiency, government has been selling him out to corporate America. Primarily, it has been a passive sellout—a simple refusal to put the government solidly behind the efficiency of the family farm. There has been a lot of hard wringing over the elimination of three million farms in three decades, but agricultural economists and other corporate apologists have rushed forward to assure us that it was "inevitable." Secretary Butz, on Meet the Press in December of 1971, again clutched to this line: "When I said we were going to have upwards of a million fewer farmers by 1980, that didn't mean necessarily that I approved of that. I simply was reporting what is going to happen. I think it is inevitable."

His is the inevitability of a stacked deck. Agribusiness corporations are increasingly dominant over fewer and fewer farmers, because Earl Butz and his colleagues have spent their lifetimes to make it so. Back in 1958, having been named Dean of Agriculture at Purdue University and having just become a paid director of Ralston Purina Company, Earl Butz wrote that "The Commercial farm will increasingly assure the characteristics of a manufacturing establishment." He seemed to glow in print at the prospect of "enterprise managers" at the helm of an integrated food system. As for family farmers, well:

"These changes may alter the traditional entrepreneurial, risk-taking function of the individual farmer. It may even move him in the direction of a quasi-riskless, semi-guaranteed wage earner. But this is not necessarily bad, per se." Unless, of course, you happen to be one of those farmers.

Now, with "four more years," with farmer power waning in Congress and, ironically, with food prices at an all-time high, Secretary Butz sees himself in a position at last to implement the corporate vision of a highly-capitalized, highly-integrated, highly-industralized and highly-concentrated agricultural economy. It is the consumer, as well as the farmer, who will pay.

CONSUMERS

Gwaltney Smithfield hams and sausages are packaged and advertised to give off a feeling of the old farm place and the unrushed process of a southside Virginia smokehouse. The reality is not nearly as down home as the image—Gwaltney is owned and managed by the world's biggest conglomerate, ITT. Country goodness, made the old fashioned way, is the advertising pitch of Pepperidge Farm bakery products. The company is owned by the food conglomerate, Campbell Soup. Is regional beer, brewed the local way, a source of enjoyment for you? Maybe a Burgermeister, a Hamms, a Waldech or a Buckhorn? They all are now a product of Heublein Inc., a Connecticut conglomerate.

The American food supply is increasingly concentrated, standardized and industrialized. The same factory techniques, the same market domination and the same selling gimmicks that Detroit brought to automobiles now are being applied to food. It is at least questionable that consumers really want to turn his corporate power loose in their pantries.

Before the family farmer is discarded—while this efficient, productive and competitive alternative still exists—we ought to take a hard look at where we are being led. It is not just the family farm that is threatened by corporate agribusiness—it is the price and quality of the American food supply.

To consumers and family farmers alike, the most significant (and least reported) reality of modern agriculture is the concentration occurring in every phase of the food system: input, production, processing and marketing. "All the subsectors have been undergoing a common internal structural change," wrote two USDA marketing specialists in February, "namely, a decrease in the number of firms accompanied by a corresponding increase in the size of firms." They observed dryly that "large, multi-product firms have taken an increasing share of the market" and that "these firms have also been innovators in developing new techniques for coordinating the activities of the production sector to their requirements . . ."

That boils down to a few very powerful processing and marketing corporations increasingly able to tie the entire food system together "from inputs through retailing," as USDA economist John Lee put it. Tenneco—which not only makes farm machinery, chemicals, fuel and food containers, but also grows, packages, markets and retails food—has an appropriate slogan to sum up its pervasiveness: "Seedling to Supermarket", they boast. Del Monte Corporation assures consumers that it can take care of food needs "from womb to tomb."

Nor is it just the farming phase that is being locked into single corporate structures. "Wholesale functions are more and more being integrated with retailing," noted economists Kyle, Sundquist and Guiter. "Four out of five firms in the supermarket industry have their own central warehouses or else are affiliated with a retailer-owned cooperative or a wholesaler-sponsored voluntary chain." In a position to grow food, process it, package and ship it, wholesale and retail it, the same corporations increasingly are cooking it for you. Nation's Restaurant News, a trade publication, counts more than 40 major food manufacturers and processors that now own restaurants. Pillsbury (Burger King) General Mills (Red Lobster Inn), Quaker Oats (Magic Pan), Campbell Soup (Hanover Trail Steak House) Ralston Purina (Jack-In-The-Box), General Foods (Burger Chef) and Green Giant (Henrici's) are just a few of the food middlemen with arms that reach all the way to the dining table.

The Secretary of Agriculture, in a May speech, said that "A market oriented agriculture lets production shift and adjust as consumer preferences change and as foreign demand grows." The bait there is the suggestion that sovereign consumers somehow will have this concentrated economy firmly in hand. Consumer to processor-marketor to farmer is the play that Secretary Butz diagrams in public. He knows better. It is in that middle sector that power will be concentrated, and both demand and supply will flow from there.

Assistant Agriculture Secretary Robert Long understands the significance of this concentration. Before coming to USDA this year, Long was in charge of agribusiness affairs at the Bank of America, and he wrote happily from there about the corporate future in a concentrated agriculture: "As agriculture progresses to fewer and fewer units, those remaining will find it easier to work together in the search for a new formula for a more profitable return." All this of whom will be chagrined that Long also has urged "consolidation within the food industry to present a solid front to the consuming public." To make that consolidation possible, Mr. Long has suggested loosening up the antitrust laws to allow more interlocking of interests.

In the new agriculture, what is produced, how much of it, what quality and at what price will be the decisions of these integrated corporations. This fundamental shift in the focus of agriculture power puts relatively few corporations in a position to control the flow of food to millions of shoppers. In a world, oligopoly. That power promises to weigh heavy on consumers, adding to food prices and subtracting from food quality.

Food prices

In a concentrated, non-competitive food system, prices do not go down, they go up. Competition is replaced by a new spirit of cooperation and coordination. As has happened in many manufacturing industries, agricultural efficiency will decline as market concentration enables food corporations to pass on to consumers the cost of inefficiencies and excess profits. "As concentration increases," says a study of the Federal Trade Commission, "the opportunities for waste and the motivation toward deception both increase."

The Federal Trade Commission found in a 1972 study that consumers are being overcharged more than $2 billion a year for food because of monopolies within just 13 food lines.

The added costs of concentration—such as burgeoning administrative staffs, increased advertising budgets and inflated management salaries—most certainly will be rung up on the consumer's tab at the checkout counter. Less credible are assurances that any savings from a concentrated food system will be passed along to shoppers. Del Monte Corporation, for example, recently, has abandoned its white asparagus operations in California, Oregon and Washington and moved those operations to Mexico, where cheap labor has reduced the corporation's production costs by 45.1 percent. But the price of Del Monte asparagus has not gone down—none of the corporate savings lightened the consumer's load.

These days, food rarely flows directly from farmers to consumers. Rather it is funneled from millions of farms into the hands of a few corporate buyers that eventually peddle it to millions of consumers. Increasingly, those middlemen have the power to hold back production of food or to store huge supplies of food, thereby limiting the amount that gets to market at any one time. With this ability to manipulate supplies corporations have the power to boost prices.

At this moment, the consumer is getting a taste of such power. There is a booming demand here and abroad for soybeans, which are fed to cattle and other livestock. The constant rains in the Midwest, however, put this year's soybean crop in doubt, thus putting a premium on soybeans that are held from last year's crop. The government is not holding any old-crop soybeans—those supplies are in the storage facilities of the highly-concentrated grain trade. In fact, it is reported that only three giant exporting corporations—Cargill, Continental and Cooke—are holding 95 percent of all the old-crop soybeans still in existence. But rather than selling soybeans now to American cattle ranchers and feedlots, these corporations are holding them, while increasing global demand steadily drive up soybean prices. One of the corporations, Continental, is reportedly shipping some of its soybeans to Europe for use there by its integrated poultry subsidiary. The corporations will do well, but American consumers will be saddled with higher prices for beef and poultry.

With market power in the hands of fewer and fewer food corporations, pricing is becoming more and more artificial. "There is an ever decreasing relationship between the price a farmer receives for his products and the price a consumer pays at the supermarket," complained New York congressman Ben Rosenthal. Advertising and shelf space increasingly have a greater impact on prices than do factors of supply, efficiency or product quality.

The food industry model might well be ready-to-eat breakfast cereals. In that food line, four corporations—Kellogg, General Mills, General Foods and Quaker Oats—control 91 percent of the market. There is no competition on price or quality of the product, nor on the efficiency of the manufacturers. The cereals are essentially the same, with only such artificial differentiations as color or shape. The only "competition" that exists is on merchandizing techniques—animated television commercials, radio jingles, package designs, contests and other promotional gimmicks.

Del Monte Corporation, with an advertising budget in excess of $15 million a year, has succeeded in selling the line that its canned goods are of superior quality. But any shipment of Del Monte peaches, for example, contains the same USDA grades as those shipped under many labels that sell cheaper. A 1969 study by the Department of Agriculture found that in half the items sampled Del Monte canned products contained less fruit and more liquid than was in

any of the competitive brands checked. Despite these facts, and because of its advertising campaign, Del Monte can sell its goods for more than other brands on the shelf.

Tenneco is trying to become the top dog in the fresh fruit and vegetable market. Its effort, according to a corporate vice president, is to "do what Del Monte has done with canned foods." It is well underway with a marketing scheme for its "Sun Giant" label. "Establishing brand identification with the consumer is the strategy," wrote a farm reporter approvingly in the *San Francisco Chronicle*. "Produce will be pre-packaged, and each package will bear a smartly prepared advertising booklet pushing the thought that Sun Giant produce is something special."

Economists Leonard Kyle, W. B. Sunquist and Harold Guither stated the situation frankly in a recent article: "The old simple concept of food as a staple, basic commodity and of a sovereign consumer with a clearly defined demand for food is being cast aside. Industry seeks to create consumer demand for differentiated products—and then to tailor the marketing and production process accordingly. This is a process that has been used effectively in the production and marketing of automobiles, television sets, and numerous other consumer items."

It gets down to this: packaging and advertising of food are becoming more important pricing factors than the food itself. It is one thing for gasoline or soap to be priced and sold by such artificial gimmicks—but food? Already, food corporations have become the biggest spenders on television advertising.

Food quality

The corporate motive is profit. That is not a criticism, merely a recognition of its limitation. Located in high-rise office buildings far from the farms they control, corporate managers keep their collective gaze steadily on the profit-loss statement. Their responsibility is to maximize profits, and any corner will be cut to do just that, even if it means compromising the taste, texture and nutritional quality of the food they produce and sell. With little competition and with a heavy advertising budget, they can get away with it.

Higher prices may not be the greatest cost that consumers pay for concentration in agriculture. The greatest danger may be the loss of the high-quality food supply that we have had from family farmers. It is a danger posed primarily by three corporate objectives in agriculture: (1) substitution of technology for labor, (2) standardization of the food supply and (3) introduction of synthetic foods.

For the past thirty years there has been a technological revolution in agriculture, largely financed by taxpayers through the land grant colleges. Genetically designed melons, pesticides for all occasions, mechanically harvested strawberries, cattle fattened on drugs, red wax for apples, chemically skinner catfish and a vast array of other gadgetry are products of the technological fervor that has gripped agriculture since World War II. Although this arsenal has been developed in the name of consumers and family farmers, it was in fact designed for and to the specifications of corporate agribusiness and the largest-scale farming enterprises. It is interesting that no consumer representative sits on USDA's 11-member National Agricultural Research Advisory Committee, though Del Monte Corporation, Curtice-Burns Incorporated, Wilhelm Feed Lots Company and the industry-funded Nutrition Foundation are represented there.

Accompanying the technological revolution, particularly in the past decade, has been a push to treat agriculture as just another manufacturing industry. USDA economist John Lee spoke in February about the rising need for management with skills that "can be applied as easily to a 'food factory' as to plants turning out industrial products."

Corporate tomatoes today are assembled as though they were bars of soap—genetically tailored, these beauties are mechanically harvested, chemically ripened, electronically sorted and mechanically wrapped in cellophane. Rutgers University recently announced development of a new breed of tomato for this assembly-line process, naming it the "Red Rock." The University of California, finally admitting to consumers that today's manufacutred tomatoes have lost taste, announced in 1972 that scientists there have isolated 70 chemicals that cause tomato flavor and that can be artifically injected back into their product. Harvard's Dr. Jean Mayer, former nutrition advisor to President Nixon, was horrified by a Purdue University tomato that was being heralded as the new commercial comer because of its particularly red color and uniform shape. "Yet, when ripe," Professor Mayer complained, "it will contain at best approximately half the vitamin A content of the varieties of tomatoes presently on the market."

Consumers who wonder what happened to the taste of chickens can be enlightened by Harrison Wellford's description of today's corporate chicken factories: "The chicken which used to run free to scratch and root in the soil until time for slaughter, now spends its short life in a 12" by 18" cage crowded up against three other birds. His day may consist of sixteen hours of artificial light in a totally programmed environment. Crowding favors disease by creating stress and aiding the buildup of harmful bacteria and parasites, such as coddidia. The chicken's feed, therefore, is sprinkled with antibiotic drugs. Other drugs, including arsenic and antibiotics, such as nitrofurans, are fed to increase the rate at which the chicken matures and gains weight. Before going to market, chickens may also be bathed in tetracyclines (antibiotics) or sorbic acid to extend their shelf life. In addition, the bird's chemical diet may contain coloring additives to give their flesh a desired yellowish tint.

These are products of a concentrated agriculture, dominated by processing and marketing corporations. More potent chemicals, more powerful machinery and more complex management systems are the tools of the new argiculture. Robert Rodale, the editor of Organic Gardening and Farming, told a Senate committee last year that agribusiness considers soil to be like styrofoam material used for arranging flowers—"It is a convenient way to hold up plants and get water to the roots, while the fertilizer companies and pesticide companies and machinery companies do things to the plants—feed it—force feed it and makes tremendous profits as a result."

USDA—initials which used to stand for farmers in the minds of consumers—now conjure up such companion initials as DES, PCB, 2,4,5–T, DMN and other chemicals and drugs out of the agribusiness tool chest. The food industry even is having major factory recalls—for example, iceberg lettuce from California went to market in January with Monitor–4 pesticide residues on it and had to be taken back.

"He's got a way with women" go the lyrics of a popular country song. "And he just got away with mine." Consumers might be singing their own version of that refrain if corporate bureaucracy is allowed to work its will on the taste of the American food supply.

The assembly line is not geared for a variety of tastes—it takes the national average and produces that over and over again. The objectives is not to produce bad-tasting food, just inoffensive food. Nothing will be too spicy, too saucy, too pulpy, too chunky—nor too tasty. On Jack Parr's late-night talk show, a guest from England was asked his impression of American food—"uniformly clean," he said. It is the McDonald's hamburger standard that is creeping into the American pantry—you probably won't get poisoned, but you certainly won't get excited.

Officials at USDA suggests that all of this uniformity is for the consumer's own good, and department spokesmen generalize about "the emergence of mass markets for standardized consumer products." If they are buying hard, tasteless tomatoes, the thinking goes, then that must be what they want—never mind that Safeway is not offering a choice. "Who has decided for consumers that we want a fruit all year long, if as its cost, there is no season when it tastes good?" demanded the National Consumers League at a 1972 Congressional hearing. "Tasting the fruits of progress is indeed a dreary and depressing experience," moaned New York Times writer Alden Whitman, "especially bitter for those of us who recollect these fruits before technology took command." And chickens? Mr. Whitman asserts that "I myself am certain that most chickens come off a Firestone assembly line."

It is the brave new agriculture. Food products are "engineered" to conform with a heavily-advertised aesthetic image of what they "ought" to look like. Thus, tomatoes are picture-book red, but they are not soft, they have no tomato smell and ultimately they lack tomato taste. Pull down the husk of corn in the supermarket and the kernels look big and ripe, but back home those kernels turn out to be filled with water rather than taste.

The Williams Companies is an Oklahoma conglomerate that makes pipelines, chemicals, steel and other products. Now, through its Nutrico subsidiary, Williams is making food. The conglomerate presently is merchandising a new product called "Fishrimps." The stuff is shaped like a shrimp and advertised as having "shrimp-like flavor." But it is not shrimp. It is made from the rocadina or croaker, a salt water fish that eats shrimp. The corporation's 1973 report to stockholders offers this description of shrimp a la Williams:

"Nutrico is presently doing the processing at its plant in Bayou La Batre, Alabama, where the meat is formulated, frozen and shipped to Nutrico's Tulsa plant. In Tulsa, the meat is placed in an automated line which shapes, breads, pre-cooks, freezes and packages the product.

The corporation is busy now in its Tulsa laboratory researching other such products. A company official said:

"Our basic criteria applied to the selection of projects is profitability. New products must either have a mass market appeal, a wide profit margin or both. They must also be free of competition."

If the corporate goal is not bad food, neither is it good food. The corporate goal is profit. In the absence of product competition, that goal can be pursued with only minimal attention to taste, texture and nutritional quality. Ralston Purina, for example, is a major producer of feeds for livestock. The Wall Street Journal reports that this company uses computers to "determine the least expensive ingredient mix for their feeds that will meet nutritional standards." As in automobiles or any other manufactured product today, food corporations produce for the lowest level of consumer acceptability that will meet government standards—the rest is up to the advertising departments.

America's food manufacturers have not been content merely to tamper with nature's work. They have entered into direct competition wih nature by making ersatz "food" in the laboratory. Even the U.S. Department of Agriculture cafeteria has quit offering milk (much less cream) for coffee drinkers—now it's a sterilized, non-dairy coffee "lightener" that is poured into the cup.

Lemon ice box pie without lemons, hamburger without meat, tomato juice without tomatoes and cheese without milk are just a few of the synthetics offered for sale today, many of them under old and trusted brand names. Good Humor has been peddling ice cream in America's neighborhoods for years. Now owned by the English conglomerate, Unilever, Good Humor recently began advertising a new ice cream bar named "Whammys." The big selling point of "Whammys" is that they do not drip. How can an ice cream bar not drip? Answer: take the cream out of ice cream and replace it with a heavy dose of chemical "emulsifiers."

Fleischmann's, a division of Standard Brands, is known for its margarine. This spring, in a flurry of national advertising, Fleischmann's moved into competition with chickens. The company is offering a concoction called Egg Beaters—a frozen, cholesterol-free egg substitute. "Fleischmann's makes sensible eating delicious," reads the slogan on the package. You might question that claim if you read on down into the small print, where the list of ingredients includes emulsifiers (vegetable lecithin, mono and diglycerides and propylene glycol monosterate), cellulose and anthan gums, trisodium and triethyl citrate, aluminum sulfate, artificial coloring and—to meet the claim that it has "All the good taste of farm fresh eggs"—artificial flavor. And if that doesn't whet your appetite, neither will the price. A package of Egg Beaters, which claims to be the equivalent of eight large eggs, averages out to 10¢ an egg, while a large, Grade A version of the real thing will cost you only 6¢ each.

Such stuff is the rage of the food industry and a harbinger to consumers. Given a laboratory and an advertising budget, food manufacturers are willing to remake the American diet. Given a concentrated food economy, they will be in a position to do just that.

As the food economy becomes more concentrated shoppers will have as much control over the price and quality of a tomato as they do over a new Chevrolet. Tomatoes will be produced by the same corporate methods and will be sold by the same advertising techniques as are Chevrolets. And neither with tomatoes nor with Chevrolets is the consumer sovereign.

Large corporations tend to be remote to the public and practically inaccessible by consumers. Remember the last time you wrestled with some corporation's computers over a billing mistake, or remember trying to pierce the bureaucracy of a major insurance company with a claim for service. That same way of doing business is about to be applied to food.

Is that what Americans want? If our electric shavers are breaking down, if our children's toys are unsafe, if our family car is being recalled, if our headache remedies are deceptively advertised—why let corporations mess with our dinner?

BUTZ CULTURE

Out on the hustings, the Secretary of Agriculture gets folksy, calling farm people "the salt of the earth" and branding himself their "cowhand on the

Potomac." Quotable stuff. Back in Washington, however, the Secretary is moving with cold determination to restructure agriculture in such a way that will leave these folks with little more than the salt in their sweatbands.

"The promised land for agriculture," gushed Secretary Butz in a May speech, "is near at hand." He was addressing the National Agricultural Advertising and Marketing Association. The audience is significant, for these food executives are the chosen ones of Butzculture—a new agricultural policy that would shift power away from efficient family farmers and put it squarely in the hands of processing, marketing and exporting corporations.

In a 1967 paper written for the National Advisory Commission on Food and Fiber, three economists predicted that "Many farming operations will become 'on-line production factories.'" The authors offered this view of how agriculture operations will be structured by 1980: "The farm of the future will be a carefully integrated complex; it will extend from genetic research outputs to end products tailored to consumer preferences. Coordination will be accomplished through numerous types of decision structure systems. Farm managers, corporations, financial institutions, and governmental units will work together as teams or units."

That structure is the goal of the Butz administration. Highly-capitalized, highly-concentrated food manufacturing firms will integrate and direct farm production, and they will control the flow of food to consumers. It means the industrialization of the American food supply. In the jargon of USDA's Marketing Economics Division: "Agriculture will be drawn into a system that will govern future output responses through rigid contract specifications or [through] direct participation in production under business rules now commonly employed in the commercial sector at large." In short, panty hose, radios and tomatoes will be products of the same industrial process and the same corporate firms.

In an interview with Daniel Balz of National Journal, Undersecretary of Agriculture J. Phil Campbell said that "proposals are being drafted to prepare for the kind of farm structure the Administration thinks will exist in 1980." There is not much room in that structure for the family farmer that we know and rely on today—the independent entrepreneur. Of course there will be farms—maybe half a million large-scale enterprises—but their operation will be controlled by the management of integrated corporations. Under Butzculture, corporate management is in, family farmers are out. It is the final enforcement of Butz's 1955 admonition to farmers: "Adapt" to the new agriculture "or die, resist and perish."

Butzculture is not a manifesto. It does not exist as a government document, loudly proclaimed and widely disseminated. In fact, the Secretary of Agriculture even has refused to submit an Administration farm bill to Congress. "There won't be a Butz plan," the Secretary declared. "If you get your name on something, they'll just shoot you out of the saddle." Never mind that he is paid 60,000 public dollars a year to take that little risk. It is not unfair for consumers, family farmers, farm workers, taxpayers and other folks—even congressmen—to expect their Secretary of Agriculture to explain in detail just what he has in mind to do with the American food supply. One can imagine the outcry if the Secretary of Defense or the Secretary of the Treasury attempted such a shell game with the public.

"Yet a plan does exist," wrote The Wall Street Journal's farm reported in January, "and in a Kansas City speech last month Mr. Butz offered a peek at it." Government by peek-a-boo is as deceitful as it is silly, but that is what the public is getting from their Secretary of Agriculture. Butzculture has to be pieced together—it is found in speeches, in administrative actions and in legislative recommendations. It has three basic elements: (1) government will get out of agriculture, leaving the market to work its will, (2) full productivity will be pressed, with a stronger emphasis on selling this productivity abroad, and (3) the small farmer will be dismissed entirely, and both a rhetorical and programmatic emphasis will be put on well-capitalized, integrated farm enterprises.

Public interest and the "free" market

In President Nixon's short agricultural message to Congress in February, he spoke of "the need to keep the Government off the farm." The President said that "We must reduce the farmer's dependence on Government payments," that "The farmer wants, has earned, and deserves more freedom to make his own decision" and that "Government influence in the farm commodity marketplace must be reduced." In the new agriculture, the family farmer is to be on his own, without government protection, in something called a "market-oriented agriculture."

Senator Herman Talmadge, of Georgia, is chairman of the Senate Agriculture Committee. "I am a conservative man," he said in February. "The idea of getting government out of agriculture is basically very appealing to me. But I would be a traitor to the people of my State and Nation if I were a participant in such a scheme."

The Nixon-Butz Administration is proposing to put farmers on something they call the "free market." No such thing exists, nor should it. A "free" market is a market out of control and open to domination by concentrated power. Food is an essential. A little bit of overproduction or a little bit of underproduction has far-reaching consequences for the supply and price of food. It is not something to turn over to the mercy of the powerful or the whim of uncertain market forces—the public requires that their food supply be publicly managed. Yet, under the guise of getting the government "off the farmer's back," the public's role in the farm economy will be seriously weakened.

General Motors does not operate in a free market. Neither do members of AFL–CIO, nor small businessmen, nor Del Monte Corporation. The government participates in economic affairs precise to protect those interests against the rigors of an unrestrained market. Now, the Secretary of Agriculture proposes a new agricultural economy in which family farmers are stripped of their protection against over-production and in which consumers are stripped of their protection against food shortages—an agriculture in which supply management becomes a private affair rather than public business.

Farm programs exist in the first place because the American farmer is too productive—his capacity to produce, and his inclination to produce, far exceed consumer demand. Unchecked, that productivity will glut a given market, push farm prices down to rock bottom and leave the farmer in bankruptcy, despite his efficiency.

One way to avert that result has been price supports for certain food products, with the government guaranteeing a minimum price to the farmer. Secretary Butz has urged that this support "be phased out over a 3-year period." It is like stripping away the minimum wage protection of laboring people. Several hundred thousand family farmers—efficient, productive people—depend on this protection to stay in farming.

Another way of matching production with demand has been to limit the acreage planted in certain crops, with the government paying farmers who take land out of production. This has been a enormously unpopular program, mainly because the very largest farmer, including many corporate landholders, have drawn the bulk of the payments. For some right reasons, this program comes under annual attack in Congress. For wrong reasons, Earl Butz now has joined in the attack on these payments, seeing in their elimination the chance to further weaken the public's management of farm output.

Without that management, productivity will zoom out of control and farm prices will plummet. In the short run, consumers would be eating cheaply, but not for long. Conglomerate and integrated farms have outside resources to see them through such a period of surpluses and ruinous farm prices. Family farmers do not. "If we drive the family farmer off the farm," warned Senator Talmadge in April, "and leave the production of the Nation's food supplies to a few large corporations that can command any price they want, then the consumer will, indeed, pay through the nose."

Government storage of surplus grains is another price support mechanism that is under attack by the Nixon-Butz team. In times of excess production, such as the mammoth corn crop of 1971, the government has bought grain to prevent the bottom from falling out of the market. Those surpluses are stored by the government to be sold when there is a shortage, such as the current world-wide shortage of grains that are fed to cattle, hogs and poultry. By storing these commodities consumers are protected from wild fluctuations in food supplies. The Secretary of Agriculture, however, is selling the public out: "In order to achieve a strong, vital, and prosperous market-oriented agriculture we must get the government out of the commodity business."

Within a year, the Secretary halved government stocks of grains. By May of this year he could say, "We have practically cleared out the Government bins." Who benefits by the Secretary's actions? "Farmers and the private trade should keep the supply in their hands." Butz told the House Agriculture Committee. But it is not family farmers who have the capacity to store grain, it is the highly-concentrated grain grade. A Purdue University report revealed that 56 percent of the storage capacity in major U.S. grain shipping ports in 1967 was

held by just six grain corporations. Under the Butz scheme, the public cannot look to its government to release grain in times of shortages; rather it must plead against the self-interests of a few multinational corporations.

Getting the government out of agriculture—getting it away from family farmers and consumers—is a way of delivering agriculture to concentrated, corporate power. "If farm operators are to be weaned," asked the St. Louis Post Dispatch editorially, "why not other segments of business that are protected from the rigors of a free market economy by direct and indirect governmental subsidy—for example, oil companies, barge and ship operators, exporters and defense contractors?" Even the Department of Agriculture admits that elimination of price support, supply management and surplus storage programs, as proposed by Secretary Butz, will be devastating to family farmers and dangerous for consumers. In a February report to Senator Talmadge, USDA's director of agricultural economics, Don Paarlberg, wrote that: "Complete removal of all production restrains and all price support activities in 1974 might cause substantial increases in production, sharp drops in net farm product prices, and even greater drops in net farm incomes in the immediate years after removal of controls. The result would be an increased economic squeeze on most farmers, with possible failure or withdrawal of many marginal farms."

And the impact of Butz's decision to sell out government stocks? Price chaos, Paarlberg says: "Production, price and income variations under a free market system would be much greater than that experienced in recent years. Unless provision was made to maintain reserve stocks, a free market system would be less well equipped to cope with such unpredictable phenomena as the 1970 corn blight and the recent unusually strong export demand. Without ample reserve stocks, such unexpected developments set us production and price waves that continue over a period of years."

Secretary Butz's "free market" ideas may look great on an economic flow chart, but their implementation will not feel so great down on the family farm, where efficiency and productivity will be overwhelmed by "free market" forces. Nor will it feel great to consumers, faced with violent swings between production surpluses one year and shortages the next. But it will feel great in the board rooms of corporations able to move into the rubble with their economic power, able to restructure agriculture by integration and industrialization and able to emerge with an unbreakable grip on the American food supply.

The production obsession

The one, clear standard for Secretary Butz is productivity. All else is measured by that. "The essence of wealth, and of well being—the essence of prosperity in America—is a full level of production," he said back in 1953. "We must pursue a program that somehow encourages that. We must pull for a flexible program. But above all, we must keep producing." He was advocating a complete return to laissez faire in agriculture at the time. The refrain has not changed now that he is Secretary of Agriculture. "The chance to operate our agricultural plant at a much fuller capacity than ever before is now within grasp," he said in May of this year. His insistence on full productivity is a key element of Butzculture.

Not everyone shares the Secretary's inner glow at the mere mention of the term. In fact, a Harris Survey in February found that seven out of ten Americans feel that it is corporate management and stockholders who benefit from increased productivity, rather than consumers, workers or even the country as a whole. The pollster summarized his findings in this manner: "To most Americans increased productivity suggests harder work, fewer jobs, and benefits for the company at the expense of workers."

Now comes the Nixon-Butz Administration spurring the farm sector for an excess of productivity, while also lifting the controlling reins out of public hands. Already, Butz has used his authority to put some 53 million acres of cropland back into production, and he is looking for authority to get more cropland.

Trust the marketplace, he's telling farmers. He wants the farmer to forget about the price per bushel and to think in terms of producing lots of bushels. It's like telling a steelworker not to worry about his hourly wage—just work more hours. That might be good for huge scale farms, with acreage too large for optimum efficiency, but average family farms have a limited capacity for volume. When all that production drives down the price per bushel—and with no government floor under the price—family farmers are going to go down with the prices. It will not matter that they are more efficient than the volume dealers that will survive.

The carrot in the Butz scheme is global demand for American farm goods. Here's the pitch: produce like Hell, even if that drives prices lower, for the Administration will sell the stuff abroad. Given the experience of 1972's Russian wheat sale, farmers and consumers might be forgiven if they view this assurance with some skepticism.

The winter and early spring of 1972 promised a bumper crop of wheat, which promised low farm prices and disgruntled farmers in an election year. Butz came up with a sale of wheat to Russia. It turns out that the Secretary's political eagerness led him to sell the wheat cheaply. It also turns out that, while grain exporting corporations had advance knowledge of the sale, wheat farmers were not informed. Those farmers sold their wheat to the exporters, cheaply. It was a good deal for Russia and grain corporations. The rest of us did not fare so well, as the Des Moines Register pointed out in a May editorial: "Farmers got less for their wheat than the export demand justified. Taxpayers got stuck with an unnecessary subsidy cost. And the sudden depletion of U.S. grain stocks with rising domestic prices for feed grain, has been a factor in the rise in meat prices."

It is a little chancy to overproduce without any protection other than USDA's assurances that it can peddle the excess to foreign governments. Ensconced behind the marble walls of the Department of Agriculture, Earl Butz is willing to take the risk. Out there alone on the free market, family farmers are not so sure. "The 'open market' policies of the Administration," said the National Farmers Union in May, "only leave the U.S. farmer open to economic catastrophe. Farm prices may hold up during these times of world shortage. But as times begin to change, beyond our control, it will be the U.S. farmers who will be left holding the bag."

The farmers' concern is well founded. Foreign sales have little to do with price or the bargaining "skills" of our negotiators. They primarily are dependent on such factors as weather and politics. There is not much that Earl Butz can do about those. The March 15th issue of FORBES magazine recognized that "of course, there are pitfalls to watch out for in these admittedly rosy projections of world demand for foodstuffs." FORBES itemized a few of those pitfalls:

"Good weather conditions around the world would diminish U.S. wheat exports for a start. The Common Market nations are not going to cower meekly under U.S. table-pounding in negotiations; Japan, with its Brazilian plans, could become a competitor in agriculture. Russia normally grows more wheat than even the U.S., and is a grain exporter itself. It also grows barley and can fatten its calves and hogs on that. So while demand for grains will grow, it will remain highly cyclical."

The Department of Agriculture has questionable ability to estimate domestic supplies and demand, much less foreign. High meat prices today exist in large part because USDA statisticians over-estimated by about 10 percent the number of beef cattle heading toward slaughter. In the winter of 1972–1973, Secretary Butz came up short of beef, and consumers came up with a boycott.

The "Flanigan Report," a heavily-leaked, internal document prepared in 1972 for Nixon's assistant for International Economic Affairs, suggests that agricultural exports could rise from $10 billion today to $18 billion by 1980 if only this country will move to a "free market" agriculture, including removal of all import restrictions. In the hope that Russia will continue to buy from this country, in the hope that European Common Market countries will open up their farm markets to us, in the hope that China will continue to find it politically advantageous to deal with us for their grain needs, in the hope that Japan will not lease farm land in South America, in the hope that weather conditions will continue to favor us and work against our competitors and in a dozen other hopes, this Administration is proposing that farmers and consumers give up public mechanisms that regulate the American food supply.

The "Flanigan Report" is not just gathering dust on a government shelf. Many of its key recommendations are embodied in Secretary Butz's testimonies on the Farm Act of 1973 and the Trade Reform Act of 1973. The impact of those recommendations, if adopted, will be to weaken the economic position of family farmers, to place a new imperative on bigness and integration in agriculture and to leave the American consumer in the hands of multi-national corporations selling to a global market.

Writing off the little guy

Butzculture has no room for smallness. When Secretary Butz says that "farming no longer is a way of life, it is a business," he means big business. A small-scale operator, no matter how efficient and productive, is frowned upon. Dedicated

to an integrated and industrialized agriculture, this Administration literally wants to write off the little guy, refusing to treat him as a legitimate producer and a legitimate client of USDA.

Nowhere has that been made clearer than in USDA's effort to alter the official definition of a farm. Under proposals made to the Census Bureau in 1972 and 1973, families grossing less than $5,000 a year in farm sales would not be considered farmers—even if their sole occupation and sole source of income was farming! At a cut-off level of $5,000 USDA would be counting out 56 percent of the farms in the country.

In the new agriculture, a majority of the farmers in America would be denied the title of their occupation and would not even be counted in farm statistics. There exists the likelihood of real harm to these farm families, for it appears that they would be abandoned for purposes of farm programs as well. It is an effort by USDA to put small producers out of sight and out of mind.

The Department of Agriculture made another move this year to manipulate statistics and alter the public's perception of farming. There is a Census of Agriculture taken every five years, with the next one due in 1974. This Census, which collects both demographic and economic data, offers the clearest, national picture available of farmers and their products. USDA has proposed to eliminate it. The collection of demographic data would be dropped entirely, and the collection of economic data would be merged into the Census of Manufacturers. In this way, farm products are separated statistically from farm people—agriculture can be defined in terms of manufactured products, without having to worry about the income of the people who produce them. It is a kind of Washington magic—there is no farm income problem if there are no statistics to show it.

During the 1972 election year, Secretary Butz crisscrossed the countryside, saying that in the next four years he would be "fighting like a wounded steer" and spending money "like a drunken sailor" on behalf of farmers. Excessive campaign zeal, no doubt, for one of the Administration's first actions after their November victory was to impound funds that Congress has appropriated for four programs important to small farmers. With the election over, Butz shrugged off criticism of these program cuts by saying, "These are fringe things." These were programs for rural electricity, emergency farm loans, grain storage loans and conservation practices—not large amounts of money, but important to small farmers. Representative Jamie Whitten is chairman of the Agricultural Appropriations Committee in the House, and he was not pleased about the cutoff of these little fringes. He got a chance to make his point when the head of USDA's Extension Service came before his committee in March for funding:

"Mr. WHITTEN. That fellow out near the little community where I grew up worked hard and paid his taxes so you and I and others could be available to help administer the affairs of the government. In addition to paying his taxes, he saved what little money he could. He went to borrow money to build one of the houses with a loan he would repay at a low rate of interest. He sees many others with houses. Or he goes to the local REA Cooperative and says: 'I wish you would get a little heavier line to my place. I can"t get labor. All of the folks have moved to town. But if I had more electricity, I could run this farm with power.'

"Then he says: 'I will tell you something else. This Saturday bathing thing has gone out of style. I want some running water in my house so my wife can live like others. We can pay three-fourths of it back but we need a grant.'

"Then you go out and say: 'Well the government has cut all of that out. Notwithstanding the fact that you paid your own way, sent your children to college, and helped pay my salary, the government has cut those programs out because they would rather you were independent and did it with your own means.'

"What do you think his answer would be?

"Mr. KIRBY. Yes.

"Mr. WHITTEN. You said yes? Did you mean that?

"Mr. KIRBY. No. I meant I understood the point you were making."

Chairman Whitten won this exchange, but Mr. Kirby won the money battle. The Extension Service will be funded, but the small farmer did not get his program money freed from the executive branch.

The small farmer, under Butzculture, is no longer an agricultural problem. He is a welfare problem. Having failed millions of small-scale operators during the past thirty years, USDA now washes its hands of them. Out of the Department comes recommendations that at least half the farmers in the country must

get out of agriculture. Where shall they go? Well, they could get under the Family Assistance Plan, if it were enacted, or they could get some vocational education, if Nixon hadn't vetoed the bill, or OEO could help them, if it were not being dismantled—or, better yet, industries could be given a tax bonus to locate their plants in the rural areas and put all these little guys on the assembly line.

Rural development is USDA's answer to their small farmer "problem." The Department even has a new post that it can point to as evidence of its concern—assistant secretary for rural development. But the effort here is not to help the little guy in farming, it's to help him out of farming. National Farmers Union told a Senate subcommitee in March that "the Administration should be using the 1972 Rural Development Act as a base to rebuild rural America rather than an excuse for withdrawing from rural America."

The rural development program could help small farmers shift to crops in which they could be more competitive, it could serve their need for better marketing information, it could help them maximize thir efficiency through cooperative practices—it could do as much for the small farmer as it does for the biggest farmer and for corporate agribusiness. But it does not. The rural Development Act of 1972 authorized a special program for small farmers. The Administration, in its new budget, seeks zero funding for that provision.

While USDA ignores the needs of small farmers, it gives rapt attention to the wishes of corporate agribusiness. From genetic research programs to Russian wheat deals, USDA is present to promote agricultural bigness, integration and industrialization. There is a reason for that: USDA officials are themselves products of agribusiness. Prior to becoming Secretary of Agriculture Earl Butz served as a paid board member of Ralston Purina, Stokely-Van Camp, J. I. Case and International Minerals and Chemical Corporation.

An assistant secretary, Clarence Palmby, was Washington lobbyist for the grain trade prior to his appointment to run USDA's grain programs. He left the Department in 1972, just after he helped negotiate the Russian wheat sale—he became vice president of Continental Grain, the firm that actually sold most of the wheat to Russia. The Bank of America, the world's largest bank, finances half of California's agribusiness. Robert Long, the Bank's senior vice president for agricultural loans, left his post in February to put in a stint as head of USDA's research and extension programs.

The Butz team is well-connected throughout, and those connections lead to an agribusiness slant on the American food supply. "The U.S. Department of Agriculture seems to look upon itself as the hand-maiden of agribusiness firms," editoralized *The Des Moines Register* a paper that is not generally hostile to the Butz administration "Under its present management, even more than in the past, USDA serves the interests of companies selling to or buying from farmers, often to the disadvantage of farmers."

By working directly against smaller-scale farmers, by pressing policies that would leave family farmers and consumers without adequate protection in the marketplace and by toting the bags of corporate interests, Butzculture is a one-way ticket to concentration in the food industry.

CHOICES

Under the Nixon-Butz Administration, agriculture is becoming a concentrated, non-competitive sector of the economy. In the new agriculture, corporate middlemen will be in a position to control supplies and administer prices. Food policy is to be treated as less a matter of public business and more a function of private interests. Food production is to be industrialized, with family farmers either being displaced or integrated into corporate structures. Food prices will go up, and they will be determined more by packaging and merchandising techniques then by factors of efficiency and quality.

Not only are these changes being made now, but they are being made in your name. "I look forward to working with the Committee to develop a bi-partisan farm bill for the benefit of all—producers, consumers and taxpayers." Secretary Butz told the House Agriculture Committee in March. He did not mention the corporate power that will flourish and profit under his agricultural vision.

Decisions over the American food supply are too important to be left to Earl Butz no matter how pure his motives. Too much is at stake to let these changes occur by default. Consumers, family farmers and others who will be affected by greater concentration in agriculture ought to "intrude" into the decision-making process and assert their interests in food policy. Ironically, public outrage over

inflated food costs is just the fuel that the Secretary is counting on to propel his new farm policy through Congress. Uninformed about the farm economy, disgruntled about the cost of farm programs and stunned by consumer unrest over high food prices, urban congressmen are grateful to hear a call to step "boldly" away from the past. Even though Earl Butz is the piper, many of them are scrambling to get in line for the march, never thinking to ask what they will be stepping boldly toward.

The complexity of the issue, the lack of public scrutiny and the confusion of his opposition are the reasons that Earl Butz exudes confidence that his vision will prevail. Add to that the fact of "four more years." Butzculture is not a plan that has to be adopted this year, or even next year. There is time, and piece by piece, it will all come together. There will be annoying diversions, like Watergate and price freezes, but those are not long term barriers.

The only effective barrier to the industrialization of food is consumer action. Family farmers are already in the fight, but they are reduced—by lack of power—to waging a defensive battle. Real power rests with consumers. They must recognize their stake in family farm agriculture and wage a major food offensive. Congressional power today is in urban hands. Those votes will determine the direction of agricultural policy. As desperate as it may appear, big city congressmen represent the last exit off the road to Butzculture.

Mr. MEZVINSKY. Now, the subcommittee will recess until 1:30, when we will have testimony from Mr. Nicholas Scoppetta, commissioner of investigation for New York City.

[Whereupon, at 12:17 p.m., the hearing was recessed, to reconvene at 1:30 this same day.]

AFTERNOON SESSION

Mr. MEZVINSKY. The committee will come to order.

This afternoon we are pleased to have before us Nicholas Scoppetta, commissioner of investigation of the city of New York.

Mr. Scoppetta, I would appreciate on behalf of the committee, your testimony so that we can get a picture of some of the factors involved in the increase in our food prices.

You can submit your statement anyway you feel fit, and anything else for the record. Your complete statement will be made a part of the record, and you can submit anything also you like.

TESTIMONY OF NICHOLAS SCOPPETTA, COMMISSIONER OF INVESTIGATION, CITY OF NEW YORK

Mr. SCOPPETTA. Thank you, Congressman.

I am pleased that you have invited me to appear before the subcommittee because I think that there is one aspect of this question of increasing prices in the food industry that perhaps does not always get dealt with in these kinds of proceedings, and that is to what extent criminal involvement in the industry may be affecting the price of food.

I have been commissioner of investigation for New York City since December of 1972. Before that time I was a special assistant to the U.S. attorney for the southern district, and I was also associate counsel to the committee investigating alleged police corruption in New York, the Knapp Commission, but most relevant to my comments today is the fact that for years, I was an assistant district attorney in New York County and spent most of that time in the rackets bureau, a part of the office concerned with, among other things, organized crime and its infiltration into legitimate business.

During that period of time we had several investigations of the meat industry in New York City. Although the cases I am referring to specifically concern people and companies and individuals and corporations involved in the meat industry, there is every reason to believe that inasmuch as the mechanics for delivering the ultimate consumer product to the public are similar in other aspects of the food industry as well, there are some lessons to be learned from the New York experience gained investigating the meat industry.

I might add that this past year—and I referred in some detail in my statement to these matters—this past year the Federal Government, the Joint Federal-State Strike Force on Organized Crime, working together with the New York County district attorney, Frank Hogan, obtained a number of indictments as a result of a year-long investigation. These indictments returned against individuals and corporations and brokers in the New York area which allege that attempts were being made to control prices and the market in the meat industry in New York City by criminal means.

The product was being retailed in New York City, but it is clear from a reading of the indictments and from my own experience investigating this area that is not confined to New York City.

New York City doesn't have any real ready source of meat products. It goes outside of New York for its supply. So that persons and companies in States across the country have also been involved in this criminal activity. As a result of these investigations, we have learned that it is not only New York's problem, but Pennsylvania's, Wisconsin's, Nebraska's, New Jersey's, and number of other States. The problem has its roots in all of these States, although the indictments were returned in New York.

We found a number of different practices existed which directly affected the ultimate price when it reached the consumer. A number of indictments were returned and convictions obtained that showed that it was a common practice to pay unlawful commissions, or more bluntly stated, bribes to the buyers for large buyers were paid in an amount directly related to the amount of product that the buyer would agree to purchase. So for example, a buyer for a large food chain was convicted of commercial bribery when it was shown that he agreed to accept a kickback of a penny a pound for every pound of the product that he put into his employer's store. That particular store was a large chain store that consumed many hundreds and thousands of pounds of product yearly, and so the figures were quite substantial.

Now, that bribe, that kickback, was tacked on to the wholesale price. It was not absorbed by these suppliers. And so the company in that case—and I might add, the company cooperated fully and brought that matter to our attention and was most instrumental in uncovering that scheme—so that price for a period of time was being added on to the campany's retail meat prices. There were a number of other schemes.

There was an investigation of the meat unions in New York that showed that at each contract signing for many years past, the unions demanded a payment from the industry in return for a guarantee of labor peace. This was not a payment for a "sweetheart contract," but for a contract, period. Any contract at all had to be bought. And the evidence before the grand jury shows that this practice had existed for many years.

This investigation resulted in the convictions of the president, vice president, secretary-treasurer of that union, all of whom received substantial jail terms. Although the case that was tried involved a $60,000 demand for a contract, there were other matters not brought out against these corrupt union officials. The evidence before the grand jury showed that these individuals in the unions had been responsible for hundreds of thousands of dollars being extorted from the meat companies, the processors. The meat processors testified that in most instances they created false records to absorb the costs of these illegal payments and passed the cost on to the consumer.

A case in point that I would like to touch on for one moment, Congressman, involved the now defunct Merkel Meat Co. case. I have discussed this in some detail in my written statement. The evidence in that case showed that not only were prices inflated as a result of illegal agreements between brokers and the corporation executives, but inferior products were being delivered at inflated prices. In some cases the product was not only inferior but was in fact contaminated. The evidence showed that diseased cows and horses were picked up at upstate farms, slaughtered under the guise of being prepared for pet food, packaged in the kind of packing that edible meat is ordinarily shipped in, counterfeit inspection stamps were affixed to the packages, and that product was eventually delivered into New York City. The books of the Merkel Meat Co. reflected payments as though they were buying the more expensive product fit for human consumption. They split the differences with their brokers.

Perhaps a more direct concern, I think, to this committee are some of the practices which are alleged to exist in the indictments that have been returned this year. Incidentally, I have copies of the indictments that can be made available to you. Those indictments are public records, but because the cases are now pending before the courts, and awaiting trial, I will have to refrain from discussing individuals or names of companies. But without referring to any particular case, it seems clear that in New York, some few brokers apparently control a disproportionate share of the market in supplying meat from wholesalers outside of the State to processors in New York. The indictments charge that by a system of illegal payments to union leaders and buyers in large chainstores, these brokers are able to decide who may sell in New York and who may not.

A case in point involves a very large, out-of-State wholesaler who had, developing superior techniques of packaging and marketing, put himself in the position of being able to deliver a superior product to the New York market at a reduced price. He found that the market was not open to him unless he agreed to go through a particular broker who by virtue of his influence—acquired by these illegal payments—with the unions and buyers and large chainstores, this broker was able to tell him that, if he agreed to deal through them, there would be a ready market in the supermarkets for him. If he did not, he could not sell his product in New York. He did enter into that agreement and paid in just over a year's period of time—just short of a million dollars in "commissions" to that broker.

As I said, those indictments are awaiting trial.

I think, referring to the last portion of my prepared statement, I would like to say that although none of these prosecutions that I have

referred to were brought under the criminal sections of the antitrust laws, it might be that a greater role exists for the application of antitrust laws and statutes in dealing with this problem of increasing prices in all aspects of the food industry. I have confined myself to the discussion of the meat industry because that is the industry in which I have had some personal experience and one in which the strike force in New York and the district attorney's office have been active and have been able to get a grand jury to act, and so we have some substantial evidence of what the situation is in that industry. But as I said earlier, there is no reason to believe that the problem is confined to the meat industry. There are brokers and there are large markets and there are buyers and, human nature being what it is, the same predispositions, we suspect, in all aspects of the food industry. Therefore, if the problem exists in such a large degree in New York City in the meat industry, it is reasonable to assume that an examination of other aspects of the food industry might indicate that the problem also exists there.

I think, too, that there is a tendency for all of us in law enforcement, or for some of us anyway, in law enforcement, to regard the criminal sections of the antitrust laws as having application only to corporations involved in somewhat esoteric manipulation of the economics of their industry. It would seem that a fresh look at the application of those statutes might suggest that the antitrust laws, in addition to the criminal statutes that presently exist, might also be applied to price fixing, market control, and manipulation of markets even though those evils come about by the bribery and extortion route that is ordinarily prosecuted under other sections of law.

If we were to bring the antitrust statutes to bear carrying as they do the treble damage penalties, in conjunction with criminal provisions of title 18, that might have perhaps a more salutory effect upon corporate conduct in this area.

Mr. MEZVINSKY. I want to go first into the long history of organized crime in the meat industry in New York. Can you give us some background on that and whether or not discussion of this has been preeating the industry for a long period of time?

Mr. SCOPPETTA. I think it is certainly clear that the industry has had that problem for many years. I would say that in the last 10 years or so, a great deal of attention has been given to it in the New York area by Frank Hogan's office and by the Justice Department, and it would seem that some reforms are under way. The problem that exists in that industry was first uncovered by some of the same people working on it now since Frank Hogan has been the district attorney for New York County for so long. His chief assistant district attorney, Alfred J. Scotti, had investigations concerning some notorious figures in this area quite a few years ago. Those cases are closed and so we can refer to them. Mr. Scotti was investigating Johnny Deo and Larry Brescio and some of these people who fit the traditional description of organized crime, going back certainly into the 1940's, at least.

Paper unions, that is artificial unions were created which really were vehicles for sweetheart contracts for the employer and a vehicle for shakedowns of the people who were working in the industry. There is a long history of this problem in the meat industry. There have been congressional investigations of the meat industry in New York—in some cases, forcing reform in some union locals—but certainly it is a

problem that has existed for 20 or 30 years, at least, and is with us today.

However, it has never gotten more attention than it's been getting in the last few years, and now for the first time in New York—the last couple of years—we have had the concept of the Federal Government Strike Force approach to organized crime, and that combined with the law enforcement activities that already exist out of Frank Hogan's office there are some hopeful signs that the problem may be being dealt with in a final way as it has never been before.

I might just say something here. We have been talking about organized crime. It is sometimes misleading to think of organized crime only in the traditional Mafia-Costa Nostra terms. I think that certainly that element exists, it is prevalent and perhaps forms the core of the problem, however the investigations that we have conducted—the ones that are pending and the ones that were completed—show that a broader definition of organized crime might be more appropriate. A better definition might define organized crime as any group of individuals who organize together for some criminal activity. In that context, I think that that definition might be more useful in considering the application of the antitrust statutes. Very often—and we certainly have seen it in New York—people who occupy positions of great responsibility and great public trust are committing the most organized kind of criminal activity imaginable. So I think this broader definition might be a more useful one for a committee such as this to work with.

Mr. MEZVINSKY. The Bureau of Labor Statistic's figures for meat prices run consistently higher in New York, Boston, Philadelphia, and the east coast than they do in the Midwest where most of the beef originates, but differences in costs can't be accounted for by freight or distribution costs. Would you attribute the influence of organized crime as a contributing factor in the increase, if not a major factor, in the increase in meat prices?

Mr. SCOPPETTA. It is unquestionably a contributing factor and maybe one of the major factors.

These cases I have been referring to, demonstrate that in each instance the cost of these illegal payments were added on to the price of the product. You can trace a direct increase in the product price.

Now, how one would ever arrive at a figure that would indicate how much the price has been increased is a little difficult to assess. In some particular cases, however, involving a particular series of shipments of several hundred thousands of pounds of product, you can figure the cost increase of the product to the consumer.

Mr. MEZVINSKY. How are the prices affected by the practices at each level as they move from the Midwest to New York and into the supermarkets? Can you describe that process?

Mr. SCOPPETTA. Well, referring back to some of these cases where we have some specifics to go on, there are instances where a wholesaler must pay the broker unlawful payments. In this case we have discussed which is pending, that figure reached almost $1 million in a 14- or 15-month period so that it is apparent that the dollar amounts are considerable. So that at the very initial stage, just to get the product into the city, there were illegal payments to a broker, which were added to the wholesale cost.

There are also a number of cases that show that it is not uncommon for buyers, if they have sufficient influence with the supermarket they work for and if the buyer is in a sufficiently important position, to extract payments from the supplier to the supermarkets, that is, the New York middleman who is now bringing the product from the wholesaler to the supermarket. And in some cases, we have been able to have prosecutions where the precise figures are known. The buyer will testify that he received a penny a pound or a penny a half a pound for every pound he bought. Now that price, we learned from the books and record of the supplier, was tacked right on to the wholesale price. So there is a second stage where the buyer has made these illegal payments and passed them on to the consumers.

So you have at least two specific instances, one from the wholesaler and another to the buyer where there are illegal payments tacked on. Those are the stages that we have been able to uncover. There may be others. There are people all along who deal with the product. There are people who do the packaging, people who do the inspecting, a number of other possibilities.

Mr. MEZVINSKY. Are there other States and localities that are investigating this problem both from the criminal and antitrust side?

Mr. SCOPPETTA. Well, the activity crosses several States. In my own experience, we were able to work a joint investigation with Wisconsin, through the Wisconsin Attorney General's office in one of the earlier cases I have referred to.

The cases that are now pending, I think it is fair to say, are being run exclusively by the Justice Department's Joint Strike Force in New York and the New York County District Attorney's office. Edward M. Shaw, the attorney in charge of the Joint Strike Force of course, has access to the Federal machinery across the country and the New York County District Attorney's office, and Frank Hogan's Chief Assistant District Attorney, Alfred J. Scotti, contribute years of expertise in this area. I think, because the payments originated out of New York and because the principal activities of the criminal conspiracy occurred in New York, they were able to make some cases that, although they crossed State lines, would be more difficult to prove in other States.

But I think to answer your question directly, as far as I can tell at the present time, the present widespread investigation is being directed exclusively out of those two New York offices.

Mr. MEZVINSKY. Do you think rather than having just the localities or States involved, we should have the Department of Justice more involved in this type of activity from an antitrust side? Of course, you have this Federal Strike Force.

Mr. SCOPPETTA. Sure. That is a tremendous boon to this kind of investigation. I can remember in my own experience that although the U.S. Attorney for the Southern District was involved, he was really running a separate investigation than the investigations I was involved in as an Assistant District Attorney. And the concept of setting up strike forces was designed really to combat this kind of sometimes competitive and very often counterproductive approach of having two separate offices racing each other to see who could get the indictments first.

This recent set of indictments which were obtained by the Joint Strike Force and the District Attorney in getting those, we had representatives in the State and city law enforcement community attached to the Strike Force working together with Frank Hogan, the New York County District Attorney. That was a truly cooperative investigation. So that using the expertise of the locally based prosecutor taken together with the vast resources of the Federal office is a far better approach.

The Strike Force really operates out of New York but reports directly to Washington and the U.S. Attorney in the Southern District. So that I think that aspect of the problem, at least in this instance, has been solved.

Mr. MEZVINSKY. Did the New York field office of the Antitrust Division, come in and do any investigation in this area and should they be concerned about this as well?

Mr. SCOPPETTA. Well, I am sure they should be. My own opinion is that they should be concerned. How much involvement they had in these cases, I really don't know.

My own thought—and I am offering a personal opinion—is that bringing the antitrust statutes to bear on this problem would be an important step forward in dealing with the problem.

What sometimes happens is that you prosecute a particular individual who is an officer of the corporation and he may get a substantial jail term and so he is removed from the picture, but because the individual is removed, it gives the appearance of having solved the problem. An antitrust prosecution against the corporation with resultant treble damages or at least exposing them to the kinds of suits that force them to pay treble damages for these kinds of illegal gains, I think would have a much more important effect on the corporation involved.

The one individual being removed from the corporation gives the appearance of solving the problem when I don't think it really has.

Mr. MEZVINSKY. You mentioned the kickbacks and the extortion payments involved. Did organized crime touch any national meatpackers who were not regionally located in New York as far as you know?

Mr. SCOPPETTA. Well, we had the experience of having organized crime exert its influence on the unions which were based in New York, by reason of their being located there although the unions were national unions, as most are.

The organized crime influence was felt on the unions there, and that gave them access nationally.

But I think it is fair to say that the organized crime figures were locally based for the most part, Congressman.

Mr. MEZVINSKY. Is there anything about the way the food or the meat industry or certain foods are brokered or distributed in cities which leads to there being only a few brokers and if so does this make them more susceptible to manipulative practices? In this case, it would be at the wholesale level of distribution, but also up and down the line? Is this mechanism and the way it operates more susceptible to this type of activity?

Mr. SCOPPETTA. I think it is clear in New York a few brokers control a disproportionate share of the market and that situation lends

itself to abuses I should think more readily than if there were a wide base of brokers competing with each other and making it more difficult to bring about the situation as charged in these indictments. With so few brokers controlling as much of the market as they do, they are then able to dictate to wholesalers whether or not they will be allowed to come into the market.

Mr. MEZVINSKY. In this case, what percentage of the market do these brokers control in the city of New York, and how much meat is involved? Do you have any idea of the amount of meat involved in this arrangement that you are talking about? You can probably discuss those indictments without naming names.

Mr. SCOPPETTA. There is a particular brokerage house that knowledgeable people in the industry say controls either directly through the accounts you can see, or indirectly through the influence they exert on others, they control all of the pork products coming into New York.

Mr. MEZVINSKY. One brokerage house controls all?

Mr. SCOPPETTA. One person involved in a brokerage house, and he is the subject of an indictment.

Mr. MEZVINSKY. Do you think that is a violation of the antitrust laws?

Mr. SCOPPETTA. Well, I leave that to you. I am no expert on the antitrust laws. Certainly the practices that he was involved in, even with a superficial knowledge of the price-fixing provisions of the Sherman Act would indicate violations of the antitrust laws. He was able to dictate what the price would be.

Mr. MEZVINSKY. Is that still the case? Is that now the case, or is that a past practice so that I understand the sequence?

Mr. SCOPPETTA. That is a pending indictment and continuing investigation.

Mr. MEZVINSKY. So you are saying that one person basically controls all of the pork products in New York, coming into New York?

Mr. SCOPPETTA. He is reputed to control, and I use that word advisedly, because the documents don't directly corroborate that kind of influence.

Mr. MEZVINSKY. Would a legal action break this up? Would an antitrust suit be able to break this up, do you think?

Mr. SCOPPETTA. If you can show that such a situation does exist and prove it, yes.

Mr. MEZVINSKY. Let's say you brought a criminal action, would that break it up or would it simply pass on down the chain and someone else would pick it up?

Mr. SCOPPETTA. Well, it is hard to predict. I think sometimes it would seem unlikely that one prosecution is going to dispose of the problem, if you have just that one individual convicted.

On the other hand, there are some individuals and Johnny Dio was one of these people, to name an organized crime figure for some years ago who is not involved in this current investigation, and by reason of their influence, the reputation, their history in the industry, connections with other criminal elements, connections with people in legitimate business, some individuals were able to acquire a position where they did exert this kind of influence so that a number of people would eventually seek them out when they sought to enter a market or

they sought to solve a labor problem or they wanted to deal with a labor dispute.

So that very often a particular person does rise to that position, that kind of position of control you are talking about. It is alleged that such a person now charged did arrive to that position, and that matter is still yet to be determined whether in fact the allegation is so, but certainly that is the charge that he did control and did have sufficient control to exert the kind of influence that dictated whether or not any particular person could sell a pork product in New York.

Mr. MEZVINSKY. How much would you say the meat industry as a whole is involved in these criminal schemes? Is it a small segment of the industry only, or most of it? What percentage do you think? Do you have any idea? Is it the majority?

Mr. SCOPPETTA. I think it is really impossible to answer a question like that. I remember—and getting off the subject—but to deal with this kind of question, Congressman, when we were investigating a completely different matter in New York City in the Knapp Commission, and I remember the question was asked what percentage of the police department was involved in corruption. That was a question that every interviewer asked. And the best answer I ever heard anyone give was one given by the police commissioner himself, and it probably applies here. He said, let's, just for argument, say 10 percent of people involved in any activity would be completely honest no matter what the involvement is, and there is another 10 percent that were going to try to steal no matter what the involvement is, and then there is this vast group in between that will do what the climate permits them to do. And Murphy was referring to his police department there. So he was aiming at that 80 percent to change the climate in the department—just as these prosecutions may change the climate in the meat industry—so you go after that middle sizable percentage that will do what the climate permits them to do.

So we hope to create a new climate in the meat industry where corruption is not the accepted way of doing business, but it is certainly a widely present and pervasive problem at the present time.

Mr. MEZVINSKY. Do you think it is going too far to say that there might be a trend for organized crime to own legitimate businesses?

Mr. SCOPPETTA. No; I don't think it is going too far at all. I think there has been substantial evidence in this industry and in other industries to show that there is a significant organized crime presence in many aspects of legitimate business. The meat industry happens to be one that has been plagued with it for some period of time.

The same figure we talked about before, Johnny Dioar John Dio Guardia, was convicted of bankruptcy fraud committed while he was the sole owner of a very large meat processing company or a principal owner, I should say, of a very large meat processing company. So in that case in point, he was the owner of the company.

So that certainly there is evidence that organized crime exerts a sizable influence on legitimate businesses, yes.

Mr. MEZVINSKY. Do you think, this seems rather obvious, but let's get it for the record—at least from your observations—do you think it is easier to inflate the prices by the various schemes that you have described with the 1½ cent kickbacks to organized crime than by

other means? Do you think this makes it easier to describe the inflationary spirals that have taken place?

Mr. SCOPPETTA. I am not sure I fully understand the question.

Mr. MEZVINSKY. Well, do you think it is easier to inflate the prices by these schemes with the payoffs in brokerage fees than it is otherwise? As I gather, on page 3 you state that certain patterns of systematic corruption are directly related to artificial prices in the meat industry and I am asking, Do you mean that these practices are becoming more prevalent or effective and have been contributing to recent price increases, or have they always been there?

Mr. SCOPPETTA. I think certainly they have contributed to recent increases in the prices, in the food prices. I think they likewise have been present for some period of time in one from or another. I don't mean to suggest that they are the cause for the inflationary spiral in food products. I suggest, though, that they are a significant contributing factor.

Mr. MEZVINSKY. Thank you.

[The complete statement of Mr. Scoppetta follows:]

STATEMENT BY NICHOLAS SCOPPETTA, COMMISSIONER OF INVESTIGATION FOR THE CITY OF NEW YORK

I am pleased to have been invited to appear before the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary during its hearings on possible anticompetitive practices, structure of markets and enforcement of the antitrust laws in the food industry. The subject of your hearings is obviously a matter of great public and legislative concern in these days when prices in the food industry continue to rise at an alarming rate.

The comments I will make today are, I suspect, offered from a perspective which may be a little atypical for witnesses appearing before your subcommittee. That is, the perspective of one who has been exposed to one aspect of the food industry purely as a law enforcement official dealing with investigations of criminal activity in that industry. I would like to discuss with you some of the ways that food prices have been affected, specifically meat prices by organized criminal activity which has infiltrated that industry.

Let me first define what I mean by organized crime in this context. This definition would include any group of individuals who have come together to conduct some form of organized criminal activity. This definition obviously includes more than the traditional "Mafia" or "Cosa Nostra" view of organized crime, though obviously those elements are present. It includes persons of many ethnic and vocational backgrounds, many of whom operate behind a facade of respectability. Many are persons who run large corporations and enjoy great position. All of these persons have one thing in common, and that is the pursuit of personal gain by criminal means.

I offer these views as one who has spent some thirteen years in law enforcement, including service as an Assistant District Attorney for New York County in the office of District Attorney Frank S. Hogan; Associate Counsel to the Knapp Commission investigating alleged police corruption in New York City; Special Assistant United States Attorney for the Southern District of New York under former United States Attorney Whitney North Seymour, Jr.; and now Commissioner of Investigation for the City of New York.

For several years as an Assistant District Attorney, I directed an investigation into criminal activities in the meat industry in and around New York City. That investigation resulted in a number of indictments and convictions, including the conviction of corporate officers and executives who operated, or were employed by, concerns which processed and supplied meat products to supermarkets, independent retail stores, municipal entities such as hospitals and nursing homes, and, in some instances, the Federal Government via certain military installations in the metropolitan area. Although the meat products produced were retailed almost exclusively in the New York City area, the investigation reached into New Jersey, Pennsylvania and Wisconsin. As a direct result of these crimi-

nal activities in the meat industry, meat prices to the consumer were substantially increased.

Subsequent recent investigations which have been conducted by the Justice Department's Joint Strike Force on Organized Crime and the New York County District Attorney's office confirm that many of the corrupt practices which were found to exist in the meat industry in the investigations I was involved in during the 1960's still exist, though they are perhaps executed in a more sophisticated fashion. Those investigations have resulted in a number of indictments which are now awaiting trial. The prohibitions restricting pretrial publicity on matters before the Court prohibit reference to specific cases before those Courts, and I will avoid doing so. However, quite apart from the facts concerning any particular individual or company, certain patterns of systematic corruption emerge which are directly related to the manipulation and artificial inflation of prices in the meat industry today.

During our investigations into the meat industry in the 1960's, a variety of cases were brought by District Attorney Frank S. Hogan which convincingly demonstrated that retailers, and ultimately consumers, were victimized by a number of corrupt schemes. One aspect of the investigation resulted in the arrest of more than a dozen meat processors from many different companies on charges of commercial bribery. Those defendants, it was learned, had made corrupt agreements whereby supermarket or chain store buyers were paid bribes which were computed on the basis of the amount of meat the chain store buyer purchased from the meat processors. Thus, for example, a buyer would enter into a corrupt agreement with a processor whereby the processor agreed to "kick-back" to the buyer one-cent per pound for every pound that the buyer purchased from him. This "cost" of bribing the buyer was added on to the selling price so that the buyer's employer, the supermarket or chain store, absorbed the costs of the bribe. Therefore, in our illustrative case, the supermarket paid $1,000 more for every hundred thousand pounds of meat it purchased. This inflated wholesale cost was then passed on to the consumer when the meat was sold at retail.

Another case involved the bribery of labor union officials who, the evidence showed, had for many years extorted at each contract renewal large sums of money from the meat companies in the New York area in return for the assurance of labor peace. The President, Vice-President and the Secretary-Treasurer of Local 174 of the Amalgamated Meat Cutters and Butchers Workmen of North America, then the largest union local in the meat industry, were convicted for engineering a scheme whereby $60,000 was demanded as the price for a new contract. The evidence before the Grand Jury showed that these same union officials had extorted hundreds of thousands of dollars from executives in the meat industry by the improper exercise of the considerable power of their union office. Invariably, the meat companies concealed the payments in their corporate records, creating false invoices for meat not purchased, and passed this cost on to their customers.

An especially vicious scheme was uncovered during our investigation of the Merkel Meat Company. The evidence underlying the indictments returned against the President and Vice-President of the Merkel Company, together with the indictments against a meat broker with ties to organized crime, showed that Merkel was purchasing from that broker many hundreds of thousands of pounds of meat which was the product of diseased cows and horses. The broker arranged to pick up thousands of carcasses of animals which had died from a variety of diseases or mishaps and which were obviously not fit for human consumption. He then had these carcasses butchered at a pet food company and packaged in the expensive kind of food cartons used for edible meat, which he then marked "Boneless Beef". He finally marked these cartons with counterfeit and forged federal inspection stamps and sold the product at reduced prices to the Merkel Company. Merkel signed false bills of lading which inflated the actual price paid the broker, and Merkel and the broker split the difference between the actual price paid and that which was charged the Corporation. Of course, the price to the retailers was based on the artificially inflated wholesale cost to Merkel, so that the ultimate consumer paid a proportionally higher price for a vastly inferior and, in fact, potentially poisonous meat product.

During this past year a Federal Grand Jury in the Southern District of New York and a State Grand Jury in New York County conducted a joint investigation to determine whether certain labor union officials and figures in organized

crime conspired to unlawfully influence agents of supermarket chain stores to purchase meat at inflated prices. A number of indictments have been returned as a result of that investigation. Those indictments charge an extensive manipulation and control of the prices of meat products in the New York City area. It is alleged that certain corrupt individuals, by the exercise of their influence and control in the meat industry, have been able to keep certain wholesalers from introducing quality meat products at reduced prices into the New York City area unless the wholesalers agreed to deal through, and pay commissions to, specified brokerage houses. Thus, where a large out-of-state meat supplier, through improved packaging and marketing techniques was able to deliver boxed boneless beef to the Northeast metropolitan markets at reduced prices, he was prevented from doing so by persons who could influence supermarket and chain store purchasing practices. The out-of-state meat supplier was told that he would be guaranteed a ready market in a number of supermarket chains only if he would deal through a specified meat brokerage company. The meat supplier over a twelve-month period eventually paid approximately one million dollars to the brokerage firm for the privilege of selling his product in New York, which amount was apparently added to the wholesale price of the meat he supplied. These unnecessary additional costs were added to the wholesale meat price because of the pressures certain individuals and companies were able to exert to prevent the meat supplier from supplying a high quality product at reduced, competitive prices.

Most meat companies in New York acquire meat supplies through brokers. Some of these brokers, it has been charged, have acquired enormous influence in the industry, sometimes through unlawful schemes involving kick-backs and bribery. Some few brokers appear to control a disproportionate share of the meat products being supplied to the metropolitan area, and it may be that some restructuring of this brokerage system would eliminate some of the abuses which now exist in the New York market. Perhaps merely increasing the number of brokers, thereby increasing competition, would decrease the opportunities for abuse.

The fact that the companies and individuals involved in the price fixing schemes described above are presently awaiting trial prevents me from going beyond a general description of the practices charged. It may be, however, that an examination of the evidence developed upon the trials of these cases by this subcommittee, and others, will suggest ways in which legislation may be drafted to deal more effectively with this problem.

Although none of these prosecutions were brought under the criminal sections of the anti-trust laws, it may be that a greater role exists for the application of anti-trust statutes in dealing with the problem of ever increasing prices in all aspects of the food industry. I have confined myself to a discussion of the meat industry because that is the area within which I have had some personal experience and is one in which the Federal Strike Force for the Southern District of New York, headed by Edward M. Shaw and the New York County District Attorney's Rackets Bureau, headed by Alfred J. Scotti, have been extremely active in developing evidence which has enabled a Grand Jury to act. However, conditions which exist in the meat industry—that is, the mechanics by which wholesalers get their product to the consumer, exist likewise in other areas of the food industry and the action and influence of this Subcommittee may be brought to bear to encourage the more vigorous use of the anti-trust provisions in this area.

I think that there is a tendency for some of us in law enforcement to regard the criminal sections of the antitrust laws as having application only to corporations involved in some esoteric manipulation of the economics of their industry. It would seem that a fresh approach would encourage anti-trust sanctions to straight criminal activity involving extortions, bribery and sophisticated kick-back schemes where those practices ultimately manipulate and control food prices and markets.

I thank you for affording me this opportunity to appear before you.

Mr. MEZVINSKY. If any of the other members have questions for you in view of your testimony, I am sure they will have the opportunity to contact you further in writing.

I would also like to say for the benefit of myself and the other members of the committee that I want to thank Jim Falco and Jared Stamell for these hearings to date, as well as the people on my staff. Sue Wellford, David Zimansky, and John Esposito, who played a very

critical role in trying to get this information out in the open—and I might add, attendance at hearings may not be a factor in what is going to happen concerning this issue, because I think the issue is going to be exposed. I think that is the responsibility that this committee has. If we can expose the issue and describe what is happening in the food price area, possibly we can have Congress take the actions they should have taken in the past.

I want to say that this concludes our hearings on the examination of the food industry and the antitrust enforcement in that industry. The record will, however, remain open for the rest of this month and anyone will have the opportunity to submit statements and to include materials pertinent to the particular investigation for the record.

I want to thank all of those that have participated. This now concludes the hearing.

[Whereupon at 2:30 p.m. the subcommittee adjourned.]

APPENDIXES

APPENDIX 1

MAY 9, 1973.

HON. THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Divison, Department of Justice, Washington, D.C.

DEAR MR. KAUPER: The Antitrust Subcommittee of the Committee on the Judiciary plans an antitrust investigation of the food industry. The Subcommittee wants to know in connection with this investigation the extent to which the antitrust laws presently are being enforced in the food industry.

To facilitate our work, I would very much appreciate it if you would provide us with answers to the following questions:

1. Antitrust actions.—What antitrust complaints have been filed by the Department of Justice in the food industry in the past five years? What is the disposition of these cases? (These should be divided according to the product, market, and type of antitrust violation involved.)

2. Enforcement measures.—What steps are being taken by the Antitrust Division to enforce the antitrust laws in the food industry? What investigations are underway? What business review letters have been issued to members of the food industry? What efforts are being made to monitor changes in prices, profits, and market structure?

3. Market structure.—What is the size and market structure of the food industry in general, in major product categories (e.g. meat and poultry, dairy, fruits and vegetables, dry groceries, etc.), and in levels of production within major product categories (e.g. grower, processor, wholesaler, retailer)? What food product markets are concentrated?

4. Price increases.—What are the implications of recent increases in food prices on competition in the food industry? Does a reduction in supply and increase in price resulting from factors beyond our control (e.g. bad weather), increase the market power of companies with significant market shares?

5. Antitrust exemptions and regulation.—What laws and regulatory schemes exempt or insulate areas of the food industry from the antitrust laws and the full effects of competition? What products and what amount of commerce are so insulated or protected from competition? Do antitrust exemptions and regulation contribute to restraints of trade in the food industry?

Your prompt reply to this inquiry would be appreciated.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 19, 1973.

HON. PETER W. RODINO, Jr.
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN RODINO: This is in response to your letter of May 9, 1973 requesting that the Antitrust Division provide the Antitrust Subcommittee of the House Committee on the Judiciary with certain information relating to the extent to which the antitrust laws are being enforced in the food industry. The following information is responsive to your request.

1. ANTITRUST ACTIONS

Attached as Appendix A is a list of cases relating to the food industry which have been filed by the Department of Justice since January 1, 1968. In each instance we have indicated the violation which provided the basis for the action, the product, geographic market (where a particular area was concerned) and the disposition of the case.

2. ENFORCEMENT

Although your letter requests information about investigations for the last five years, our system of record keeping makes it much easier to respond for the period January 1, 1963 through April, 1970. During this period the Antitrust Division conducted 209 investigations in the food industry. These investigations may be classified as follows:

(1) Restraint of trade	117
(2) Mergers	63
(3) Monopoly	20
(4) Tying arrangements	3
(5) Exclusive dealing	2
(6) Decree violations	2
(7) Price discrimination	1
(8) Unclassified investigations	1

We have not yet compiled information of this nature for the period 1970–73. However, when such a compilation is completed we will forward it to you.

During the past five years the Antitrust Division issued 11 business review letters relating to the food industry. The letters may be classified as follows:

(1) Application of the Capper-Volstead Act to membership in and activities of agricultural cooperative associations	7
(2) Mergers	3
(3) Lease agreements	1

Our existing policy, which is currently under review, does not permit disclosure of the identity of applicants for these letters.

In 1971, and again in 1973 the Antitrust Division conducted a survey of bread and milk prices in major cities. This was part of a broader survey designed to identify those areas where prices of significant products seemed to be unaccountably high. In addition, the Division monitors changes in prices and market structure primarily by observing them as they are reported in the press, in trade journals, and other similar sources of information.

3. MARKET STRUCTURE

The Department of Justice does not possess regularly compiled and maintained analyses of the food industry generally or by various categories.

We must rely upon Federal Trade Commission, Department of Agriculture, Bureau of Labor Statistics and Department of Commerce publications for information of that kind. In situations in which we have adequate ground to believe a violation of the antitrust laws may have occurred, we do, of course, gather detailed information on the market or product in question. By and large, however, that is of little generalized value both because the focus of such information is necessarily very narrow—a single milk shed, a single metropolitan marketing area for bread, or a single state or crop producing region—and because the information developed quickly becomes stale.

At the primary level of food production, we find that the Census of Agriculture is an excellent source of detailed information of farm size, dairy size, feed-lot size, and poultry plant sizes. The Department of Agriculture publishes occasional studies of distribution performance that are useful in particular matters but we do not attempt to keep abreast of all such information. Other information possessed by the Department of Agriculture and other agencies concerning individual firms is unavailable to us by statute, as are census reports. The Annual Survey of Manufacturers, Report of the National Commission on Productivity and reports published by the Federal Trade Commission are additional sources of information pertaining to the food industry. I would suggest that you inquire directly of the Department of Commerce and the Federal Trade Commission for this information.

4. PRICE INCREASES

The Antitrust Division does not possess sufficient facts to permit any detailed comment on the implications on competition of the recent increases in food prices, or of a reduction in the supply of food resulting from uncontrollable factors. Increases in food prices at the farm level might have an anticompetitive effect at the processing and manufacturing stage, where some marginal firms might find it more difficult to absorb or pass on higher costs and hence might be forced to exit from the industry with a possible resulting increase in concentration. However, this effect would not seem to be quantitatively very significant.

While the distribution of food once it leaves the hands of the farmer is subject to the antitrust laws in the same way as other businesses, at the farm level there is both a significant exemption and substantial regulation. The Capper-Volstead Act, 7 U.S.C. 291, 292 (and the parallel Fisheries Cooperative Marketing Act, 15 U.S.C. 521, 522) permits producers of agricultural products to agree on the price at which they will sell their product and to act collectively in other ways without violating the antitrust laws. The only restraint that exists on the price level such farmer cooperatives can achieve is the power given to the Secretary of Agriculture to take action where "the price of any agricultural product is unduly enhanced." The Secretary has never exercised this power. While it is impossible to state with any precision what effect this exemption has had on prices of food in general or of any particular food, we can assume that it has been substantial.

The price of raw food products is also affected by the marketing orders which the Secretary of Agriculture is authorized to establish by the Agricultural Adjustment Act (7 U.S.C. § 601 et seq.). The basic purpose of such orders is to establish minimum prices for farmers for certain agricultural commodities. The commodities which can be so regulated include milk, fruits, nuts, tobacco, vegetables and hops. The specific marketing orders which have been promulgated by the Secretary of Agriculture can be found in Title 7 of the Code of Federal Regulations.

In addition to the antitrust exemption for farmer and fishermen cooperatives and the regulation of prices by marketing orders, there are other statutes which, to some extent, limit the role of competition in the food industry at the farm level. These include the Sugar Act (7 U.S.C. §1100 et seq.), which authorizes the Secretary of Agriculture to establish quotas for the production of import of sugar, and price support regulation, which has the effect of setting a floor on the price of certain commodities.

I hope that this information will assist your Subcommittee in its planned investigation of the food industry. If I can be of any further assistance, please let me know.

Sincerely yours,

THOMAS E. KAUPER,
Assistant Attorney General,
Antitrust Division.

APPENDIX A

1968:

United States v. *Topco Associates*

Violation.—Conspiracy to allocate exclusive territories by retail grocery chains.
Product.—Grocery and non-food products sold in supermarkets.
Disposition.—Supreme Court held Topco's exclusive territorial arangements violated Section 1 of the Sherman Act. Case was remanded to District Court for entry of Final Judgment. Government has appealed to Supreme Court the District Court's Final Judgment.

United States v. *American Angus Association*

Violation.—Agreement restricting the registration of artifically conceived pure-bred calves.
Product.—Pure-bred Angus cattle.
Disposition.—Consent Judgment requiring Association to ease its restrictions on the registration of artificially conceived Angus cattle.

United States v. *General Host Corporation, et al.*

(Companion Civil and Criminal Cases)

Violation.—Price Fixing in the sale of bread by products of bread and bakery products.
Product.—Bread (Philadelphia).
Disposition.—Civil-Consent Judgment—Enjoins defendants from agreeing on prices, terms or conditions in the sale of bread. Criminal—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *B & W Marketing, et al.*

Violation.—Price fixing and group boycott in the retail sale of milk.
Product.—Dairy Products (Wyoming).
Disposition.—Final Judgment—Enjoins fixing of prices and engaging in group boycott.

United States v. *Oregon Restaurant and Beverage Association, et al.*

Violation.—Conspiracy to restrain sale of beer by distributors to consumers.
Product.—Beer (Oregon).
Disposition.—Jury verdict of guilty—Fines imposed.

United States v. *Beatrice Foods Company, et al.*

(Civil and Criminal Cases)

Violation.—Conspiracy to fix prices, submit collusive and rigged bids to federal, state and private institutions, and allocate customers in the wholesale and retail sale of dairy products.
Product.—Dairy Products (Colorado, Idaho and Utah).
Disposition.—Civil Consent judgment (1) enjoins fixing of prices, rigging of bids, and allocation of territories (2) awarded damages of $115,000 to the United States.
Criminal—Pleas of *Nolo Contendere*—Fines imposed.

1969:

United States v. *Western Farmers Association*

Violation.—Acquisition of Fryer Farms by Western Farmers Association, two processors of chicken fryers.
Product.—Chicken fryers (Washington).
Disposition.—Consent Judgment Ordered Divestiture.

United States v. *Iowa Beef Processors, Inc.*

Violation.—Acquisition of Blue Ribbon Beef Pack, Inc., by Iowa Beef Processors, Inc.
Product.—Fed cattle. (Iowa, Minnesota, Nebraska, and South Dakota).
Disposition.—Consent Judgment Ordered divestiture.

1970:

United States v. *Frito Lay, Inc., et al.*

(Companion Civil and Criminal Cases)

Violation.—Price fixing in the wholesale sale of snack food products.
Product.—Snack food (Arizona, California and Nevada).
Disposition.—Civil—Pending trial. Criminal—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *Odom Company, et al.*

(Civil and Criminal Cases)

Violation.—Price fixing in sales of alcoholic beverages to retailers.
Product.—Alcoholic beverages (Alaska).
Disposition.—Civil—Pending. Criminal—Pleas of *Nolo Contendere*—Fines imposed.

1971:

United States v. *Sweetheart Bakers, Inc., et al.*

(Companion Civil and Criminal cases)

Violation.—Fixing of prices by baking companies.
Product.—Bread and Bakery Products (Eastern Shore of Maryland).
Disposition.—Civil—Consent Judgment enjoins each of the defendants from conspiring to fix prices, terms and conditions in the sale of bread. Criminal—Pleas of *Nolo Contendere*— Fines imposed.

United States v. *E. H. Koester Bakery Company, et al.*

(Companion Civil and Criminal cases)

Violation.—Fixing of prices by baking companies.
Product.—Bread and Bakery Products (Baltimore).
Disposition.—Civil—Consent Judgment enjoins each of the defendants from conspiring to fix prices, terms and conditions in the sale of bread. Criminal—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *Arden Mayfair, Inc., et al.*

(Companion Civil and Criminal cases)

Violation.—Price fixing, bid rigging and allocating customers by milk processors.
Product.—Dairy Products (Alaska and Washington).
Disposition.—Civil—Consent Judgment enjoins fixing of prices, rigging of bids and allocating customers. Criminal—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *Archer Daniels Midland Company*

Violation.—Merger of soybean processing companies.
Product.—Soybeans, Soybean meal (Nebraska and Kansas).
Disposition.—Pending trial.

1972:

United States v. *Associated Milk Producers, Inc.*

Violation.—Attempted monopolization by a cooperative of dairy farmers.
Product.—Dairy Products (Mid-west).
Disposition.—Pending trial.

United States v. *G. Heileman Brewing Company, Inc., et al.*

Violation—Merger of breweries—Heileman Brewing Company and Jacob Schmidt Brewing Company, Drewrys, Ltd. U.S.A. Inc., and Sterling Brewers Inc, three breweries owned by Associated Brewing Company.
Product.—Beer (Mid-west).
Disposition.—Proposed consent judgment lodged with the court on June 13, 1973.

United States v. *Colley Enterprises, Inc.*

(Companion Civil and Criminal Cases)

Violation.—Price fixing by retailers.
Product.—Liquor (Waco, Texas).
Disposition.—Civil—Pending trial. Criminal—Jury verdict of not guilty.

United States v. *Tulsa Bottlers Association, et al.*

Violation.—Price fixing by soft drink bottlers and their association.
Product.—Soft drinks. (Tulsa, Oklahoma.)
Disposition.—Consent Judgment enjoins defendants from acting in concert to fix prices.

United States v. *Southwestern Peanut Shellers Association*

Violation.—Fixing of commissions to peanut brokers by trade association and its members.
Product.—Peanuts. (Southwest United States.)
Disposition.—Consent Judgment enjoins defendants from fixing and maintaining uniform commission rates to peanut brokers and from boycotting brokers.

United States v. *Southeastern Peanut Association*

Violation.—Fixing of commissions to peanut brokers by trade association and its members.
Product.—Peanuts. (Southeast United States.)
Disposition.—Consent Judgment enjoins defendants from fixing and maintaining uniform commission rates to peanut brokers and from boycotting brokers.

United States v. *A. Levy and J. Zentner Company, et al.*

(Companion Civil and Criminal Cases)

Violation.—Price Fixing by wholesale produce sellers.
Product.—Produce. (California and Nevada.)
Disposition.—Civil—Pending trial, Criminal—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *American Bakeries Company, et al.*

Violations.—Price fixing by producers of bread in sales to retail grocers.
Product.—Bread (New York).
Disposition.—Pleas of *Nolo Contendere*—Fines imposed.

United States v. *Gonnella Baking Company, et al.*

(Companion Civil and Criminal Cases)

Violation.—Conspiracy by producers to fix wholesale and retail prices.
Product.—Italian, French and Vienna style bread. (Chicago.)
Disposition.—Pending trial.

United States v. *Federal Company*

Violation.—Merger of two processors of flour.
Product.—Flour. (Southeast United States.)
Disposition.—Pending trial.

United States v. *Marathon Enterprises*

Violation.—Merger of two producers of frankfurters.
Product.—All-beef sheep casing frankfurters. (New York.)
Disposition.—Merger abandoned—Case dismissed.

United States v. *Blue Ribbon Meat Company, et al.*

United States v. *Len Harris Wholesale Meats, Inc.*

(Companion Civil and Criminal Cases)

Violation.—Price fixing and bid rigging of meat by wholesalers.
Product.—Meat, ground beef. (California and Nevada.)

JULY 24, 1973.

Hon. THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division,
Department of Justice, Washington, D.C.

DEAR MR. KAUPER: As I indicated to you at the conclusion of your testimony on competitive problems in the food industry of June 27, 1973, before the Subcommittee on Monopolies and Commercial Law, there would be some additional questions the Subcommittee would submit to you at the conclusion of its hearings.

Your replies to the enclosed questions are expected to be of considerable assistance to us.

Your cooperation in this matter of a further response is greatly appreciated.

Sincerely,

PETER W. RODINO, JR.,
Chairman.

JULY 23, 1973.

QUESTIONS OF THE SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW FOR THE ANTITRUST DIVISION OF THE DEPARTMENT OF JUSTICE

1. The modification of a law like the Capper-Volstead Act which has been in effect for over half a century certainly requires the careful scrutiny of Congress before any action could be taken. You suggest today that some modification is in order, but you also indicate that the Department of Justice does "not

have the pricing information available . . . which would establish or rebut a contention . . ." that prices are enhanced unduly by farmer cooperatives.

What are you doing, in view of your testimony on the effect of the Capper-Volstead Act to obtain the information needed by Congress to make a wise decision in this area?

2. What would be the status of farmer cooperatives under the antitrust laws if there were not a Capper-Volstead Act? Would this mean that all cooperative activities of farmers would be illegal?

3. In view of the fact that the Capper-Volstead Act is the law of the land, and in view of the national policy of construing antitrust exemptions very narrowly, what are you doing to ensure that the scope of this exemption is no more than what Congress intended by passing this law?

Have you, for example, urged the Secretary of Agriculture to take action under section 2 of the Capper-Volstead Act to prevent a cooperative from enhancing prices unduly?

4. What kind of legislation does the Department of Justice recommend should replace or modify the Capper-Volstead Act?

5. Is the present antitrust exemption for cooperatives more or less than that possessed by labor unions?

6. Section 2 of the Capper-Volstead Act, 7 U.S.C. § 292, appears to make it mandatory for the Secretary of Agriculture to act when there is reason to believe that prices are enhanced unduly by a cooperative. It says that "(i)f the Secretary . . . shall have reason . . . he shall serve upon such association a complaint." Is this the interpretation of the Antitrust Division of section 2?

7. Are activities by cooperatives to purchase equipment used in agricultural production and other activity not involving marketing exempt from the antitrust laws?

8. Are mergers by cooperatives exempt from the antitrust laws? Is there a difference between Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act in this regard?

9. You stated that the Antitrust Division has tried to intervene in only one USDA marketing order proceeding. In view of the Antitrust Division's participation in administratve proceedings before the FCC, SEC, and other agences, and its expertise in such activity, why doesn't the Antitrust Division take a more active role in USDA proceedings as well?

10. What is the Antitrust Division's understanding of the informal operating arrangement with the FTC whereby (i) certain kinds of violations and (ii) certain areas of industry are the enforcement responsibility of one agency or the other? Please be specific about (i) and (ii).

11. Would you propose or recommend modification or repeal of USDA marketing order authority as you have done with respect to the Capper-Volstead Act?

12. Do you plan to send legislation to Congress to modify Capper-Volstead or marketing order authority?

13. Your testimony voiced concern about the resources of the Antitrust Division with respect to its ability to pursue a case through a trial. If additional resources were available to the Antitrust Division would you devote them to litigating cases and not to consenting to as many, or is there a different list of priorities?

14. The settlement of cases generally means that private parties do not have the benefit of public resources the Department of Justice has devoted to the investigation of an antitrust case. Frequently, there is not even a trial which would make investigation a matter of public record, let alone a litigated judgment which would be prima facie evidence of a violation in a private suit. Is there any means to change this situation?

15. You indicated that, with respect to retail food chains, "there is not the degree of concentration in the retail market which would lead one to believe that the prices at the retail level are being unduly enhanced." However, the FTC has testified that the *average* four firm concentration ratio for over 200 local markets in food retailing is over 50 percent. Does this evidence indicate that your conclusion should be reevaluated?

16. You indicate specifically that the total market for lettuce is not concentrated. What are the national market shares for cooperatives or corporations controlling, by ownership of land or contract production, the supply of lettuce on which you base your conclusion? Please provide the market shares for the supply of other agricultural commodities available to you.

17. You explained that you had the impression that the Antitrust Division has counselled the Price Commission not to handle matters jointly with members in the industry. Has the Price Commission operated as you advised them? In what respect does its method of operation raise anti-competitive dangers?

18. The publication Supermarket News reported on Monday, July 16, 1973, page 2, that the price freeze of the past few months triggered tie-in practices and other activities designed to ameliorate its effects, but which also violate the antitrust laws. Do you have evidence that this kind of activity has taken place? Is there any evidence that such activity will end with the enforcement of Phase IV? What is the Antitrust Division doing to investigate and prevent these anticompetitive consequences of the price freezes?

19. What steps are you taking, "to develop with the Department of Agriculture the kind of procedures that ought to be employed in terms of [marketing order] hearings," a course of action to which you referred in your testimony and in which you said the Antitrust Division was involved?

20. In June 1967, the Department announced a policy under which United States Attorneys would supplement Antitrust Division efforts by undertaking investigations and prosecutions in the area of price-fixing, a policy which Mr. Kauper also suggested would be effected when he assumed his present position. Is this policy still in effect, and if so, what have been the results?

21. The information provided in your reply letter indicated that 7 out of 11 business review letters in the food industry involved the application of the Capper-Volstead Act. What kinds of cooperative activities did these involve, and why is the law in this area so unclear as to raise the need to seek business review clarification?

22. What standards do you apply in determining whether a Sherman Act violation should be a criminal case? How long have these standards been applied?

23. You urge the Subcommittee to gather the information needed to reevaluate antitrust exemptions. What information do you believe would be important for the Subcommittee to collect?

24. Does the Commodity Exchange Act prevent the enforcement of the antitrust laws against the activities of exchange members of against anticompetitive conduct and market concentration which results in the increasing prices of commodity futures?

25. When can the Subcommittee have the opportunity to examine the business review letters of the Department of Justice with respect to the food industry which Mr. Kauper indicated in his testimony might be possible?

DEPARTMENT OF JUSTICE,
Washington, D.C., October 5, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to respond to your request by letter of July 24, 1973, in which you submitted additional questions following the testimony of Mr. Kauper on competitive problems in the food industry on June 27, 1973. Our response is structured as an item-by-item statement, which first recites the questions you have submitted.

1. *The modification of a law like the Capper-Volstead Act which has been in effect for over half a century certainly requires the careful scrutiny of Congress before any action could be taken. You suggest today that some modification is in order, but you also indicate that the Department of Justice does "not have the pricing information available . . . which would establish or rebut a contention . . ." that prices are enchanced unduly by farmer cooperatives.*

What are you doing, in view of your testimony on the effect of the Capper-Volstead Act to obtain the information needed by Congress to make a wise decision in this area?

In connection with pending litigation against the large dairy cooperatives (AMPI and Dairymen, Inc.) we have received some information concerning the premiums being charged for milk in excess of federal marketing order prices, but we have not undertaken any specific attempt to gather information relevant to the question whether cooperatives have unduly enhanced the price of any agricultural product. We do not have the resources or the statutory authority necessary to gather this kind of information in any systematic way.

2. *What would be the status of farmer cooperatives under the antitrust laws if there were not a Capper-Volstead Act? Would this mean that all cooperative activities of farmers would be illegal?*

The agricultural exemption from the antitrust laws derives both from the Capper-Volstead Act and from Section 6 of the Clayton Act (15 U.S.C. § 17). Even without the Capper-Volstead Act farmers would, under Section 6 of the Clayton Act, possess a significant antitrust exemption. Essentially the Capper-Volstead Act broadened the exemption granted by the Clayton Act so as to permit farmers to organize into stock cooperatives. On the understanding, however, that your question was intended to inquire about the status of agricultural cooperatives in the absence of any exemption, the answer would be that cooperatives could then engage in activities that trade associations of other businessmen can also engage in consistent with the antitrust laws. I enclose a recent speech on the topic, which may be of interest in assessing the activities of trade associations under the antitrust laws.

3. *In view of the fact that the Capper-Volstead Act is the law of the land, and in view of the national policy of construing antitrust exemptions very narrowly, what are you doing to ensure that the scope of this exemption is no more than what Congress intended by passing this law?*

Have you, for example, urged the Secretary of Agriculture to take action under Section 2 of the Capper-Volstead Act to prevent a cooperative from enhancing prices unduly?

The general answer to your question is that we bring cases challenging violations of the antitrust laws by cooperatives in those instances where we believe that they have acted in a manner beyond the scope of the exemption. Three current examples of those kinds of cases are the ones we have filed against AMPI, Dairymen, Inc. and National Broiler Marketing Association. Each of those cases raises some issues of the scope of the agricultural exemption. So far as I know, the Division has never urged the Secretary of Agriculture to take action against a cooperative under Section 2 of the Capper-Volstead Act.

4. *What kind of legislation does the Department of Justice recommend should replace or modify the Capper-Volstead Act?*

We are not at this time making any recommendations for legislation to replace or modify the Capper-Volstead Act.

5. *Is the present antitrust exemption for cooperatives more or less than that possessed by labor unions?*

In general, the exemption permits both labor unions and agricultural cooperatives to be treated as a single entity rather than as a conspiracy among competitors. Activities of both groups which enlarge their scope of activities beyond that permitted by law, such as conspiracies with either purchasers or employers to exclude competition at the purchasing level, may violate the antitrust laws.

6. *Section 2 of the Capper-Volstead Act, 7 U.S.C. § 292, appears to make it mandatory for the Secretary of Agriculture to act when there is reason to believe that prices are enhanced unduly by a cooperative. It says that "(i)f the Secretary . . . shall have reason . . . he shall serve upon such association a complaint." Is this the interpretation of the Antitrust Division of section 2?*

Since the requirement to act depends upon the Secretary's determination of undue enhancement of prices, and since that determination is not governed by any specific statutory standards, action by the Secretary is "mandatory" only upon the Secretary's finding of undue enhancement of prices, which finding is in the discretion and control of the Secretary.

7. *Are activities by cooperatives to purchase equipment used in agricultural production and other activity not involving marketing exempt from the antitrust laws?*

In our view, although the language of Section 6 of the Clayton Act could be construed to allow purchasing cooperatives for "mutual help," we would argue that purchasing cooperatives are not exempt under existing federal law.

8. *Are mergers by cooperatives exempt from the antitrust laws? Is there a difference between Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act in this regard?*

While I do not believe that mergers of cooperatives are exempt from the antitrust laws—simply because neither Section 6 of the Clayton Act nor Section 1 of the Capper-Volstead Act requires such an interpretation—there are cases where cooperatives by using a joint marketing agency could accomplish the same thing as could be accomplished by a merger. Since the use of a joint

marketing agency is permitted by the exemption, it might make little sense as a practical matter to attempt to prevent such a merger. Of course, factual questions will always be important in the context of any individual merger. For instance, suppose it could be shown that not all the members of one or both of the merging cooperatives were in favor of it? In view of the requirement that a cooperative be composed of members *voluntarily* joined in a common endeavor, such a fact would have a bearing on the legality of the merger. Another factor which would be relevant in a cooperative merger would be whether such merger was effected as part of an overall scheme unlawfully to monopolize the production and sale of the commodity involved. This would involve questions under Sections 1 and 2 of the Sherman Act. These questions have not yet been answered by the courts and until either they or the Congress speaks to them, some uncertainty as to mergers will continue to exist.

9. *You stated that the Antitrust Division has tried to intervene in only one USDA marketing order proceeding. In view of the Antitrust Division's participation in administrative proceedings before the FCC, SEC, and other agencies, and its expertise in such activity, why doesn't the Antitrust Division take a more active role in USDA proceedings as well?*

As you know, the marketing orders administered by the USDA cover the entire nation and involve a number of commodities. In short, the USDA administers a complicated program of regulation. The Antitrust Division has not had the resources, manpower or otherwise, to monitor systematically USDA proceedings with a view toward Department intervention. We would, however, expect to increase our efforts in the future.

10. *What is the Antitrust Division's understanding of the informal operating arrangement with the FTC whereby (i) certain kinds of violations and (ii) certain areas of industry are the enforcement responsibility of one agency or the other? Please be specific about (i) and (ii).*

Complaints involving alleged violations of the Robinson-Patman Act have traditionally been referred by this Division to the Federal Trade Commission. In addition, allegations with respect to such things as false advertising, which are exclusively within the jurisdiction of the Commission, necessarily will be referred to it by this Division. And where the Commission has facts indicating criminal violation of the antitrust laws they traditionally will refer them to us. In general, there are no understandings concerning one agency or the other having the responsibility for any "areas of industry."

11. *Would you propose or recommend modification or repeal of USDA marketing order authority as you have done with respect to the Capper-Volstead Act?*

I have recommended reexamination, not repeal, of the Capper-Volstead Act and of the need for marketing orders.

12. *Do you plan to send legislation to Congress to modify Capper-Volstead or marketing order authority?*

We are continuing our review of these issues and, although we have nothing to submit at this time, may ultimately make legislative proposals.

13. *Your testimony voiced concern about the resources of the Antitrust Division with respect to its ability to pursue a case through a trial. If additional resources were available to the Antitrust Division would you devote them to litigating cases and not to consenting to as many, or is there a different list of priorities?*

The Division's policy regarding consent decrees is that where substantially the same relief as that requested in the complaint can be obtained by agreement, without the need for extensive allocation of manpower and other resources and with the desire to obtain early relief in the public interest, and there are no other overriding factors, a decree should be entered. It is unlikely that our approach would change if we had more resources since the amounts needed to try every case that is filed would be enormous. With the authorization of some more funds, however, the Division might well be in a position to devote more time and study to some of the areas about which you have expressed concern, e.g., monitoring of USDA proceedings and in-depth studies of concentrated industries. In any event, I am sure that the question of whether to agree to a consent judgment in a particular case would continue to hinge directly on the facts and circumstances of that case and the most efficient use of resources available at that time.

14. *The settlement of cases generally means that private parties do not have the benefit of public resources the Department of Justice has devoted to the investigation of an antitrust case. Frequently, there is not even a trial which would make investigation a matter of public record, let alone a litigated judgment which*

would be prima facie evidence of a violation in a private suit. Is there any means to change this situation?

As you know, there is presently pending before your Committee a bill, passed by the Senate, that would require significant changes in the procedures followed in connection with the settlement of antitrust cases. The satement which I presented before you on this legislation reflects the Department's views on the merits of the proposed changes.

15. *You indicated that, with respect to retail food chains, "there is not the degree of concentration in the retail market which would lead one to believe that the prices at the retail level are being unduly enhanced." However, the FTC has testified that the average four firm concentration ratio for over 200 local markets in food retailing is over 50 percent. Does this evidence indicate that your conclusion should be reevaluated?*

The relatively low profits of retail food chains—profit margins provide some measure of effective competition, or conversely monopoly—indicate that concentration is not so high as to impede competition in the food industry. Historically, food chains have operated at a low margin of profit calculated as a percent of total sales; this indicates that the business is a competitive one. For example, the July 16 edition of *Supermarket News* reports the quarterly operating results of Safeway and Kroger, among others; Safeway's profit as a percentage of sales was reported to have been about 1 percent and Kroger's to have been less than 1 percent. While low profit margins do not conclusively establish the absence of antitrust violations, they do not indicate that prices are not being unduly enhanced.

16. *You indicate specifically that the total market for lettuce is not concentrated. What are the national market shares for cooperatives or corporations controlling, by ownership of land or contract production, the supply of lettuce on which you base your conclusion? Please provide the market shares for the supply of other agricultural commodities available to you.*

We have subsequently had the opportunity to correct Mr. Kauper's testimony and believe that the testimony, as it appears in the corrected transcript submitted to you, provides a more accurate description of the market in question.

17. *You explained that you had the impression that the Antitrust Division has counselled the Price Commission not to handle matters jointly with members in the industry. Has the Price Commission operated as you advised them? In what respect does its method of operation raise anticompetitive dangers?*

At the outset of Phase I officials of the Division commented publicly on the need for antitrust scrutiny of business activities under price controls, and suggested to the Cost of Living Council and the Price Commission that care be taken to insure that price ceilings did not become fixed prices due to collusion. We suggested that exchanges of cost data and joint industry presentations be limited to avoid the problems encountered by earlier price control efforts on the part of the Government. To the best of our knowledge the Cost of Living Council and the Commission have established a general policy to insure that their regulation does not provide a convenient form for industry conspiracy on prices, output, and the like. We have established a liaison with the Cost of Living Council and the Price Commission from the outset of controls, and that liaison continues.

18. *The publication Supermarket News reported on Monday, July 16, 1973, page 2, that the price freeze of the past few months triggered tie-in practices and other activities designed to ameliorate its efforts, but which also violate the antitrust laws. Do you have evidence that this kind of activity has taken place? Is there any evidence that such activity will end with the enforcement of Phase IV? What is the Antitrust Division doing to investigate and prevent these anticompetitive consequences of the price freezes?*

The story you refer to reported in very general terms that some buyers, none of whom would speak for quotation, told the reporter for Supermarket News that some suppliers would sell them products "on which they had low ceilings only if, at the same time, the retailer would buy another product with a more comfortable ceiling." Such practices could, of course, violate the antitrust laws where the supplier had some degree of control over the tying product. We have no independent evidence that such activity is taking place and have not undertaken an investigation since we did not consider this report of such practices to constitute an adequate basis for an investigation.

19. *What steps are you taking, "to develop with the Department of Agriculture the kind of procedures that ought to be employed in terms of [marketing order] hearings," a course of action to which you referred in your testimony and in which you said the Antitrust Division was involved?*

Since Mr. Kauper's appearance before your Committee, members of his staff have met with officials at the Department of Agriculture responsible for the administration of the marketing order programs. Liaison procedures have been explored and we hope to pursue them further.

20. *In June 1967, the Department announced a policy under which United States Attorneys would supplement Antitrust Division efforts by undertaking investigations and prosecutions in the area of price-fixing, a policy which Mr. Kauper also suggested would be effected when he assumed his present position. Is this policy still in effect, and if so, what have been the results?*

Local price-fixing matters which involve amounts of commerce are routinely referred to United States Attorneys or to state antitrust enforcement authorities. Many such referrals have been accepted and appropriate action has been taken on them, but because the resources of these agencies are also limited many others have either been declined or have not been effectively prosecuted. Increased resources at both the federal and state levels of antitrust enforcement will, of course, result in more effective prosecution of local price fixing.

21. *The information provided in your reply letter indicated that 7 out of 11 business review letters in the food industry involved the application of the Capper-Volstead Act. What kinds of cooperative activities did these involve, and why is the law in this area so unclear as to raise the need to seek business review clarification?*

The fact that in a five-year period we had seven applications for business review letters involving the Capper-Volstead Act does not necessarily show that the application of the Act is unclear. In any event, of the seven letters one involved a common marketing agency, one a proposed cooperative which purpose was to restrict the production of the agricultural commodity involved, one involved the proposed merger of two cooperatives, and four concerned the eligibility for the agricultural exemption of cooperatives whose membership included persons who relied on contract growers for their production.

22. *What standards do you apply in determining whether a Sherman Act violation should be a criminal case? How long have these standards been applied?*

Ordinarily, the Department of Justice will bring criminal cases against price fixing conspiracies and other types of per se violations, such as direct horizontal allocations of contracts, customers, or territories by direct competitors. Indirect arrangements which only incidentally have effects similar to these more direct restraints may be subjected only to civil injunctive action, but where a specific intent to restrain trade or to monopolize can be shown, a criminal action may also be brought. Other antitrust violations accompanied by extremely predatory activities may also result in criminal enforcement action. Finally, where an antitrust defendant has been subjected to similar antitrust enforcement efforts in the past, his continued engagement in proscribed activity may invite criminal action. Similarly, where it is shown that an antitrust defendant was aware of the illegality of his activities, or that he undertook to conceal his activities from the scrutiny of antitrust investigators, criminal action may be appropriate.

23. *You urge the Subcommittee to gather the information needed to reevaluate antitrust exemptions. What information do you believe would be important for the Subcommittee to collect?*

In order to evaluate these antitrust exemptions there should be a determination whether there is a continuing need for them. The facts necessary to make such a determination would include a comparison of the conditions that existed at the time the exemptions were granted, and which persuaded the Congress that the exemptions were necessary, with the conditions that exist now. Mr. Kauper made reference to this in his statement of June 27. For example, at the time the Capper-Volstead Act was passed Senator Capper argued that "a farmer's monopoly is impossible" because high prices inevitably would lead to overproduction. There is good reason to question whether this argument is correct, especially with respect to products such as milk, where some large cooperatives have control of a significantly large part of the total supply and have been able to obtain prices for their milk in excess of the prices established under milk marketing orders. The Subcommittee could also gather information relevant to the degree of control cooperatives have over particular agricultural products and to the profit margins they have been able to obtain in the marketing of these products. I believe further areas of inquiry could be developed by our staff working with the Committee staff, which we would be happy to do.

24. *Does the Commodity Exchange Act prevent the enforcement of the antitrust laws against the activities of exchange members or against anticompetitive conduct and market concentration which results in the increasing prices of commodity futures?*

The Commodity Exchange Act does not prevent the enforcement of the antitrust laws against exchange members for activities which are not necessary to achieve a purpose of the Act. Such activities are fully subject to the antitrust laws. *Ricci* v. *Chicago Mercantile Exchange*, 409 U.S. 289 (1973). In very special circumstances the Commodity Exchange Commission or the Secretary of Agriculture may have primary jurisdiction to determine certain subsidiary issues arising in an antitrust case dealing with a commodity exchange, but the antitrust court has ultimate responsibility for determining the antitrust liability. *Ricci, supra.* We do not believe that the Commodity Exchange Act interferes with antitrust enforcement against market concentration or collusive price fixing. The Commodity Exchange Act is aimed at market manipulation and cornering and thus has a goal consistent with the antitrust laws.

25. *When can the Subcommittee have the opportunity to examine the business review letters of the Department of Justice with respect to the food industry which Mr. Kaupper indicated in his testimony might be possible?*

This material has been made available on a confidential basis to the staff of the Subcommittee.

I would hope that the foregoing material is responsive to your inquiry. In the event there are further questions, please do not hesitate to contact us.

Sincerely yours,

BRUCE B. WILSON,
Acting Assistant Attorney General, Antitrust Division.

TRADE ASSOCIATIONS AND THE ANTITRUST LAWS—A VIEW FROM THE JUSTICE DEPARTMENT

Remarks by Keith I. Clearwaters, Special Assistant to the Assistant Attorney General, Antitrust Division, Department of Justice: prepared for the D.C. Bar Association Antitrust Law Committee—Annual Trade Association Symposium, Sheraton Park Hotel, Washington, D.C., March 21, 1973

I am pleased to be here today to discuss some of my views on trade associations and the antitrust laws. In this area I think those of us in the Antitrust Division and those of you in private practice share a common goal: neither of us wants to see the antitrust laws violated by trade association conduct. If violations occur, we must commit our limited resources to prosecuting those violations. And the clients of trade association counsel may be subjected to civil liability and perhaps jail. So I think these symposiums on trade associations serve our mutual interests.

For purposes of my discussion this morning, I think it might be helpful if I would define in a general way my concept of a trade association: A trade association is a combination of competitors in an industry which furnishes either products or services to the public. This definition includes the multitude of trade associations, from box manufacturers to gasoline dealers, and also encompasses bar associations, real estate boards, medical boards, pharmacy boards, and the like.

So far as our enforcement program is concerned, I think it is by now rather clear to all that those firms in the unregulated sector of our economy which fix prices, divide up markets, and engage in other kinds of anticompetitive activities in a trade association are setting themselves up for criminal and civil liability. If this sort of conduct begins to emerge in a trade association, I am fairly certain that by now most company representatives have the good sense not to be polite and just sit there, wearing a somewhat bemused expression, while prices are being discussed. They get out of the meeting, using the nearest exit, fire exit, or window.

I think we can all agree that the days have passed when trade association antitrust counsel were required as a precaution against improper discussion to accompany members around the golf course—like some overpaid caddy. And no one—except perhaps the country club which received additional green fees—wants to see those days return. Nevertheless, from time to time we still encounter some hardcore activity in trade associations. And when we do, we bring suit.

In recent years we have filed several cases which fit into this category. In December 1972, we obtained an indictment and filed a civil complaint against

the St. Petersburg Automobile Dealers Association, charging that this trade association had conspired to establish and maintain a schedule of fees for estimating automobile repairs, and had also conspired to eliminate discounts on parts and prices. These discounts had previously been granted on repairs covered by automobile casualty insurance. I think the impact of this activity should be rather clear to any automobile owner; the indictment charges that as a result of this conspiracy, owners of damaged automobiles and their insurers have been deprived of the opportunity to obtain automobile repairs at competitive prices.[1]

In January 1972, we also obtained two indictments against a trade association of garage door manufacturers and a second trade association of garage door distributors. One indictment charged that the association of garage door manufacturers had entered into a conspiracy to fix prices of overhead doors and accessories sold by the manufacturers.

The second criminal case charged the distributors' trade association with price fixing and refusal to sell overhead doors to unauthorized distributors and certain other customers.[2]

As a general rule, however, our enforcement program in this area is directed to rather more subtle and sophisticated anticompetitive conduct. Anticompetitive standards-making by trade associations is one such area. We start with the premise that industry self-regulation aimed at eliminating unsafe products or fraudulent practices from the marketplace does not, of itself, violate the antitrust laws. Companies may lawfully engage in concerted action designed to achieve these legitimate ends. But I would caution that this form of standards-making be no more restrictive than is necessary and that such standards be invoked only where they are really needed. Moreover, the standards invoked should be voluntary in character, for while it may be appropriate for competitors to agree voluntarily to standards designed to meet a clear need, the standards cannot be used—or abused—by industry groups to intimidate competitors or exclude them from the market.

Some trade associations may also have seals of approval which are of great commercial value, because products bearing those seals are generally recognized to meet certain minimum levels of safety, quality, and the like. Also, local ordinances may prohibit the use of products which do not bear the seal or comply with a private trade association safety standard. Certainly, membership in these associations and access to the seals of approval may have substantial economic importance.

Trade associations having this kind of economic clout should take some care to insure that the standards they set have been subjected to a wide cross-section of review by members of the industry involved. Both large and small producers should have the opportunity to participate in the standards-making process. I would also suggest that the users of a product be given the opportunity to present their views before standards are imposed.

Also, access to the association's testing procedure and its seal of approval should be made available to all interested manufacturers, be their foreign or domestic, on a reasonable and non-discriminatory basis. Courts have held that where competitors have jointly created a valuable property right or organization that gives them a competitive advantage over other non-member competitors, and denial of that membership amounts ot a significant limitation on non-member firms and their ability to compete, such denial can amount to an unreasonable restraint of trade.[3]

Recent cases brought by the Department have challenged this kind of discriminatory and unreasonable exclusion of competitors. Several of these cases involved real estate boards. Last year we filed a complaint against a multiple listing service in Oregon,[4] which included a charge that the listing service had conspired to exclude licensed real estate brokers from membership in Portland area real estate boards and their separately incorporated multiple listing service.

We have also challenged trade association rules which exclude foreign competitors. In July of 1970 we filed a suit against the American Society of Mechanical Engineers, attacking the refusal by that association to grant seals of approval

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[1] *United States* v. *St. Petersburg Automobile Dealers Ass'n*, 72–337–CR–P–H (M.D. Fla.).

[2] *United States* v. *The Overhead Door Distributors' Association of Greater Delaware Valley*, Cr. 27–46 (E.D. Pa.); *United States* v. *Garage Door Manufacturers Association, Inc.*, Cr. 27–47 (E.D. Pa.).

[3] See, *e.g.*, *United States* v. *Associated Press*, 326 U.S. 1 (1945).

[4] *United States* v. *Multiple Listing Service*, Civ. 72–68 (D. Ore.).

to foreign-made boilers and pressure vessels.[5] We alleged that those seals had important competitive advantages and in fact were required by a number of municipalities.

We have also brought a number of cases in recent years in the services area. The Council of Economic Advisers has noted that services account for an increasing portion of commerce in the United States. To the extent that those services are affected by price-fixing agreements and the like, the consumer must pay higher prices and is deprived of competition in this most important area. We have therefore proceeded against a number of real estate transactions by their members.[6] Certainly the increasing cost of housing in this nation should not be aggravated by a fee-fixing arrangement among realtors.

As another fairly recent development, we have challenged provisions in the "code of ethics" of certain professional associations which operated to prohibit members of those associations from engaging in competitive bidding. While price is not and should not be the only factor taken into account in hiring a professional, it should be one factor. With state purchasing agencies being subjected to a united front of all engineers, for example, the public may find it is required to pay an increasing amount of taxes due to a lack of of this form of competition.

With these considerations in mind, we have brought suit against the National Society of Professional Engineers,[7] the American Institute of Architects,[8] the American Society of Civil Engineers,[9] and the American Institute of Certified Public Accountants.[10]

I might note that certain professional groups have insisted that we are somehow engaging in a bit of discrimination here. They say that we lawyers should not attack the anticompetitive practices of other professional associations until we clean our own house in the bar associations. While I do not agree that we should hold back on challenges to restraints of trade in other professions, I do agree that we should clean house. An increasing number of local and state bar associations have heeded the many warnings from Department officials that minimum fee schedules and their enforcement through disciplinary proceedings, as well as other conduct such as unreasonable exclusion of members, can violate the antitrust laws. But other bar associations have not gotten the message and are persisting in this conduct. We have several investigations going in this area.

I think it is incumbent upon all of us as members of the legal profession to do whatever we can to get rid of these practices. As lawyers who are supposed to know the law, and I include the antitrust laws, I think both public and private counsel have a particular obligation to eliminate conduct which violates the antitrust laws.

Trade associations have also been used in the past for the purpose of retarding or completely eliminating innovation among competitors. As one of the classic examples, the Department in the 1940s brought suit against the Association of American Railroads alleging, among other things, that the Association was the focal point of a conspiracy among a number of railroads to retard the introduction of a streamlined passenger train and air-conditioned passenger cars.[11]

Where there is heavy investment by members of an industry or by the more influential members, a trade association may be used as a vehicle to hold back research and development toward an improved and more efficient industry way of doing business. Experience teaches that collective decisions may be made to impede the introduction of new processes and products if their introduction is likely to produce results deemed inconsistent with the financial interest of the industry as a whole. New processes and products tend to make obsolete equipment and other property in which there is heavy investment. Or in some instances innovation may make obsolete a marketing system which serves the interest of influential members of the association. Also at times, as a result of the collective process, the pace of innovation may be geared to the least progressive member of the industry with resulting detriment to society as a whole.

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[5] *United States* v. *American Society of Mechanical Engineers, Inc.*, 70 Civ. 3141 (S.D. N.Y.).

[6] E.g., *United States* v. *Real Estate Board of Metropolitan St. Louis*, Civ. 72C 793(3) (E.D. Mo.); *United States* v. *Atlanta Real Estate Board*, Civ. 14744 (N.D. Ga.).

[7] *United States* v. *The National Society of Professional Engineers*, Civ. 2412–72 (D.C.).

[8] *United States* v. *The American Institute of Architects*, Civ. 92–72 (D.D.C.).

[9] *United States* v. *American Society of Civil Engineers*, 72 Civ. 1776 (S.D.N.Y.).

[10] *United States* v. *American Institute of Certified Public Accountants, Inc.*, Civ. 1091–72 (D.D.C.).

[11] *United States* v. *Association of American Railroads*, Civ. 246 (D. Neb. 1944); Hearings on Public Law 662, 80th Cong. p. 100 (1947).

A single, monolithic approach to research and development through a trade association can thus lead to decisions to retard development rather than encourage it; and the financial interests of member firms may run contrary to the interest of the consumer and the public. For example, there is substantial public interest concerning a pollution free environment, and the *Smog*[12] case is a good example of trade association activities which conflict with the public interest. As you know, the Department charged the four domestic automobile manufacturers and their trade association with conspiring to delay the development and installation of antipollution devices on automobiles. At the time we obtained a consent decree providing for early relief and a bar to this alleged conspiracy, President Nixon's science adviser expressed strong approval of our antitrust relief. He stated:

> If we are to preserve the quality of our environment, we must take active steps to reduce contamination of that environment. Nowhere is there a greater need for urgency than in the field of air pollution, which affects directly the health and comfort of our people. I think speedy resolution of this case will promote competitive research and development in the design and installation of smog control devices and represents an important step forward in the fight against pollution.[13]

In our view this decree forced the auto manufacturers to start moving on their own individual initiative. And it eliminated the kind of cross-licensing arrangement in the trade association which had rather effectively sapped any initiative on the part of the auto manufacturers to move forward on ther own R&D. So long as each manufacturer is required to share his research and development with the others there is a danger that no single manufacturer will invest in sufficient research and development unless he can capture profits from his expenditures. The result is that the industry tends to move at the speed of the slowest producer—or not at all—as long as there is no spur up to the more innovating firm to get the job done.

A year ago we brought suit against the Manufacturers Aircraft Association and 23 of the nation's major airplane and airplane parts manufacturers.[14] The complaint charges that these manufacturers, through their trade association, had eliminated competition in research and development of patentable inventions relating to airplane production. Our suit charged that as a result of the patent and cross-licensing agreement, first entered into by the association in 1928, the group had engaged in a contract and combination to eliminate competition in R&D.

These, then, are the risks that collective action, which at times may be ostensibly for the purpose of encouraging industry research and development, may in fact impede R&D.

This is not to say that all cooperation is suspect or harmful; there is much room for cooperation among firms in a particular industry to deal with existing problems, but these cooperative efforts can be useful without abandoning fundamental antitrust principles and without scrapping strong economic incentives which come from continued competition among industry members.

We have seen in the past and I am sure we will see in months to come statements by various firms in various industries that pollution problems, drug problems, community problems, and all manner of ills confronting a particular industry or the society can be cured if antitrust enforcement is suspended to allow firms to band together in trade associations for collective research on the problem. I am not suggesting that those who make this argument are wrong one hundred per cent of the time, regardless of what case they can make out, in a specific fact situation. Nor am I implying that there can be no joint ventures among firms in a particular industry to deal with pressing problems under existing antitrust law. I am not quite that dogmatic; and I believe that some cooperation with adequate safeguards to protect continued competition and to insure that innovation moves ahead rapidly, is reasonable under the antitrust laws. But I am suggesting that before we scrap our commitment to a competitive system, a very strong showing of need must be made.

Aside from more traditional law enforcement activity, the Department also plays another role. From time to time we are called upon by another agency of

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[12] *United States* v. *Automobile Mfrs. Ass'n.*, Civ. No. 69–75–TWC (C.D. Calif. 1969).

[13] Statement of Dr Lee A. DuBridge, Science Adviser to the President, September 11, 1969.

[14] *United States* v. *Manufacturers Aircraft Ass'n., Inc., et al.*, Civ. 72 Civ. 1307 (S.D. N.Y.).

government or by Congress to advise, as a matter of antitrust policy rather than enforcement, on the way in which the trade association should be relied upon by the government. Certainly, federal, state, and local governments cannot meet the demands imposed upon them without adequate information. And the federal government relies heavily upon the private sector to provide information for use in government policy making on a wide range of social concerns.

Over the years we have worked closely with the Commerce Department, Treasury Department, HEW, the Environmental Protection Agency, and other federal entities, which from time to time convene industry meetings to consider ways and means of dealing with a variety of pressing problems. These government agencies are very much concerned that such meetings do not create antitrust risks, and of course the companies who may be consulted by the agency are also aware of these risks. As a result some care is taken to build into these meetings precautions which are designed to collect the needed information, while avoiding joint commitment or agreement from the firms involved. In addition, we also generally inform federal agencies seeking to avoid antitrust problems that they should be very wary of calling for or allowing exchanges of company confidential information dealing with research projects, production costs, feasibility studies, and the like. This type of material is normally very closely guarded by a company as it could give a competitor an edge. In the pollution effort for example, with exchange of competitively sensitive information among the firms, there might be a tendency to slow down individual company efforts on R&D. Such a result, of course, could frustrate federal initiatives in the problem area.

Finally, while this is not exclusively an antitrust problem, we also encourage the agencies as a general rule to proceed to gather information on a company-by-company basis. This minimizes the risks that competitively sensitive information will be exchanged, and it permits the agency to test the submission of one firm against another. At times in the past, government agencies, seeking to determine the feasibility of a particular federal action, were told by trade associations that what the government sought to do could not be done or could be done only at great expense. With a united industry front, the government has no way of testing such assertions. By proceeding on a company-by-company basis, we may come upon one firm which not only believes that the proposed action is feasible for the industry, and will not pose unusual financial hardships, it may have developed the means of getting the job done.

Admittedly we don't have all the answers. But I think you may agree with me when I say that trade associations serve a legitimate and useful purpose in the system, and that they may engage in a wide variety of activities which do not run afoul of the antitrust laws. We rely very heavily on private counsel to keep it that way.

APPENDIX 2

MAY 18, 1973.

Hon. LEWIS A. ENGMAN,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: The Antitrust Subcommittee of the Committee on the Judiciary plans an antitrust investigation of the food industry. The Subcommittee is interested in ascertaining in connection with this investigation the extent to which the antitrust laws presently are being enforced in the food industry.

To facilitate our work, I would very much appreciate it if you would provide us with your answers with respect to the following questions:

1. FTC proceedings.—What complaints have been issued by the FTC in the food industry in the past five years? What is the disposition of these cases? (Those should be divided according to the product, market, and the type of antitrust, Robinson-Patman or FTC § 5 violation involved.)

2. Enforcement measures.—What steps are being taken by the FTC to promote competition and to protect the consumer from deceptive practices in the food industry? What investigations and studies are under way? What advisory opinions have been issued concerning the food industry? What efforts are being made to monitor prices, profits, and commercial practices in the food industry?

3. Market structure.—What is the size and market structure of the food industry in general, in major product categories (e.g. meat and poultry, dairy, fruits and vegetables, dry groceries, etc.), and in levels of production within major product categories (e.g. grower, processor, wholesaler, retailer)? What food product markets are concentrated?

4. Market performance.—What costs are imposed on the economy by lack of effective price competition in the food industry? How does the food industry compare with other industries in this regard? (Please supply with respect to these questions the FTC Bureau of Economics study of costs imposed on the economy by lack of effective price competition in 100 selected industries.)

5. Price increases.—What are the implications of recent increases in food prices on competition in the food industry? To what extent does a reduction in supply and increase in price resulting from factors beyond our control (e.g. bad weather), increase the market power and ability to engage in deceptive practices of companies with significant market shares?

6. Antitrust exemptions and regulation.—What laws and regulatory schemes exempt or insulate areas of the food industry from the antitrust laws and the full effects of competition? What products and what amount of commerce are so insulated or protected from competition? To what extent do antitrust exemptions and regulation contribute to restraints of trade and deceptive practices in the food industry?

I have instructed my staff to cooperate fully with you in obtaining the information I am requesting. In this regard, please feel free to contact Jerome Zeifman, General Counsel of this Committee, at 225–7709.

Your prompt reply to this inquiry would be appreciated.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

FEDERAL TRADE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C., June 27, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 18, 1973, to Chairman Engman. That letter requested certain information in order to facili-

tate the preparatory work for your Committee's antitrust investigation of the food industry. Listed below and identified under the headings which are used in your letter, is the information which you request.

1. FTC proceedings

Attached hereto (Exhibit A) is a compilation of complaints issued between 1968 and 1973 by the Commission involving respondents who were engaged in some aspect of the food industry. The compilation lists the respondent's name, product market involved, violation alleged, and present status of the case.

2. Enforcement measures

The Commission has two programs of an on-going nature, the purposes of which are to monitor and, where appropriate, challenge mergers or acquisitions in the food distribution industry and in the grocery manufacturing industry. The Commission's statements regarding both programs are attached as Exhibits B and C.

This past winter, an evaluation of the 5 year experience with the food distribution program was conducted. Attached (Exhibit D) is a press release reporting on that analysis and the salutary effect which the program has had in maintaining a competitive structure in the food distribution industry. The program has been renewed for another 5 year period and reporting forms applicable to all acquisitions over a certain size were authorized.

In addition to these formal programs and the cases actually in litigation, the Commission staff at any one time is investigating on an individual, nonpublic basis matters regarding anticompetitive practices in different sectors of the food industry or specific mergers or acquisitions which may have an anticompetitive effect in that industry. At the present time, investigations of specific matters are under way involving companies in the beer industry, the dairy products industry, food retailing, grocery products manufacturing, the soft drink industry, and the wine industry.

Attached as Exhibit E is a list of advisory opinions rendered during the last 5 years dealing with the food industry. The list shows the date and subject matter of the opinion.

As for monitoring of prices, profits, and other commercial practices in the industry, the reporting program for mergers in the food distribution industry provides an on-going monitoring of that activity. In addition to examination of reports which are required to be filed, staff maintains a regular vigilance over trade journals to keep abreast of changes in all segments of the food industry.

Plans were recently announced for an additional monitoring program contemplating the implementation of a "market basket survey" which will compare at competing supermarkets prices for similar foods (Proposed Protocol attached as Exhibit F). This project is being developed by the Commission's Bureau of Consumer Protection which is now in the process of evaluating comments which were received in response to the initial proposal. Careful attention is being given to developing reliable and fair survey techniques. It is hoped that implementation of this program will highlight the problems inherent in "lowest prices in town" advertising and establish a model on which others will run similar surveys.

3. Market structure

4. Market performance

5. Price increases

Attached as Exhibit G is a memorandum in which the Commission's Bureau of Economics replies to the questions presented by Questions #3, 4 and 5. The views expressed therein result from the Bureau's general familiarity with the food industry, and are not the result of any formal or focused investigation conducted by Commission staff. As a consequence, while it is hoped that these views may be helpful for your study, they do not represent any determination or conclusion by the Commission.

6. Antitrust exemptions and regulation

The primary antitrust exemption which touches on the food industry is the Capper-Volstead Act of 1922 (7 U.S.C. §§ 291, 292) which permits farmers and other producers of food products to join together in cooperative associations for the marketing of their products. This exemption is reflected in Section 6 of the Clayton Act (15 U.S.C. § 17). This exemption, however, does not create complete immunity. Although its parameters have not been fully tested, the primary pur-

pose of the exemption is to permit small farmers to bank together to market their products without running afoul of the Sherman Act's prohibition against "contracts, combinations or conspiracies" in restraint of trade. The exemption would not appear to immunize a coop in its dealings with nonmembers.

A parallel act, The Fishermen's Collective Marketing Act of 1934 (15 U.S.C. §§ 521–522) authorizes independent fishermen to organize collectively for the sale of fish and other acquatic products. The statute does not apply to processing and distribution associations which are not operated by cooperative associations of fishermen.

Since no studies have been made by the Commission to determine what specific effect these exemptions may have on competition in the food industry, the Commission cannot estimate the extent of interference, if any, with competition resulting from these exemptions.

It should also be noted that a new exemption involving territorial allocations among bottlers of soft drinks has won the approval of the Senate (S. 978).

While not directly responsive to any of the specific questions you posed, we have included as background information publications and supplements of the National Commission on Food Marketing, the Federal Trade Commission's Economic Studies related to the food industry, and a copy of the 1971 Commission trade regulation rule on Retail Food Store Advertising and Marketing Practices. We hope this additional information will be of assistance to you in your investigation of the food industry.

Please let us know if we can be of further assistance.

By direction of the Commission.

VIRGINIA M. HARDING,
Acting Secretary.

Enclosures.

EXHIBIT A

Respondent	Product or market	Type of violation	Final FTC action	Date
Lucky Stores	Food retail	Sec. 7	Assurance of voluntary compliance.	Jan. 2, 1968
Supreme Freezer Meats, Inc	Frozen meats	Sec. 5 (F. and M.)	Final order	May 29, 1968
Viviano Macaroni Co	Macaroni	R–P	Commission order	[1] Feb. 19, 1968
Alliance Associates, Inc	Grocery broker	do	Consent order	May 20, 1968
Connell Rice & Sugar Co	Commodity brokerage and wholesaling.	Sec. 5 and R–P	do	Feb. 20, 1969
Grand Union Co	Food retail	Sec. 7	do	June 21, 1968
American Foods	Freezer plans	Sec. 5	do	July 10, 1968
Frito-Lay, Inc	Potato chips and snacks and soft drinks.	Sec. 7	do	Sept. 12, 1968
H.C. Bohack Co	Food retail	do	do	Aug. 23, 1968
Colonial Stores, Inc	do	Sec. 5 and R–P	Final order	May 7, 1970
Flotill Products, Inc	Fruit and vegetable canning brokerage.	R–P	Modification of final order.	Sept. 20, 1968
Western Star Beef, Inc	Mear retailers	Sec. 5 (F. and M.)	Consent order	Jan. 21, 1969
Consumers Food Inc	Frozen food	do	do	Feb. 25, 1969
General Mills	Potato chips and snacks	Sec. 7	do	Mar. 11, 1969
Campbell Soup Co	Soup	Sec. 5 (F. & M.)	do	May 25, 1970
Borman Food Stores, Inc	Lettuce brokers	Sec. 2 (c) R–P	Compliance	July 10, 1969
Scott Finks Co., Inc	Produce wholesaler	R–P sec. 2(c)	Consent order	June 13, 1969
Golden Grain Macaroni Co	Macaroni	Sec. 7	Final order	[2] Feb. 20, 1971
National Tea Co	Retail grocer	do	Denial of modify of order.	June 11, 1970
United Fruit Co	Bananas	R–P	Final order	[3] Jan. 12, 1973
Jos. Schlitz Brewing Co	Beer	R–P	Consent order	Jan. 5, 1970
Wm. T. Colbert	Meat retailer	Sec. 5 (F. & M.)	do	Nov. 21, 1969
KRR, Inc	do	do	do	Dec. 8, 1969
Borden, Inc	Ice cream	R–P	Compliance	Mar. 6, 1970
Tri Valley Growers	Canner of fruit and vegetables.	R–P	Modified order	Dec. 12, 1969
Beatrice Foods	Retailers	R–P	Final order	[4] Dec. 1, 1969
Arden-Mayfair, Inc	do	R–P (brokers)	Consent order	June 3, 1970
Metro Systems of Maryland	Freezer-food	Sec. 5 (F. & M.)	Proposed compliance.	Jan. 27, 1970
AMK Corp	Bananas and food	Sec. 7	do	May 6, 1970
Beatrice Foods Co	Institutional foods	do	Complaint dismissed	Sept. 8, 1972
Purex Corp, Ltd	Fresh produce	do	Proposed compliance.	Jan 30, 1970
General Mills	Frozen seafood	do	Initial decision	Feb 16 973
Beatrice Foods Co	Dairies	Sec 7 enforcement	Civil penalty filed	Nov 4, 1970
Crush International, Ltd	Soft drinks	Sec 5 (territories)	Compliance	Jan 15, 1971
United Brands	Fresh produce	Sec 7	Initial decision	Mar 19, 1973
Adolph Coors Co	Beer	Sec 5	do	Sept 15, 1972

Respondent	Product or market	Type of violation	Final FTC action	Date
Swift & Co.	Baby food	Sec 5 (F. & M.)	Consent order	June 17, 1971
Ocean Spray Cranberries, Inc.	Juice	do	do	June 23, 1972
Howard-Gibco Corp.	Milk	Sec 5 (below cost sale)	do	Mar 30, 1971
Borden, Inc.	Coffee and nondairy products	Sec 5 (F. & M.)	do	Apr 12, 1971
Kroger Co.	Retail grocer	Sec 7	do	Sept 14, 1971
ITT-Continental Baking Co, Inc.	Bread	Sec 5 (F. & M.)	Complaint	Mar 16, 1971
Alterman Foods	Wholesale, retail food	R-P	Final order	Feb 12, 1973
Coca-Cola	Fruit drink	Sec 5 (F. & M.)	Initial decision to dismiss.	Sept 15, 1972
Southland Corp.	Candy	Sec. 7	AVC	May 19, 1971
A&P-Borden	Dairy products	R-P Sec. 5	Complaint	Oct. 8, 1971
General Foods	Toast 'ems	Sec. 5 (F. & M.)	Consent order	Sept. 13, 1971
General Sales Corp.	Frozen meat	do	do	Sept. 3, 1971
Natpac, Inc.	Frozen food	do	do	Sept. 21, 1971
Amstar Corp.	Sugar	do	Complaint	May 8, 1972
Mr. Beef, Inc.	Bulk beef	do	Consent order	Aug. 27, 1971
T-ville Freezer Meats	do	do	do	Sept. 21, 1971
P & G	Cooking oil	do	do	Feb. 14, 1972
Kellogg Co.	RTE cereal	Sec. 5 shared monopoly.	Complaint	Apr. 26, 1972
Cattlemens Quality Meat, Inc.	Meat	Sec. 5 (F. & M.)	Consent order	May 4, 1972
Frozen Food Forum	Frozen food	R-P 2(c)	Complaint	June 12, 1972
Seekonk Freezer Meats	Meat	Sec. 5 (F. & M.)	Final order	Mar. 15, 1973
Buy-Rite Foods, Inc.	Grocery wholesaler	R-P	Consent order	June 22, 1972
Ronzoni Macaroni Co.	Macaroni	R-P	do	July 11, 1972
A. & P.	Grocery retail	Sec. 5 (F. & M.)	Complaint	Feb. 16, 1973
Heublein Inc.	Wine	Sec. 7	do	Nov. 27, 1972
Sugar Association	Sugar	Sec. 5 (F. & M.)	Consent order	Sept. 11, 1972
Beatrice Foods	Bakery products	do	do	Sept. 16, 1972
Freihofer Baking Co.	Bread	do	do	Dec. 7, 1972
Pepsi Co. Inc.	Soft drink	Sec. 7	Complaint	Nov. 15, 1971
Standard Brands	Margarine	Sec. 5 (F. & M.)	Consent order	Apr. 9, 1973
Western Storecasting, Ltd.	Food advertising	R-P	do	Apr. 2, 1973
MCP Foods, Inc.	Orange drink	Sec. 5 (F. & M.)	do	Apr. 11, 1973
Thomas P. Lipton, Inc.	Gelatin	do	do	Do.
R.J.R. Foods, Inc.	Fruit drink	do	do	May 20, 1973

[1] Affirmed, 3d circuit.
[2] Enforced with modification, 9th circuit.
[3] On appeal, 5th circuit.
[4] Affirmed, 6th circuit.

EXHIBIT B

Enforcement Policy With Respect to Mergers in the Food Distribution Industries—January 3, 1967

The structure of food retailing in the United States has undergone a number of very significant changes during the past decade and a half. Food distribution has become increasingly concentrated in both national and local markets. This growth in concentration has been caused in significant part, and certainly accelerated, by a nationwide merger movement among large supermarket chains. In the meantime, the relative importance of chains in the marketing of grocery products has substantially increased.

The Commission has exercised continued surveillance over these developments, recognizing that whereas many were in response to normal and desirable market forces, others might bring about unnecessary and irreversible changes inimical to the market structure and competitive behavior of food retailing. Much of the Commission's merger enforcement activity has been devoted to this sector of the economy. The Commission initiated its first legal action under amended Section 7 of the Clayton Act challenging mergers among grocery supermarket chains in early 1959. The first case challenging 13 acquisitions made from 1952–1958 by the National Tea Co., the fifth ranking grocery chain on a national basis.[1]

The second case, against the Kroger Co., challenged 5 acquisitions made from 1955–1958 by that chain, the third ranking grocery chain in the country.[2] In 1962 the Commission filed a complaint against 2 acquisitions of direct competitors by the Grand Union Co., 10th ranking chain in the United States.[3] The Antitrust Division, in the meantime, filed a case in 1960 against the Von's Grocery Co., the third ranking Los Angeles grocery chain, challenging its acquisition of Shopping

[1] *In the Matter of National Tea Co.*, Docket No. 7453, March 26, 1959.
[2] *In the Matter of the Kroger Co.*, Docket No. 7464, April 1, 1959.
[3] *In the Matter of Grand Union Co.*, Docket No. 8458, January 12, 1962.

Bag, the fifth largest chain in the same market.[4] In 1966 the Commission filed a complaint against Consolidated Foods Corporation challenging its acquisition of three grocery store chains.[5] Finally, in September 1966, the Commission filed an action under Section 7 against Winn-Dixie Stores, Inc.

Litigation has been terminated in all but one of the Commission's merger actions in food retailing. The Commission's action against Grand Union was terminated June 10, 1965, when the Grand Union Co. signed a consent agreement which required the divestiture of certain acquired supermarkets and prohibited for a period of 10 years, without the prior approval of the Commission the acquisition of competitors above a certain minimum size. The Commission issued its opinion and final order in the National Tea case on March 4, 1966.[6] The case was not appealed. The final order in this matter prohibits National Tea from making any retail food store acquisitions for a period of 10 years without the prior approval of the Federal Trade Commission.[7] Consolidated Foods signed a consent agreement December 2, 1965, which required the divestiture of retail stores with combined sales in excess of $200 million and which prohibits Consolidated from acquiring without the prior approval of the Commission any grocery stores or dairy product stores.

The Commission's case involving Winn-Dixie Stores, Inc., was settled with a consent agreement, September 1966, which prohibits Winn-Dixie from acquiring without the prior approval of the Commission any retail food stores for a period of ten years.[8]

The Commission's case involving the Kroger Company is still in the process of litigation. This complaint was recently amended challenging the Kroger Company's acquisition in 1963 of Market Basket, a Los Angeles based chain.[9]

The Department of Justice case against Von's was decided in favor of the Government by the Supreme Court on May 31, 1966.[10]

In view of the Commission's extensive legal activity in the area of food retailing and the probability that market forces will continue to create an environment conducive to mergers in the industry, it is appropriate that the Commission spell out as clearly as possible those mergers which the Commission's experience and knowledge suggest are most likely to have anticompetitive consequences. This is not to imply that the Commission has sufficient knowledge of foresight to draw with precision the legal boundaries around every prospective merger in food retailing. Conditions inevitably change with time and circumstances. On the other hand, businessmen contemplating mergers have a right to know whether particular mergers are likely to be challenged by the Commission and, perhaps, be forcibly undone after years of expensive litigation. This is not to say that what is set forth below in any way represents prejudgment by the Commission concerning the way in which it will rule in particular litigated cases. On the contrary, the following expressions of the Commission's characterization of particular organizational developments in the industry, and their probable competitive consequences, represent the Commission's current knowledge of these matters as revealed by its own experience in various litigated cases, information received from a recent survey of leading food distributors, and on authoritative studies of others, particularly those of the National Commission on Food Marketing. It seems pertinent to this Commission that the National Commission on Food Marketing concluded on the basis of its two-year inquiry into recent organizational changes in the food industry that: "An urgent need, as we see it, is positive action by the regulatory agencies to make clear and effective the policy of Congress as declared in the Clayton Act, and we favor development of guidelines by the Department of Justice and the Federal Trade Commission to make the policy specific in those food fields to which its application is most significant." [11]

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[4] *U.S. v. Von's Grocery Company*, Southern District of California, March 25, 1960.

[5] *In the Matter of Consolidated Foods Corporation*, Docket No. C-1024, December 21, 1965.

[6] *In the Matter of National Tea Co.*, Docket No. 7453, March 4, 1966.

[7] *Ibid.*

[8] *In the Matter of Winn-Dixie Stores*, Docket No. C-1110, Decision and Order, September 14, 1966.

[9] *In the Matter of Kroger Co.*, Docket No. 7464, Complaint Amended August 10, 1966, to include Market Basket.

[10] *U.S. v. Von's Grocery Company and Shopping Bag Food Stores*, May 31, 1966.

[11] Food from Farmer to Consumer, Report of the National Commission on Food Marketing, June 1966, p. 106. Hereinafter referred to as Final Report of the National Commission on Food Marketing.

CRITERIA USED TO IDENTIFY MERGERS WHICH WARRANT IMMEDIATE ACTION

In view of its extensive activity in the application of Section 7 to forestall anti-competitive mergers, together with recent and prospective developments in food retailing, this Commission would be derelict if it did not make abundantly clear, insofar as possible, its future enforcement policy in this important area. Methods must be devised to head off needless litigation and to implement prompt action where litigation is indicated. On the basis of its past experience and the findings of the National Commission on Food Marketing, the Commission shall in the future focus particular attention on mergers or acquisitions by food retailing and wholesaling corporations with combined annual sales in excess of $100 million. Mergers by companies with sales of $500 million or more are particularly significant. The ten or so retail companies of this size, alone, have accounted for about one-half of all retail mergers which occurred since 1948. The record in the one litigated case before the Commission illustrated that the large multimarket character of firms of this size may give them substantial advantages over smaller firms, and that some of these advantages are entirely unrelated to economic efficiency.[12]

Also, the best available evidence indicates that firms need not be this large in order to enjoy the most important economies of scale. Economies of retail selling are achieved primarily at the store level and ordinarily can be achieved by units with annual sales of between $1 million and $2 million. Economies of scale in performing the warehousing function most probably do not extend beyond the $75 million to $100 million range.[13] Advantages associated with size beyond this scale relate primarily to manufacturing operations, private label programs and field buying of perishables, although economies in these areas can be attained by a company with retail sales of $500 million.[14]

It therefore appears that whereas mergers by retail firms with annual sales in excess of $500 million may contribute to further concentration of buying power, in addition to any adverse effect that they may have at the retail selling level, it is unlikely that the prohibition of mergers by such companies would have an adverse effect on efficiency. Moreover, insofar as economies of scale require fairly large-scale operations, the goal of promoting economic efficiency might be better achieved by channelling mergers away from the largest firms to those whose efficiency would be enhanced by further growth.

Also, whereas the growth of voluntary and cooperative groups of food retailers generally has promoted the viability of independent food retailers, unlimited mergers by the largest of such groups also may adversely affect competition.

Thus the Commission has adopted the following enforcement criteria for evaluating acquisitions by large food retailers and wholesalers:

I. Mergers and acquisitions by retail food chains which result in combined annual food store sales in excess of $500 million annually raise sufficient questions regarding their legal status to warrant attention and consideration by the Commission under the statutes administered by it.

II. Mergers and acquisitions by voluntary and cooperative groups of food retailers creating a wholesale volume of sales comparable to those of food chains with sales in excess of $500 million annually also raise sufficient questions regarding their legal status to warrant attention and consideration by the Commission under the statutes administered by it.

It should not be inferred from the above criteria that all mergers by companies with combined sales of less than $500 million are unlikely to injure competition. A threat to competition is posed whenever companies which are leaders in important metropolitan areas merge with direct competitors which are also leaders in the same market.[15] Similarly, market extension mergers may pose a threat to competition, particularly a series of mergers promising to create another industrial giant. In the Commission's experience, however, it appears that market extension mergers involving companies with combined annual sales of less than $500 million generally do not pose a serious threat to competition except when they involve some competitive overlap.

Thus the Commission adopts the following enforcement criteria for mergers and acquisitions by food chains or wholesalers which represent food store sales of between $100 million and $500 million annually.

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[12] *In the Matter of National Tea*, Docket No. 743, Opinion of the Commission, March 4, 1966. The National Tea Company had sales of $520 million in 1954. The record in this matter indicates that at that time it already had substantial market power.

[13] *Final Report of the National Commission on Food Marketing*, June 1966, pp. 71-72.

[14] *Ibid.*, p. 72.

[15] *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (May 31, 1966).

III. Mergers and acquisitions by food chains or wholesalers which result in combined annual food store sales of between $100 million and $500 million appear to warrant investigation by the Commission to determine whether there has been or may be a violation of any statutes administered by the Commission.

Qualifications.—The implementation of these enforcement criteria is not intended to block mergers obviously lacking in significant anticompetitive consequences. Nor should these criteria be applied to work an undue hardship on small business or result in unwarranted expenditures of Commission resources.[18] The Commission has previously indicated the levels below which a detailed Commission review does not appear necessary in every situation. *In the Matter of Grand Union Co.*, Docket No. 8458, Decision and Order (June 10, 1965). Restating the qualifications contained in that Order, the Commission is of the view that mergers and acquisitions which satisfy each of the following criteria do not ordinarily require specific Commission review:

1. A merger or acquisition of not more than four food or grocery stores:

2. A merger or acquisition of food or grocery stores, or food wholesaling establishments, representing annual food or grocery product sales of not more than $5 million; and

3. A merger or acquisition of food or grocery stores, or food wholesaling establishments, representing combined food store sales of not more than five percent of total food store sales in any city or county in the United States.

These enforcement criteria are not to be construed as an expression of views of the Commission or any individual Commissioner on the legality of any particular merger or acquisition. Rather, the Commission has chosen quantifiable standards in order concisely to describe those mergers and acquisitions in food distribution industries which merit special attention. The use of dollar sales by food stores as the primary criteria is intended to enable all whose actions may be affected by the guidelines to determine their application with certainty. The term "food store" has specific meaning in business and statistical circles as a retail store primarily engaged in selling food for home preparation and consumption. Similarly, food store sales universe data are conveniently available in publications of the Bureau of the Census, United States Department of Commerce.

Implementation.—To carry out this enforcement program expeditiously and uniformly, the Commission must know of prospective acquisitions and mergers in advance of their consummation. Every food retailer and wholesaler with annual sales in excess of $100 million will be required to notify the Commission at least 60 days prior to the consummation of any merger, acquisition or consolidation involving any food retailer or wholesaler. The Commission will notify each year, so long as this enforcement program is in effect, the individual companies known to fall in this size class and will require each to file special reports with the Commission under the authority provided by Section 6 of the Federal Trade Commission Act.

This action by the Commission should not be interpreted to mean that grocery firms must request Commission approval prior to the consummation of any merger or acquisition. However, the Commission shall continue to provide advisory opinions, as provided by its Rules of Practice, regarding the legality of particular mergers, and invites food retailers and wholesalers contemplating mergers to avail themselves of this program in any situation where they are uncertain as to the legality of a prospective merger.

Chairman Dixon and Commissioner MacIntyre, while approving the enforcement criteria set forth in this statement, did not concur in the action of the Commission in providing for the requirement that special reports be filed with the Commission 60 days in advance of any merger under the authority of Section 6 of the Federal Trade Commission Act.

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[18] Moreover, the Commission recognizes that there may well be some situations where mergers between small concerns may stimulate and enhance competition even though their immediate effect is to increase market concentration. ". . . Congress recognized the stimulation to competition that might flow from particular mergers. When concern as to the Act's breadth was expressed, supporters of the amendments indicated that it would not impede, for example, a merger between two small companies to enable the combination to compete more effectively with larger corporations dominating the relevant market, nor a merger between a corporation which is financially healthy and a failing one which no longer can be a vital competitive factor in the market." *Brown Shoe* v. *United States*, 370 U.S. 294 (1962).

EXHIBIT C

NEWS RELEASE—FEDERAL TRADE COMMISSION,
OFFICE OF INFORMATION,
Washington, D.C., May 15, 1968.

COMMISSION ANNOUNCES ENFORCEMENT POLICY WITH RESPECT TO PRODUCT EXTENSION MERGERS IN GROCERY PRODUCTS MANUFACTURING

The Federal Trade Commission today released a statement setting forth its "Enforcement Policy with Respect to Product Extension Mergers in Grocery Products Manufacturing."

A product extension merger is one that unites two corporations whose activities are functionally related at the production or marketing levels, but whose products are not close substitutes. Thus, in grocery products manufacturing the term describes any nonvertical, nonhorizontal merger that combines two firms engaged in the manufacture of household consumer products marketed through retail grocery stores.

This is the third Commission enforcement policy announcement in the merger area. The first two, dated January 3, 1967 applied to vertical mergers in the cement industry and mergers in food distribution. The Commission emphasized that such enforcement policy statements are not to be construed as implying that the Commission has sufficient knowledge or foresight to draw precise legal boundaries for every prospective merger. However, the Commission announcement is designed to provide the business community with information as to the kinds of product extension mergers in grocery products manufacturing which, based upon Commission experience, are most likely to raise concern as to their possible anticompetitive effects under Section 7 of the Clayton Act as amended by the Celler-Kefauver Act.

The Commission pointed out that it has taken on essentially pragmatic approach in assessing potential anticompetitive aspects of product and market extension mergers in grocery products manufacturing. Cases involving such questions were "*The Procter & Gamble Company*, Docket No. 6901 (November 23, 1963), rev'd, 358 F.2d 24 (6th Cir. 1966), rev'd and enforced, 385 U.S. 897 (1967); *General Foods Corporation*, Docket No. 8600 (March 11, 1966), aff'd —— F.2d —— (3rd Cir. 1967); *Beatrice Foods Company*, Docket No. 6653 (December 10, 1965); and *Foremost Dairies, Inc.*, Docket No. 6495 (April 30, 1962)."

According to the Commission's statement:

Product extension mergers may adversely affect competition in several ways. One is by raising the barriers to entry of new firms, and thus preventing the creation of new capacity in the markets of the acquired firm. Among the factors affecting entry barriers are the relative size and market power of the acquiring firm, the degree to which it operates, the magnitude of its promotional activity and advertising expenditures, and whether or not it is a potential competitor of the acquired firm.

Additionally, the relative size and market position of the acquired firm, the extent of oligopoly of the markets in which it operates, its growth potential, and the extent of abnormal profits it and others in such markets may enjoy, bear on the question of the need for the constraints of potential competition. The potential entrant, by providing the *threat* of entry, may restrain oligopolists in the market from securing monopoly profits, forcing them as a minimum to charge entry forestalling prices. Or by actually entering the market, the potential entrant would add capacity to the industry, become an active competitor and erode the non-competitive profits of the oligopolists.

Merging in, rather than building in, would remove both of these constraints on the potential entrants and might simultaneously raise the barriers to additional entrants.

The Commission's announcement contains an extensive description of the changing structure of grocery manufacturing as well as the nature of the product extension mergers in food manufacturing, and the implications of recent structural changes. On the basis of such studies, the Commission set forth the following major criteria for assessing product extension mergers in grocery products manufacturing under Section 7 of the Clayton Act:

(1) Both the acquiring and acquired companies engage in the manufacture of grocery products. Grocery products include food and other consumer products customarily sold in food and grocery stores.

(2) The combined company has assets in excess of $250 million.

(3) The acquiring company engages in extensive promotional efforts, sells highly differentiated consumer products, and produces a number of products, in some of which it holds a strong market position. A strong market position is defined as being one of the top four producers of a product in which the top four companies hold 40 percent or more of the value of shipments.

(4) The *acquired* company is either among the top eight producers of any one important grocery product, or has more than a 5 percent share of a relevant market.

The Commission instructed its staff to apply the above criteria with specific reference to mergers among manufacturers of grocery products, but pointed out also that the staff was to be concerned with mergers where (1) grocery manufacturers acquire nongrocery manufacturing firms selling products that are presold to consumers with advertising and promotion of the same general type used by grocery products companies and (2) nongrocery products manufacturers selling highly advertised and promoted consumer products acquire grocery products manufacturers.

The Commission stressed the fact that this announcement "should not be interpreted to mean that grocery products manufacturers must request Commission approval prior to the consummation of any merger or acquisition. However, the Commission shall continue to provide advisory opinions, as provided by its Rules of Practice, regarding the legality of particular mergers, and invites those contemplating mergers to avail themselves of this program in any situation where they are uncertain as to the legality of a prospective merger."

A copy of the Commission's statement is attached.

FEDERAL TRADE COMMISSION—ENFORCEMENT POLICY WITH RESPECT TO PRODUCT EXTENSION MERGERS IN GROCERY PRODUCTS MANUFACTURING

The purpose of this announcement is to provide the business community with information as to the kinds of product extension mergers in grocery products manufacturing which, based upon Commission experience, are most likely to raise concern as to their possible anticompetitive effects under Section 7 of the Clayton Act as amended by the Celler-Kefauver Act. As in the Commission's statements of enforcement policy applicable to other industries,[1] this is not to imply that the Commission has sufficient knowledge or foresight to draw precise legal boundaries for every prospective merger. On the contrary, the following expressions of the Commission's characterization of structural developments in grocery products manufacturing and their probable competitive consequences represent the Commission's current knowledge of these matters as revealed by its own experience in this sector of the economy and on authoritative studies of others.

The market structure of the grocery products manufacturing sector of the economy has changed significantly in recent years. Small companies are tending to disappear, diversification and conglomeration are becoming more extensive, and market concentration has been increasing in many grocery product markets. Large scale promotional activity and heavy advertising expenditures by the largest food manufacturing companies have both resulted from and contributed to these structural changes. The National Commission on Food Marketing concluded on the basis of its exhaustive study that food manufacturing firms "tend to grow, especially by merger and acquisition, well beyond the size needed to attain full operating efficiency."[2] It further called for "positive action by the regulatory agencies" to make the Clayton Act merger policy effective.[3]

The Commission's exploration and development of the Clayton Act's merger proscriptions to product and market extension mergers in grocery products manufacturing has been essentially pragmatic. See, for example, *The Proctor & Gamble Company*, Docket No. 6901 (November 23, 1963), *rev'd*, 358 F 2d 24 (6th Cir. 1966), rev'd and enforced, 385 U.S. 897 (1967); *General Foods Corporation*, Docket No. 8600 (March 11, 1966), *aff'd* F 2d (3rd Cir. 1967); *Beatrice Foods Company*, Docket No. 6653 (December 10, 1965); and *Foremost Dairies, Inc.*, Docket No. 6495 (April 30, 1962).

[1] *Enforcement Policy with Respect to Mergers in the Food Distribution Industry* (January 3, 1967) and *Enforcement Policy with Respect to Vertical Mergers in the Cement Industry* (January 3, 1967).

[2] *Food from Farmer to Consumer*, Final Report of the National Commission on Food Marketing, June 1966, p. 106.

[3] *Ibid.*

Principal legal-economic factors for assessing the probable anticompetitive consequences of product extension mergers [4] in grocery manufacturing are set forth in the Supreme Court's *Proctor & Gamble* opinion, *supra*.

Product extension mergers may adversely affect competition in several ways. One is by raising the barriers to entry of new firms, and thus preventing the creation of new capacity in the markets of the acquired firm. Among the factors affecting entry barriers are the relative size and market power of the acquiring firm, the degree to which it operates across many markets, the magnitude of its promotional activity and advertising expenditures, and whether or not it is a potential competitor of the acquired firm.

Additionally, the relative size and market position of the acquired firm, the extent of oligopoly of the markets in which it operates, its growth, and the extent of abnormal profits it and others in such markets may enjoy, bear on the question of the need for the constraints of potential competition. The potential entrant, by providing the *threat* of entry, may restrain oligopolists in the market from securing monoply profits, forcing them as a minimum to charge entry forestalling prices. Or by actually entering the market, the potential entrant would add capacity to the industry, become an active competitor and erode the non-competitive profits of the oligopolists.

Merging in, rather than building in, would remove both of these constraints on the potential entrants and might simultaneously raise the barriers to additional entrants.

The following sections review the changing structure of grocery manufacturing, identify the implications of the recent structural changes, and outline major criteria for identifying product extension mergers which merit the Commission's consideration.

II

THE CHANGING STRUCTURE OF GROCERY MANUFACTURING

Between 1947 and 1963 the number of food manufacturers declined from about 40,000 firms to about 32,000.[5] The dropout rate was especially high between 1958 and 1963, when the number of companies fell from 36,000 to 32,000. If this high dropout rate continues, the number of food manufacturing firms would be halved by 1985. Although the change in the number of firms has varied from one food industry to another, generally the more highly concentrated food industries experienced higher dropout rates than the less highly concentrated ones.

Not only has the number of firms been declining in most of the food manufacturing industries, but the expanding volume of business has become increasingly concentrated in the hands of a few of the largest remaining firms. In 1966 there were about 30,000 firms engaged in the various food manufacturing industries; yet the largest 50 firms accounted for 52 percent of all the assets of food manufacturers. This represented a sharp increase over 1950, when the top 50 firms held 42 percent of the total assets.[6]

Of all the measures of overall concentration perhaps the most significant is profits. When there is considerable disparity in the total profits of firms, particularly when the firms with the greatest profits operate across many product lines, some firms are capable of engaging in competitive strategies in particular markets that impose short-run drains on profits not possible for less diversified competitors. In 1963 the 50 largest food companies received about 61 percent and the 100 largest food companies received about 71 percent of the total profits of all food manufacturing companies. The remaining 29 percent was divided among the over 30,000 food manufacturing companies.[7]

Sales concentration is high—and rising— in the individual food manufacturing industries. Over 20 percent of all food industries fall in the "very highly concentrated" category of oligopolies.[8] Nearly 30 percent fall in the "high-moderate" and "highly concentrated" categories. Empirical studies have demonstrated that

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[4] A product extension merger is one that unites two corporations whose activities are functionally related at the production or marketing levels, but whose products are not close substitutes. Thus, in grocery products manufacturing the term describes any non-vertical, nonhorizontal merger that combines two firms engaged in the manufacture of household consumer products marketed through retail grocery stores.

[5] *The Structure of Food Manufacturing*, Technical Study No. 8, National Commission on Food Marketing, June 1966, p. 28. This study was prepared by the staff of the Federal Trade Commission for the National Commission on Food Marketing.

[6] *Ibid.*, pp. 22–24.

[7] *Ibid.*, pp. 24–25.

[8] See Appendix Tables 1 and 2.

firms in highly concentrated industries have considerable market power.[9] The National Commission on Food Marketing concluded that high market concentration adversely affected competition:

High concentration in the food industry is undesirable because it weakens competition as a self-regulating device by which the activities of business firms are directed toward the welfare of the public at large. When a few large firms dominate a field, they frequently forbear from competing actively by price; competition by advertising, sales promotion, and other selling efforts almost always increases; and the market power inescapably at the disposal of such firms may be used to impose onerous terms upon suppliers or customers.[10]

An upward concentration trend has been most pronounced in consumer industries selling highly differentiated products. Product differentiation is usually associated with large-scale promotion and advertising expenditures on network television.[11] Relatively few food manufacturers are capable of utilizing effectively television and certain other advertising media. In 1964 the 8 largest food manufacturers accounted for 40 percent, the 20 largest 71 percent, and the 50 largest 88 percent of network television advertising done by food manufacturers.[12] The 50 largest companies also accounted for 78 percent of all such advertising in general magazines. The National Commission on Food Marketing concluded with respect to large-scale promotional effort:

Advantages in selling—advertising, sales promotion, a sales force—frequently are gained by very large firms. National advertising is extremely expensive, and substantial discounts to large advertisers increase the difficulties faced by smaller competitors. Such advantages of large size do not have corresponding value to the public at large and are not persuasive reasons for accepting high concentration in the food industry.[13]

Although there are pronounced advantages of large-scale promotion and selling, there do not appear to be corresonding economies of large-scale production.[14] On this point the National Commission on Food Marketing concluded:

. . . medium-sized firms commonly are, or can be, about as efficient in processing or physical distribution as the largest firms. They usually are entitled to cost-justified discounts for large-volume purchases. Little social gain in these respects is realized by replacing such firms by larger ones.[15]

Not only do advertising and promotional activities tend to increase concentration in consumer product markets, but the conglomerate character and large absolute size of leading companies enable them more effectively to differentiate their products by large-scale promotional effort. The leading firms in most food manufacturing product classes operate across many product lines. Positions among the top four or eight firms in individual food product markets are held mainly by a relatively small number of large, diversified congomerate enterprises that have achieved much of their relative size through mergers.

When firms hold strong positions in many industries, particularly concentrated ones, this may affect the condition of entry and the type of conduct to be expected in particular product markets.[16] Where entry is contingent on successfully carving out a market share from leading firms, it is more difficult where the leading firms have a strong power base.

The concentration of leading producing positions in food product markets is high and has continued to grow. In 1963, 62 percent of the 4 leading positions of 116 food products were occupied by just 50 companies.[17] Over the nine-year period between 1954 and 1963 the percent of top positions of 116 product classes that were held by the 100 largest food manufacturers increased from 63 to 70 percent.

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[9] Bain, Joe S., *Barriers to New Competition*, 1959; *The Structure of Food Manufacturing, op. cit.*, pp. 210–212; Weiss, L. W., "Average Concentration Ratios and Industrial Performance," *Journal of Industrial Economics*, July 1963; Collins, Norman R. and Preston, Lee, "Concentration and Price Margins in Food Manufacturing Industries," *The Journal of Industrial Economics*, July 1966; Mann, H. M., "Seller Concentration, Barriers to Entry and Rates of Return in Thirty Industries, 1950–1960," *Review of Economics and Statistics*, August 1966.

[10] Food Commission Final Report, *op. cit.*, p. 94.

[11] *The Structure of Food Manufacturing, op. cit.*, pp. 61–104; and Senate Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, Hearings on *Economic Concentration*, Part 5, 1966, pp. 1902–1910.

[12] *The Structure of Food Manufacturing, op. cit.*, p. 66.

[13] *Final Report, op. cit.*, pp. 93–94.

[14] *The Structure of Food Manufacturing, op. cit.*, pp. 83–100.

[15] *Final Report, op. cit.*, p. 93.

[16] See Commission decisions *In the Matter of Procter & Gamble Company, supra*, pp. 47–51, and *General Foods Corporation, supra*, pp. 18–31.

[17] *The Structure of Food Manufacturing, op. cit.*, p. 44.

The largest firms have been especially active in acquiring leading positions in concentrated product classes.[18]

The National Commission on Food Marketing concluded that multi-product or so-called conglomerate food manufacturers enjoyed certain competitive advantages:

The size and diversity of the large food conglomerate give it great ability to survive its own mistakes or intense competitive struggles in particular product fields. It can engage in reciprocal trading arrangements not available to conventional firms. Food conglomerates are likely to grow, to reduce the number of independent competitors in the industry as a whole, and to face the various segments of the industry more nearly into a single system characterized by the kind of nonprice competition in which they excell.[19]

III

PRODUCT EXTENSION MERGERS IN FOOD MANUFACTURING

A merger movement in food manufacturing has been under way since the mid-1950's. The tide of mergers has risen steadily in recent years to reach record levels in 1967.[20]

As this merger movement progressed, the character of mergers changed from small, horizontal mergers to large product extension mergers and geographic market extension mergers. *Product extension* mergers multiply the number of functionally related product markets in which acquiring companies operate, while market extension mergers increase the number of geographic markets in which a firm operates.

Large food manufacturers have used mergers almost exclusively to expand into new industries. Eighty-eight percent of the new industries entered between 1950 and 1966 by 25 of the largest grocery manufacturers were entered through merger.[21] The acquired companies, in addition to being leading producers in individual product markets, usually held product differentiation advantages. Many had been innovators of new products and most exhibited favorable growth potential.

Merger activity in the current merger movement has been concentrated among the largest food manufacturers. The 50 largest food manufacturers were especially active acquirers.[22] Almost one-fourth of their total assets in 1965 was attributable to mergers made during 1951–65, and nearly 40 percent of their total asset growth over the period was due to mergers.[23] It has been estimated that, had it not been for mergers, and assuming merger growth would not have been offset by accelerated internal growth, overall concentration of food manufacturing assets would have declined between 1950 and 1965.[24]

Since 1950, about 80 food manufacturers with assets of $10 million or more have been acquired. *This represents a very high percentage of the most viable independent food manufacturers—perhaps as many as one-half.* At the beginning of 1966 only 219 food manufacturers had assets of $10 million or more. If the top 50 are excluded, not more than 75 of the remainder have achieved a significant degree of product differentiation. These 75 companies will be the chief targets of future acquisitions.

The canning industry illustrates how mergers have eroded the number of medium size food companies. In 1958, there were 26 independent canners with sales between $10 and $50 million. By 1966, nearly half (12) had been acquired by larger companies and most by large conglomerate grocery products manufacturers. Of the 14 which had not been acquired, one had gone out of business and 6 were grower cooperatives. Even more important, 6 of the 7 top advertisers among the 26 companies cited above were acquired.

The high cost of television and other preferred methods of advertising has been a major stimulus to mergers. In the past, this factor has been magnified by the advertising rate structures of various media, which ranged up to 30 percent or more in some advertising media. To obtain a 30-percent discount in television advertising, for example, annual expenditures of $3 million or more were

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[18] See Appendix Table 3.
[19] *Final Report, op. cit.*, p. 95.
[20] See Appendix Tables 4 and 5.
[21] *The Structure of Food Manufacturing, op. cit.*, p. 125.
[22] *Ibid.*, pp. 116 ff.
[23] *Ibid.*
[24] *Ibid.*

required in a single network.[25] Only the largest food manufacturers have advertising budgets which permit this amount of spending.

Large conglomerate acquiring companies have substantially stepped up the amount spent on advertising the products of acquired companies. Often immediately after an acquisition the level of advertising is sharply accelerated with television advertising showing the greatest absolute increases.[26] There is little doubt that the immense promotional budgets of the largest firms give them a degree of market control not possessed by smaller enterprises. It may raise barriers to entry confronting potential entrants and may destroy or weaken smaller rivals.

IV

IMPLICATIONS OF RECENT STRUCTURAL CHANGES

Experience based upon litigated cases, published economic studies prepared by the Commission's staff, and the findings of the National Commission on Food Marketing lead to the conclusion that the following salient characteristics of grocery products manufacturing have a bearing on the future of competition.

(1) Most food manufacturing industries are characterized by medium to high levels of concentration.

(2) The average level of industry concentration has increased over the past two decades; the major exceptions to this trend occurred in markets where product differentiation was not strong.

(3) Market power is positively correlated with the level of market concentration; i.e., profit rates are significantly greater in highly concentrated industries than in less concentrated industries.

(4) The largest food manufacturers have greatly expanded their share of total food manufacturing in recent years; practically all of this increase is directly attributable to mergers.

(5) Most of the largest food manufacturers operate across a number of food manufacturing industries, and occupy the leading positions in most of these, particularly in the highly concentrated ones.

(6) The barriers to entry in most sectors of grocery products manufacturing have risen in recent years; the most important barriers to entry are associated with product differentiation maintained and achieved by advertising.

(7) Only a relatively few grocery products manufacturers are large enough to achieve all the advantages of large scale advertising. Smaller advertisers may be at a competitive disadvantage.

(8) Because of the high level of market concentration and high barriers to entry in many markets, actual or threatened entry via internal growth by potential competitors may have a salutary influence on competitive performance in grocery products manufacturing.

(9) The large grocery products manufacturers are the leading potential entrants into most grocery products markets. Past growth experience indicates that multi-product grocery product manufacturers with assets of about $250 million or more are most prone to enter other grocery products industries.

(10) Since 1950 the leading grocery products manufacturers have "entered" new industries almost exclusively by acquiring leading independent companies already in these industries rather than building their way in. A small group of about two dozen companies with assets of $250 million or more accounted for the bulk of all acquisitions.

(11) When leading potential competitors expand into an industry by merger rather than internal growth, such "entry" does not enhance competition in a fashion comparable to that brought about by entering by internal growth. On the contrary, the merging-in process may affect the vigor of competition either by (a) removing the potential entrants as a constraint of members of the industry, or (b) eliminating the new capacity that actual entry would have provided.

(12) Although there may be a number of large grocery products manufacturers with the *capacity* to enter an industry, few may, at any given time, have a strong incentive to enter by internal growth.

(13) When large conglomerate firms enter an industry by merger, they may further raise barriers to entry, largely because of the enormous financial resources flowing from their size and the strong positions they hold in some

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[25] Blake, H. M. and Blum, J., "Network Television Rate Practices: A Case Study in the Failure of Social Control of Price Discrimination," *Yale Law Journal*, July 1965, pp. 1339–41; *The Structure of Food Manufacturing, op. cit.*, pp. 128–131.

[26] *Ibid.*, pp. 125–128.

oligopolistic industries. This power is frequently manifested through massive promotional campaigns. The resulting increase in barriers to entry may place existing smaller competitors (who entered before barriers were raised) at a competitive disadvantage and reduce the restraining influence exercised by potential competitors.

In sum, while there are still some 30,000 food manufacturing companies, relatively few of these—not over 50—are either the leading actual competitors or are among the leading *potential competitors* in most *highly concentrated* grocery products industries. Quite clearly, in the decades ahead these large firms will play a major role in determining the nature and extent of competition in food manufacturing.

Importantly, at the beginning of 1966 there were only 172 food manufacturing companies with assets between $10 million and $100 million. Large acquirers are especially interested in companies of this size that have achieved a significant degree of product differentiation. Fewer than half of those companies meet this test. Hence, a continuation of recent merger trends could eliminate this entire tier of successful medium size companies.

The structure of food retailing and the imperatives of modern adveristing and promotion provide a tremendous stimulus for large scale operations in food manufacturing, particularly to those firms selling products under their own brands. Most probably, very few food manufacturing concerns are reaping all the advantages of large scale promotion. This inevitably places a strong incentive on smaller firms either to become larger or to discontinue business via the merger route.

If the above characterizations are correct, it follows that many small and medium size companies will continue to have a strong incentive to sell out or merge. It does not follow, however, that they must inevitably merge with the largest companies. Public policy may affect the direction, as well as the extent, of the merger movement. In view of recent structural developments, channeling the direction of merger activity away from those acquiring companies which may adversely affect competition may create an environment conductive to growth and vitality among small and medium size grocery products manufacturing companies.

Considering the industry context involved, unrestrained merger activity by certain of the largest companies may adversely affect competition, not only by eliminating them as leading potential competitors but by further raising barriers to entry. Nor do "efficiency" arguments provide compelling economic justification for extensive mergers by these companies. Certainly large acquiring grocery products companies need not make further mergers to operate efficiently.

These conclusions are supported by the findings of the National Commission on Food Marketing, which concluded:

There is a tendency for business in the several fields of the food industry to become more concentrated in the hands of a few large firms except where special circumstances prevail—for example, in meat packing. In neither food processing nor distribution do economies of operation resulting from large size necessitate high concentration in national markets. The United States is fortunate in being large enough to permit both high efficiency and effective competition in foods. But as indicated . . . firms tend to grow, especially by merger and acquisition, well beyond the size needed to attain full operating efficiency. In the absence of restraint, concentration is expected to increase in most fields of the food industry.[27]

MAJOR CRITERIA FOR ASSESSING PRODUCT EXTENSION MERGERS IN GROCERY PRODUCTS MANUFACTURING UNDER SECTION 7 OF THE CLAYTON ACT

In view of the changing structural characteristics of grocery products manufacturing and the competitive implications of those changes, it is appropriate that the Commission indicate the knds of mergers whch may raise questions under Section 7 of the Clayton Act, as amended. This announcement does not constitute an expression of the views of the Commission or any individual Commissioner on the legality of any particular merger or acquisition. On the basis of its current knowledge, the Commission can identify at least four major criteria for selection of grocery product extension type mergers which raise significant question of law of policy. Acquisitions with these factors are those in which:

(1) Both the acquiring and acquired companies engage in the manufacture of

[27] *Final Report, op. cit.*, pp. 105–106.

grocery products. Grocery products include food and other consumer products customarily sold in food and grocery stores.

(2) The combined company has assets in excess of $250 million.

(3) The acquiring company engages in extensive promotional efforts, sells highly differentiated consumer products, and produces a number of products, in some of which it holds a strong market position. A strong market position is defined as being one of the top four producers of a product in which the top four companies hold 40 percent or more of the value of shipments.

(4) The *acquired* company is either among the top eight producers of any one important grocery product, or has more than a 5 percent share of a relevant market.

Although the above criteria have specific reference to mergers among manufacturers of grocery products, the Commission instructs its staff to apply the same general criteria in identifying for attention mergers where (1) grocery manufacturers acquire nongrocery manufacturing firms selling products that are presold to consumers with advertising and promotion of the same general type used by grocery products companies (2) nongrocery products manufacturers selling advertised and promoted consumer products acquire grocery products manufacturers.

This announcement should not be interpreted to mean that grocery products manufacturers must request Commission approval prior to the consummation of any merger or acquisition. However, the Commission shall continue to provide advisory opinions, as provided by its Rules of Practice, regarding the legality of particular mergers, and invites those contemplating mergers to avail themselves of this program in any situation where they are uncertain as to the legality of a prospective merger.

APPENDIX TABLE 1.—CLASSIFICATION OF FOOD MANUFACTURING INDUSTRIES BY CONCENTRATION TYPES, 1958

Bain's industry concentration type [1]	Number of industries and percent of food industry [2] value added	
	Number	Value added
I. Very highly concentrated oligopolies	9	14
II. Highly concentrated oligopolies	4	5
III. High-moderate concentrated oligopolies	8	40
IV. "Low grade" oligopolies	12	22
V. Unconcentrated industries	10	19
Total	43	100

[1] Joe S. Bain, "Industrial Organization," John Wiley & Sons, 1959, pp. 124–133. Bain's type I, very highly concentrated class, includes industries whose top 8 firms control 90 percent or more of production or whose top 4 control 75 percent or more. The equivalent percentages for type II are 85–90 percent for the top 8 or 65–75 percent for the top 4. Type III, 70–85 percent for the top 8 or 50–65 percent for the top 4. Type IV, 45–70 for the top 8 or 35–50 for the top 4. Unconcentrated industries would fall below type IV.

[2] Food and kindred products industries, excluding alcoholic beverages.

Source: "The Structure of Food Manufacturing," technical study No. 8, p. 31.

APPENDIX TABLE 2.—NUMBER OF INDUSTRIES AND VALUE OF SHIPMENTS BY LEVEL OF CONCENTRATION AND CHANGE, 1947-63

Type of industry	Number of industries	A: Number of industries in which 4-firm concentration: Increased 3 percentage points or more	Changed less than 3 percentage points	Decreased 3 percentage points or more	A: Number of industries in which 8-firm concentration: Increased 3 percentage points or more	Changed less than 3 percentage points	Decreased 3 percentage points or more
Total	213	81	46	86	95	50	68
Producer goods	332	38	32	62	44	38	50
Consumer goods	81	43	14	24	51	12	18
Undifferentiated	28	10	7	11	14	5	9
Moderately differentiated	36	21	5	10	23	6	7
Highly differentiated	17	12	2	3	14	1	2
	Industry shipments (millions)	B: Percent distribution of shipments			B: Percent distribution of shipments		
Total	$175,721	35	20	45	44	18	38
Producer goods	103,854	21	22	57	27	24	49
Consumer goods	71,867	54	17	29	68	10	22
Undifferentiated	12,258	26	12	62	36	4	60
Moderately differentiated	28,089	55	23	22	70	14	16
Highly differentiated	31,520	65	13	22	78	8	14

Source: Bureau of Economics, Federal Trade Commission, based on "Consentration Ratios in Manufacturing Industry 1963," Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U.S. Senate, 89th Cong., 2d sess.

APPENDIX TABLE 3.—4 LEADING POSITIONS OF FOOD PRODUCT CLASSES OCCUPIED BY 100 LARGEST FOOD MANUFACTURERS, BY 4-FIRM PRODUCT CONCENTRATION RATIOS, 1954, 1958, AND 1963

Product class concentration ratio for 4 largest companies	Number of product classes: 1954	1958	1963	Percent of leading positions occupied by 100 largest food manufacturers: 1954	1958	1963	Percentage point change, 1954 to 1963
Under 20	8	7	11	62	61	66	+4
20 to 39	40	52	52	61	68	67	+5
40 to 79	46	47	40	65	63	74	+9
80 to 100	9	7	13	64	75	73	+9
All product classes	103	113	116	63	66	70	7+

Source: Special tabulation by the Bureau of the Census.

APPENDIX TABLE 4.—ACQUIRED AND TOTAL ASSETS OF THE 50 LARGEST FOOD MANUFACTURING COMPANIES OF 1965 FOR THE PERIOD 1950-65

[In millions of dollars]

	Assets acquired by the 50 largest food manufacturing companies of 1965: Each year	Cumulative
Year:		
1950	$10	$10
1951	42	52
1952	23	75
1953	63	138
1954	88	226
1955	190	416
1956	53	469
1957	40	509
1958	152	661
1959	103	764
1960	336	1,100
1961	112	1,212
1962	135	1,347
1963	164	1,511
1964	263	1,774
1965	356	2,130
1966	560	2,690

Source: "The Structure of Food Manufacturing," Technical Study No. 8, p. 263.

APPENDIX TABLE 5.—ACQUISITIONS OF FOOD MANUFACTURERS WITH ASSETS OF $10,000,000 OR MORE, 1951-68

[Dollars in millions]

	Number of acquisitions	Acquired company assets in year prior to acquisition
Year:		
1951	1	$11
1952	2	41
1953	2	49
1954	4	90
1955	4	77
1956	4	179
1957	1	14
1958	3	82
1959	4	60
1960	6	318
1961	5	146
1962	4	94
1963	6	187
1964	9	167
1965	8	262
1966	12	347
1967	8	551
1968—1st quarter[1]	7	927
Total	90	3,602

[1] Including 4 pending acquisitions with total assets of $613,000,000 which are scheduled for consummation in 1968.

Source: Bureau of Economics, Federal Trade Commission.

EXHIBIT D

FEDERAL TRADE COMMISSION NEWS

WASHINGTON, D.C.,
Wednesday, March 7, 1973.

FTC SAYS ITS ENFORCEMENT POLICY REGARDING MERGERS AND ACQUISITIONS IN FOOD DISTIBUTION INDUSTRY FOSTERS COMPETITION

The Federal Trade Commission announced today that its strict monitoring of the food distribution industry had arrested mergers and acquisitions by the nation's largest food distribution companies. The Commission stated that its program also had fostered competition in food distribution and had encouraged entry into local markets by internal expansion, rather than by acquisition.

The program, a response to economic analysis of grocery retailing, began in the early 1960's with cases against mergers involving large grocery chains and developed into a strong enforcement policy statement in 1967.

The policy focuses on mergers and acquisitions by retail food chains resulting in combined annual food store sales in excess of $500 million. The policy was implemented by a Commission resolution of September 13, 1967, directing certain corporations in food distibution to file special reports on anticipated mergers or acquisitions. Essentially, the resolution requires that the Commission receive 60 days advance notice of any merger or acquisition that would result in total food sales, from both wholesale and retail operations, in excess of $100 million. To facilitate this reporting, FTC staff mails report forms to food retailers and wholesalers having yearly sales above that amount.

The reports are used to determine whether a Section 7 (Clayton Act) investigation is justified by the Commission.

Impact of the Commission's enforcement policy is apparent in the accompanying tables.

The number of acquisitions of food distributors was less than 20 per year between 1950 and 1953 and then jumped to 55 in 1955 and continued at over 50 per year, with the exception of two years, until 1964. (Table 1)

In the decade 1955–1964 the number of acquisitions averaged 55 per year. Since the implementation of the enforcement policy, the number of acquisitions has averaged 27 per year, a level more comparable to that before 1955. However, the

size of the acquisitions per year (in terms of sales of the acquired companies) has increased. For the decade 1955–1964 the average was $418 million per year; since 1967, $494 million—an increase of 18 percent.

The Commission said that the important change has occurred in the pattern of acquisitions by the top 20 supermarket chains, where acquisition activity has shifted substantially toward the medium and small-sized food distributors. (Table 2) From 1950 through 1964, those supermarket chains that were the 20 largest in sales in 1963 made 48 percent of all acquisitions of grocery retailers. In recent years these same top 20 have made only 26.6 percent of all such acquisitions. The average size of their acquisitions has declined proportionally—from an average of $290 million per year in sales during the decade 1955–1964 to $158 million per year since the introduction of the policy. In 1971 most acquisitions were made by small and medium-sized food distributors.

Thus, since the introduction of the Commission's policy, the annual rate of acquisitions in food distribution has fallen by half, and the proportion of acquisitions made by the 20 largest chains has been halved in terms of numbers and average size. While financial conditions have been less favorable for mergers in recent years, it is unlikely that this factor alone would have served to shift merger activity in food distribution toward small and medium-sized food distributors.

The Commission said its merger policy has forced large food chains to turn to internal expansion to achieve growth, and several of the previously acquisition-oriented firms have gone to discounting to enter new markets. It is believed that this may explain the trend toward discounting among food retailers.

Since the adoption of the Commission's policy, more than half of the major food chains have introduced discount pricing in some or all of their stores—reversing sharply the trend in grocery chain markups following World War II.

The Commission also credited its efforts to arresting the growth in the concentration of sales. The 20 largest grocery chains increased their share of national sales from 26 to 34 percent from 1948 to 1963, largely through acquisitions.[1] By 1967, the percentage had dropped to 33.[2]

At the city level, the average share of the top 4 chains increased from 43.9 percent in 1954 to 46.5 in 1963. Recent data from a private research organization indicate that the trend has been reversed and that the 1971 average may be lower than in 1954.[3]

TABLE 1.—ACQUISITIONS OF FOOD DISTRIBUTORS AND SALES OF ACQUIRED COMPANIES

Year	Number of acquisitions	Sales of acquired companies (millions of dollars)	Year	Number of acquisitions	Sales of acquired companies (millions of dollars)
Before policy:			Before policy—Continued		
1950	5	$4	1962	53	[1] $306
1951	12	28	1963	51	[1] 568
1952	10	71	1964	41	[1] 312
1953	13	88	After policy:		
1954	24	76	1965	28	558
1955	55	559	1966	40	539
1956	69	450	Fiscal year:		
1957	52	319	1968	16	587
1958	74	517	1969	46	805
1959	63	[1] 319	1970	24	124
1960	44	[1] 307	1971	23	461
1961	50	[1] 518			

[1] Estimated.

Source: For data before policy, National Commission on Food Marketing, "Organization and Competition in Food Retailing," technical study No. 7 (1966), p. 104. For more recent data, memoranda to Commission reporting on the food distribution policy.

[1] National Commission on Food Marketing, *Organization and Competition in Food Retailing*, Technical Study No. 7 (1966), Figure 5–4, p. 113.

[2] Federal Trade Commission, 1969 Food Retailing Survey.

[3] Metro Market Studies, Inc., *Grocery Distribution Analysis and Guide*, Greenwich, Conn., 1971.

TABLE 2.—ACQUISITIONS OF FOOD DISTRIBUTORS BY TOP 20 CHAINS OF 1963

Year	Number of acquisitions	Sales of acquired companies (million)
Before policy:		
1950	2	$3
1951	6	25
1952	5	55
1953	4	77
1954	7	37
1955	23	465
1956	32	310
1957	20	194
1958	41	361
1959	34	[1] 136
1960	25	[1] 201
Before policy—Continued		
1961	30	[1] $407
1962	25	[1] 179
1963	27	[1] 463
1964	16	[1] 188
After policy:		
1965	5	61
1966	6	110
Fiscal year:		
1968	2	225
1969	12	308
1970	9	19
1971	6	60

[1] Estimated.

Source: For data before policy, National Commission on Food Marketing, "Organization and Competition in Food Retailing," technical study No. 7 (1966), p. 104. For more recent data, memorandums to Commission reporting on the food distribution policy.

EXHIBIT E

Advisory Opinions Affecting Food Industry, 1968–1971

Exchanging wage rates among association members, January 27, 1968.
Merger: indiscernible, competitive effects, February 13, 1968.
Merger: de minimis competitive effects, February 13, 1968.
Merger: imminent insolvency, February 13, 1968.
Merger: prohibition of certain acquisitions, February 13, 1968.
Merger: imminent bankruptcy, February 13, 1968.
Merger: imminent insolvency, February 13, 1968.
Merger: probability of liquidation, February 13, 1968.
Merger: imminent bankruptcy, February 13, 1968.
Merger: de minimis competitive effects, February 13, 1968.
Merger: de minimis competitive effects, February 13, 1968.
Questions raised by merger of firms in same industry, February 13, 1968.
Random distribution of "bonus certificates" with purchase, February 16, 1968.
Clearance denied for merger of competing milk companies, February 20, 1968.
Use of computer system to collect and disseminate marketing data, April 3, 1968.
Commission denies clearance for proposed merger of substantial local independent producer of a food product and a leading national processor and distributor of the same product, April 30, 1968.
Receipt of discount in lieu of brokerage by respondent wholesale food distributor, May 7, 1968.
Commission advises agricultural cooperatives it has no objection to proposed purchase of country elevators of financially-troubled direct competitor, August 27, 1968.
Commission advised applicant it cannot approve a proposed partial acquisition of a direct competitor's business that may substantially increase applicant's market power, August 27, 1968.
Formation of common marketing association by agricultural cooperatives, August 31, 1968.
Commission refuses to grant blanket approval to small baking company to be acquired by anyone including corporations subject to commission acquisition-prohibition orders, October 1, 1968.
Advertising on food product wrapper, October 8, 1968.
Commission does not object to proposed acquisition by dairy products producer-processor-distributor, November 25, 1968.
Commission declined to approve proposed three party promotional plan in food industry, December 20, 1968.
Commission refusal to grant blanket approval to small dairy to be acquired by any corporation subject to Commission acquisition prohibiting orders, February 3, 1969.

Legality of membership by brewer in beer wholesalers' trade association, April 16, 1969.

Premerger clearance not granted: grocery stores in concentrated market, May 2, 1969.

Tripartite promotional plan in the grocery field, July 10, 1969.

Tripartite promotional plan in the grocery industry, July 11, 1969.

Request denied for approval to sell dairy company to any dairy company under Commission order, September 2, 1969.

Tripartite promotional assistance plan, September 16, 1969.

Tripartite promotional plan for larger supermarkets, October 22, 1969.

Refusal of alternatives in tripartite promotional assistance plan, October 22, 1969.

Tripartite promotional plan in the grocery field, October 29, 1969.

Advertising of hamburgers made of chuck and plate, December 16, 1969.

Commission declines to render advisory opinion because of insufficiency of information furnished by applicant potato seller who seeks approval to pass any brokerage charges on to customers, January 5, 1970.

Tripartite cents-off coupon promotion, March 2, 1970.

Advertising of grocery and non-grocery products on shopping carts of retail grocery stores, June 8, 1970.

Legality of proposed reciprocal advertising plan, March 29, 1971.

Petition for reconsideration of prior FTC advisory opinion regarding proportionally equal treatment of retail cooperatives and nonaffiliated retailers denied, June 29, 1971.

Advertising of milk of particular handler as compared to promotion of milk products generally, March 1, 1971.

Maintenance of purchase levels under divestiture order requiring purchases by divesting company from new competitor approved, October 22, 1971.

Tripartite promotional plan involving in-store audio advertising, August 28, 1970.

Distribution of a weekly magazine through retail outlets in the New York Metropolitan area, August 12, 1970, April 16, 1971.

In-store promotional plan approved, September 3, 1971.

Advertising of grocery products on shopping carts or retail grocery stores, April 16, 1971.

Proposed game program for gasoline and retail food industries, February 4, 1971.

Legality of promotional plan involving menu-recipe-coupon, February 25, 1971.

Tripartite advertising plan using grocery carts, June 22, 1970.

Acquisition of certain fixtures and equipment formerly used in three closed retail food stores located in Indiana, August 10, 1971.

Promotional assistance plan whereby labels from grocery and household products may be redeemed when affixed to designated portions of a book which the company proposes to sell to competing retailers, August 6, 1971.

Provide packagers of food and grocery products with slide projection advertising of their products in retail outlets, March 31, 1971.

EXHIBIT F

Proposed Protocol for Retail Food Price Survey [Para. 50,159]

A proposed protocol for the Federal Trade Commission Retail Food Price Survey is hereinafter set forth and is today made public by the Commission for consideration by industry members and other interested or affected parties pursuant to the Federal Trade Commission Act as amended, 15 U.S.C. sections 45, 46. In general, the protocol describes a procedure for the twice monthly collection and publication of prices of 50 to 100 commonly purchased supermarket items, on a chain by chain basis in selected metropolitan areas.

Opportunity is hereby extended by the Federal Trade Commission to all persons, firms, corporations, organizations or other parties affected by or having an interest in the proposed protocol for the Federal Trade Commission Retail Food Price Survey to present to the Commission their written comments concerning the protocol. For this purpose, copies of the proposed protocol may be obtained upon request to the Commission. Such comments may be submitted by letter, memorandum, brief or other written communication not later than March 16, 1973 to Assistant Director, Division of General Litigation, Bureau of Consumer

Protection, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, D.C. 20580. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit 20 copies.

The comments presented with respect to the proposed protocol will be available for examination by interested parties at the Office of the Secretary, Federal Trade Commission.

I. *Introduction.* The purpose of the proposed protocol is to notify retail food stores, trade associations, consumer organizations and other persons interested in the retail food industry that the Federal Trade Commission intends to initiate a retail food price survey. The design of the survey and the alternative methodologies which may be employed are disclosed at this time. In this way, the Commission is inviting views from all interested persons as to its methodology for the survey.

The Commission's interest in this area has been heightened by the recent widespread use in supermarket advertising of such terms as "lowest prices" and "discount prices." These claims often lead the consuming public to believe that they can satisfy their food needs at the lowest cost at the store which claims the "lowest prices."

If the public and the Commission knew whether, in fact, such advertisements were accurate, they would be aided in evaluating competing claims for retail food stores, and in distinguishing between the seller who is advertising truthfully and the one who is unfairly treating both consumers and competitors by representing, directly or by implication, that its prices are low when, in fact, its prices are not lower than those at other competing stores.

Considering the importance of these questions to consumers and businessmen, the Commission, in fulfilling its statutory responsibility under section 5 of the Federal Trade Commission Act (15 U.S.C. section 45) with respect to unfair and deceptive practices and unfair methods of competition, will initiate retail food price surveys in selected metropolitan areas. These surveys will enable the Commission swiftly to institute appropriate enforcement proceedings against significant false advertisers and, thus, prevent injury to the truthful competitor and the consumer.

Also, in light of the importance of these questions to consumers and businessmen and as an aid in fulfilling its statutory responsibilities under section 5, the information secured by the Commission from the surveys will be made available to the public, pursuant to section 6(f) of the Act, under such terms and conditions as the Commission may from time to time determine. Publication can aid enforcement in two ways: First, the publication of this information will encourage advertising supermarkets to make truthful claims about price. Second, public disclosure can enhance competition by assisting consumers to make a more rational choice among competing supermarkets.

The survey will be conducted in an as yet to be determined number of Standard Metropolitan Statistical Areas (SMSAs). Designed to be experimental, the program will be run for a fixed period of time, after which it will be evaluated as to its significance for Commission enforcement activities, impact on the protection of consumers, and enhancement of competition.

II. *Proposed protocol*—A. *Firms to be included and surveyed.* The following components of the supermarket industry will be included in each survey: All food chains operating in the selected SMSA which account for 1 percent or more of the total percent of grocery store sales in that area, or the top 10 chains by volume, whichever yields the lower number of stores, as determined by Metro Market Studies' Grocery Distribution Guide (1972 ed.).

For the purpose of the above standard, food chain is defined as a corporation, partnership, or sole proprietorship which exercises price control over three or more store locations engaged in the retail sale of food in the given SMSA. This price control can be exercised by specifying the prices charged for each item sold by the individual store or by specifying the percentage of markup over wholesale or profitability of various product categories sold by the store. Such control does not necessarily mean that the prices charged by all individual stores in the chain must be uniform but the control looks only to the relationship between the corporate headquarters, regional office, or local office and each individual store within the corporate structure. Voluntary or cooperative groups will not be included in the survey.

Chains which will be subject to the survey will be notified approximately 1 month before the survey is initiated.

Initially three store locations will be surveyed for each chain, including those operating three or more store locations within the given SMSA. The surveyed store locations will vary each time the survey is made but they will be chosen to uncover price differences made by each chain in different neighborhoods of the SMSA. Where a chain does not adhere to substantially uniform pricing within the metropolitan area, the price of each surveyed item in each store as well as the address of each store will be published. In compiling for each chain subtotals for food groups and totals for an entire market basket, the average price for each surveyed item will be used. If, however, it is determined that a chain adheres to substantially uniform prices throughout the metropolitan area, only one store will thereafter be surveyed for that chain.

B. *Dates and frequency of the survey.* The first survey will be initiated sometime in 1973. Thereafter, subsequent surveys will be undertaken on a semimonthly basis; one survey during the first 15 days and one during the remainder of each month. The exact date of each survey will not be disclosed until the price data is actually collected. All surveyors engaged in the food price survey will be regular Federal Trade Commission employees. Immediately after the data is collected a copy of the store's prices will be given to the manager of that particular store or his delegate to be reviewed at that time for surveyor error. The Store's representatives must notify the Commission of any inaccurate prices before the surveyor leaves the store. The price data will be published approximately 2 days after the survey is made. Each published survey will disclose the exact date on which the data was collected.

C. *The survey structure and methodology.* The survey will be composed of a sample of 50 to 100 items each time it is made. Approximately one-half of these items will remain constant. The other items will be rotated on a random or probability basis from a master list. Both the master list and the selection method will remain confidential.

The same name brands will be surveyed in each store in any given survey week. thereby achieving exact quality comparability. From time to time, however, name brands will also be rotated. As to some of those products where house brands have a substantial market share, house brands will be surveyed.

Items of fresh meat and produce will be selected to achieve the degree of quality comparability which can be attained through the use of U.S. and State Department of Agriculture grades and specifications, where possible. The surveyor will also be furnished with a detailed description derived from USDA publications and regulations for each meat or fresh produce item to be surveyed. See 7 CFR 51 et seq. Other items will be described by specifications as to size or weight and brand.

Once a tentative survey list is compiled, a pre-survey check will be made to insure that the items as specified in the survey list are actually found in virtually all chains. Substitutions will be made for those items found to be missing in a significant number of stores by selecting food items with characteristics similar to one another (e.g., spinach, kale, and broccoli) from the BLS list of food items and/or by choosing another brand, if necessary.

The price of each food item surveyed will be listed individually. High, low, and middle prices will also be listed after each item. The prices of items on sale will be noted by an "S" following the item's price. "N.A." will be recorded for items which are not available and "N.C.Q." (not comparable quality) for meat and produce items which do not carry Federal or State grades.

In cases where a store is missing an item or only offers a noncomparable item, the following procedure will be followed, regardless of whether totals are to be weighted or unweighted. I: We will compute the variation between that store's prices and the average price for other stores on items which that and the other stores have. II: The average price will be computed on the item which is missing or noncomparable in the particular store. The price to be used in computing the basket total will be the average cost for that item (II) adjusted by the store's variation from average on all items (I). Where these extrapolated prices are used, the appropriate subtotals and totals will be marked by an asterisk.

The Commission is presently considering two different methods of computing "market basket" totals and invites industry and consumer comments on the relative merits of the methods.

Under "Method A," the basket total each week at each store will be computed by totaling the cost of one of each product in the surveyed sample for that week. The quantity chosen for each item will be the most frequently purchased quantity of that product as determined by the Bureau of Labor Statistics. The prod-

ucts chosen each week for inclusion in the survey will be selected so as to preserve a dollar ratio for each product group which is approximately equal to the dollar ratio for purchases of that group by consumers as a whole. See Bureau of Labor Statistics, Relative Importance of Components in the Consumer Price Index, 1971–72. At the same time, the items to be surveyed within each product group will be chosen on a sales volume basis, with the most frequently purchased items (certainty items) included in each survey, and the somewhat less frequently purchased items (probability items) rotated on a random or probability basis.

"Method B" differs from Method A chiefly in that those items which command a larger share of the typical consumer's food budget will be more heavily stressed in computing product group subtotals and the total market basket figure. As in Method A, selection will begin by determining the average relative importance by dollar volume of each product group from BLS data. Also as in Method A, selection of products within each product group will be on a probability sample basis with the probability of inclusion proportional to relative sales volume. About one-half of the items (certainty items) will be included every week; the remainder (probability items) will be included sporadically.

The computation of the basket total and product group subtotals will take place in two stages. First, product group subtotals will be computed by adding (a) the prices of all certainty items weighted by their relative sales volume and (b) the prices of those probability items which are included in the particular survey weighted by the relative sales volume of the subgroup within the product group which the probability item represents. In the second stage, the basket total will be computed by weighting the product group subtotals so as to achieve for each product group the same relative importance vis-a-vis, the other product groups that it has in BLS data on average dollar sales volume. The sum of these adjusted product group subtotals will comprise the weighted market basket total. Proposed disclosures to alert consumers to survey limitations for both methods A and B are attached in Appendixes A and B.

D. *Data collection and publication.* The data will be brought to selected regional offices where it will be checked for obvious errors. Sale prices will be checked against the chains' newspaper advertisements. Data will be transmitted by telephone to Commission headquarters for keypunching and computer processing.

The survey results will be announced at press conferences. Copies of the surveys and explanatory material will be distributed to the press and other interested groups. Materials will also be distributed for educational use. In addition, the Commission will attempt to arrange publication of the survey results in a major daily newspaper in each selected SMSA.

III. *Areas of special Commission concern.* The Commission invites comment as to all aspects of the survey, but it is especially interested in receiving comments on the following questions:

1. In how many SMSA's should the survey be conducted? Which ones?
2. What criteria should be employed to determine the inclusion or noninclusion of various retail food marketing entities?
3. How should the existence or absence of zone pricing in an SMSA be ascertained? Where zone pricing exists, how should the zone boundaries be identified?
4. How long should this experimental project be scheduled to run?
5. Of the items in each survey basket, how many should be included each time and how many rotated?
6. Should name brands be rotated from time to time? If so, on what basis?
7. Should "house" brands be surveyed? If so, on what basis and as to which products? How can it be determined whether quality comparability has been achieved?
8. What should the criteria be to ensure quality comparability with respect to meat and fresh produce?
9. How should items to be surveyed within product groups be selected? Should dollar volume, shelf space, or another indicator be the factor which deter-

mines the "leading" products? Should only the "leading" products within a group be surveyed, or should some of the "less important" products be included on a probability basis? On what basis should those items which are not to be included in each survey be rotated? (Possibilities include regular rotation, random selection, and probability selection with probabilities based on relative sales volume.)

10. Is there available data as to product volume which will be more reflective of present consumer purchasing patterns than BLS data? Is there available data reflecting regional consumption differences and if so, should it be used instead of national data in determining products to be surveyed and weights (if any) to be assigned to them?

11. On what basis should items which are unavailable or not of comparable quality be dealt with in computing a basket total?

12. Within product groups, should products be weighted in computing the basket total to reflect sales volume? (This question is illustrated in the comparison of Methods A and B.)

Issued: January 9, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

APPENDIX A

SAMPLE DISCLAIMERS—METHOD A

This survey is not a complete guide to food pricing.

Meat and produce items surveyed were of the same grade at all stores participating in Federal and State grading programs (most stores), but quality may vary within grades, with the result that quality may be somewhat higher at one store than at another.

Sale prices vary from week to week. Therefore, this week's prices may not be indicative of a store's general pricing policy.

Some subtotals and totals have been derived by subsituting an "average" price based on a mathematical formula for missing or noncomparable items. Such subtotals and totals, therefore, are not necessarily an accurate reflection of that store's product group or overall prices as compared with the stores with no missing or comparable items.

In addition to price, service, selection, convenience, and store appearance should be considered in making shopping decisions. The items surveyed do not consitute a statistically valid sample of the items likely to be purchased by a typical consumer. Basket totals are therefore not necessarily indicative of the overall price levels of each store. You will likely purchase different items in different quantities than are on this list, so use these basket totals with extreme caution.

APPENDIX B

SAMPLE DISCLAIMER—METHOD B

This survey is not a complete guide to food pricing.

Meat and produce items surveyed were of the same grade at all stores participating in Federal and State grading programs (most stores), but quality may vary within grades, with the result that quality may be somewhat higher at one store than at another.

Sale prices vary from week to week. Therefore, this week's prices may not be indicative of a store's general pricing policy.

Some subtotals and totals have been derived by substituting an "average" price based on a mathematical formula for missing or noncomparable items. Such subtotals and totals, therefore, are not necessarily an accurate reflection of that store's product group or overall prices as compared with the stores with no missing or noncomparable items.

In addition to price, service, selection, convenience, and store appearance should be considered in making shopping decisions. You will likely purchase different items in different quantities than are on this list, so use these basket totals with extreme caution.

38 Federal Register 1543. See ¶ 7837.

EXHIBIT G

BUREAU OF ECONOMICS RESPONSE TO LETTER OF MAY 18, 1973, FROM PETER W. RODINO, JR., CHAIRMAN, HOUSE COMMITTEE ON THE JUDICIARY

Question 3—Market Structure

What is the size and market structure of the food industry in general, in major product categories (e.g. meat and poultry, dairy, fruits and vegetables, dry groceries, etc.) and in levels of production within major product categories (e.g. grower, processor, wholesaler, retailer)? What food product markets are concentrated?

ANSWER:

Food constitutes a major item in consumer budgets. It is difficult to estimate the overall size of the "food" industry since it is spread over many sectors of the economy. In 1972, personal consumption expenditures for food and beverages were $144.8 billion, which represented 20.1 percent of the $721.1 billion total spent by consumers in that year.[1] Thus about one-fifth of the consumer's dollar went for food and beverages.

The distribution of consumer expenditures among various categories of food products is shown in Table 1, below:

Table 1.—Consumers' relative expenditures for various foods consumed at home, December 1964 [1]

Food group	*Percent*
Meats	24.5
Fruits and vegetables:	
Fresh fruits	4.3
Fresh vegetables	5.9
Processed fruits and vegetables	7.1
Total	17.3
Dairy products	15.5
Bakery products	9.2
Cereals	4.6
Poultry	4.0
Eggs	3.4
Sugar and sweets	3.4
Fats and oils	3.0
Fish	2.5
Beverages, nonalcoholic	6.3
Prepared and partially prepared foods	6.3
Total	[2] 100.0

[1] As reflected by weights in the Bureau of Labor Statistics' index of retail food prices, December 1964.

[2] 79.7 percent of consumers' total food expenditures went for food consumed at home.

Source: *Food From Farmer to Consumer*, National Commission on Food Marketing; 1966, p. 7.

Meats accounted for about one-fourth (24.5 percent) of consumer food expenditures, fruits, vegetables 17.3 percent, and dairy products 15.5; together these three groups accounted for more than one-half of food expenditures.

Food production and distribution can be separated into three general stages; agriculture, food processing, and wholesale and retail distribution. Market structures and competitive conditions in these stages differ significantly:

A. *Agriculture* is often cited as an example of a competitive industry. Leonard W. Weiss states: "In structure, agriculture comes closer to *pure competition* than any other major industry. There are more than one million producers of hogs and

[1] *Economic Report of the President*, January 1973, p. 207.

cattle, and even 9,500 of avocados . . . In such a setting, no farmer can hope to do anything about the price at which he sells." [2] It is possible to find isolated crop lines in which concentration levels are significant and producers have some market power (for example the growing of dates), but these are clearly exceptions. Most of agriculture is competitively structured, and prices are likely to fluctuate substantially in response to supply and demand shifts. Weiss summarizes farm price behavior as follows: "unstable prices and incomes are the natural result of very inelastic demand, high fixed costs and large year-to-year changes in market conditions owing to weather shifts between crops, and general business fluctuations." [3]

Thus, one should not be surprised if there are sharp upward and downward movements in prices at the farm level. This is a natural consequence of the basic structure of agriculture.

B. *Food Processing*—Only a small portion of the consumer's food dollar goes to pay for farm products. It was estimated that in 1964 that food processing and distribution accounted for 68 percent of the consumer's food dollar, while the farm value of crops accounted for only 32 percent.[4]

Food processing industries vary widely in their market structure. The staff of the Federal Trade Commission in 1966 prepared for the National Commission on Food Marketing, tabulations of individual food manufacturing industries, by their basic market structures. While there have been some changes in concentration levels since that time, the basic picture is similar today. These tabulations are presented below.

Food manufacturing industries present a spectrum from the very highly concentrated oligopolies to industries which are basically unconcentrated. One cannot, therefore, generalize as to the type of competitive performance to be expected from "food" industries. It is necessary to examine the particular industry.

TABLE 2.—CLASSIFICATION OF FOOD MANUFACTURING INDUSTRIES ACCORDING TO BAIN'S CONCENTRATION TYPES, 1958

Bain's industry concentration type [1]	Number of industries and percent of food industry [2] value added					
	National or regional industries		Local market industries (average concentration)		Total for type	
	Number	Value added	Number	Value added	Number	Value added
I. Very highly concentrated oligopolies	9	14	(3)		9	14
II. Highly concentrated oligopolies	3	2	1	3	4	5
III. High-moderate concentrated oligopolies	5	8	3	32	8	40
IV. "Low-grade" oligopolies	12	22	(4)		12	22
V. Unconcentrated industries	10	19	(4)		10	19
Total	39	65	4	35	43	100

[1] Joe S. Bain, Industrial Organization, John Wiley & Sons, 1959, pp. 124–133. Bain's type I, very highly concentrated class, includes industries whose top 8 firms control 90 percent or more of production or whose top 4 control 75 percent or more. The equivalent percentages for type II are 85–90 percent for the top 8 or 65–75 percent for the top 4. Type III, 70–85 percent for the top 8 or 50–65 percent for the top 4. Type IV, 45–70 for the top 8 or 35–50 for the top 4. Unconcentrated industries would fall below type IV.

[2] Food and kindred products industries, excluding alcoholic beverages.

[3] Local and small regional market industries were classified by average concentration. However, 4-firm concentration ratios of some markets of local and small regional market industries would cause them to be classed as type I.

[4] None.

Source: Appendix table A–14.

[2] Leonard W. Weiss, *Case Studies in American Industry*, John Wiley & Sons, New York, 1967, p. 19.

[3] *Op. cit.*, p. 85.

[4] *Food from Farmer to Consumer*, Report of the National Commission on Food Marketing, June 1966, p. 11.

APPENDIX TABLE A-14.—CLASSIFICATION OF FOOD INDUSTRIES, EXCLUDING ALCOHOLIC BEVERAGES, BY BAIN'S CONCENTRATION TYPES

Classification [1] and industry	SIC 1958	SIC 1954	Concentration 4-firm	Concentration 8-firm	Value added (thousands of dollars) industry
Type IV (national):					
Meat slaughtering plants [7]	2,011		34	46	1,746,603
Natural cheese	[6] 2,022	2,022	37	42	126,753
Canned and curred seafoods	2,031	2,031	47	58	100,242
		2,032	50	60	
Dehydrated food products	2,034		45	66	75,529
Pickles, sauces, salad dressings	2,035		35	48	164,624
Flour mills	2,041		38	51	393,053
Rice milling	2,044		43	64	53,152
Raw cane sugar	2,061		38	52	21,841
Cottonseed oil mills	2,091	2,881	42	54	63,587
Soybean oil mills	2,092	2,883	40	63	139,612
Animal oils (not elsewhere classified)	2,095	2,889	41	54	24,475
Roasted coffee	[8] 20,995		46	59	461,295
Type total					3,370,766
Type V (national):					
Meat processing plants	2,013		17	25	442,058
Poultry dressing plants [9]	2,015		12	16	310,572
Creamery butter [9]	2,021		11	18	147,207
Canned fruits and vegetables [10]	[6] 2,033	2,033	29	39	808,306
Fresh or frozen packaged fish [11]	2,036		18	30	82,368
Frozen fruits and vegetables	2,037		31	43	323,789
Confectionary products [12]	2,071		18	27	511,688
Grease and tallow [13]	2,094	2,886	23	33	127,120
Manufactured ice [13]	2,097		31	41	107,527
Macaroni and spaghetti [14]	2,098		25	41	67,130
Type total					[15] 2,927,765
Total all types					15,312,994

[1] Joe S. Bain, Industrial Organization, "pp. 124–132, John Wiley & Sons (1959).

[2] A concentration ratio was not computed for canned specialties in 1958. However, the 2 principal product classes in the industry had 4-firm concentration ratios over 90 percent. In 1954, this industry was a part of canned fruits and vegetables (2,033) and dehydrated fruits and vegetables (2,034) and minor parts came from other industries.

[3] This is a national concentration ratio which includes the production of franchised bottlers and is calculated from data published in "Printers Ink," p. 28, June 12, 1964. The census ratio of 11 percent for the top 4 firms fails to take franchised dealer arrangements into account and includes each local producer of a national brand separately.

[4] This is a 1954 industry definition carried forward to 1958 to maintain comparability.

[5] The median of the concentration ratios for the individual States reported in "Concentration Ratios in Manufacturing Industry," 1958, pt. II, table 36, Subcommittee on Antitrust and Monopoly, U.S. Senate 87th Cong., 2d sess.

[6] Concentration ratios for these industries are according to 1954 definitions which were changed only slightly in 1957. Census used these older definitions to maintain comparability. Value added figures are by the new definitions.

[7] The industry is much more oligopsonistic in the purchase of livestock for slaughter than these data indicate. The 4-firm concentration ratios of the 4 largest States which in total accounted for a 3d of all meat slaughtering were: Iowa (66 percent), Minnesota (93 percent), Illinois (61 percent), and Nebraska (71 percent).

[8] This is included as a separate industry in accordance with the revised "Standard Industrial Classification Manual." The 1958 ratio shown here, although a 5-digit ratio, is almost exactly the same as it would be under the revised definition because of the specialization of the plants of coffee roasters.

[9] See footnote 23, ch. II.

[10] Industry 2,033 includes jams and jellies which are produced for regional markets. Except for National Dairy Products and a few other large firms, the industry is composed almost wholly of small single-product, single-plant firms selling within 150–250 miles from the plant. "In the Matter of National Dairy Products Corporation," FTC docket No. 8548, proposed findings of fact, pp. 16–26.

[11] Parts of this industry are highly regional in nature.

[12] A large number of acquisitions affecting this industry, particularly since 1961, have increased concentration significantly, according to an FTC Survey of confectioners and chocolate manufacturers in 1965.

[13] These industries are only marginally related to food. Manufactured ice in particular is of a highly regional nature.

[14] This tends to be a regional industry. For example, only 2 national producers and approximately 12 regional firms supply the whole northwest part of the United States, according to FTC records.

[15] Census classification 2,099 (Food preparations, not elsewhere classified) was not included, except for coffee roasting and leavening compounds. Coffee roasting alone accounts for over half of the shipments in this industry.

Source: "Concentration Ratios in Manufacturing Industry, 1958, pt. I," Subcommittee on Antitrust and Monopoly, U.S. Senate, 87th Cong., 2d sess.; and "1958 Census of Manufacturers," Bureau of the Census, Department of Commerce-National Commission on Food Marketing, technical study No. 8, June 1966.

There are many dimensions to competitive performance[5] and it is difficult to generalize about the diverse list of industries presented above. Nevertheless, with a few exceptions, there appears to be little evidence that food manufacturing competitive performance has been notably deficient. While some industries have consistently shown profits above the average for all manufacturing, profits of food manufacturing firms have been near, or slightly below the average. Over the decade, 1962–71, the average rate of return after taxes on stockholder's equity was 11.2 percent for all manufacturing corporations and 10.4 percent for food and kindred product corporations.[6]

C. *Food Retailing*[7]—Food is sold by a variety of outlets, ranging from convenience stores to large supermarkets. Food retailing is not a highly concentrated industry when considered on a national basis. The four leading firms nationally in 1963 accounted for 20 percent of total sales; the eight largest 27 percent; and the twenty largest 34 percent. In local markets, however, concentration is considerably higher. A special tabulation on local market concentration is attached as an Appendix. For 218 local markets in 1963, the average share of the four largest grocery retailers was 51 percent.

There are considerable variations in concentration levels, however. The four largest firms in Denver, Colorado had 73 percent of grocery sales, indicating an oligopolistic market structure. On the other hand, in Fresno, California the four leaders accounted for only 25 percent. Whether competition is vigorous in a particular market area would depend upon the degree of concentration, as well as other factors.

There have been a number of changes over time in the structure of food retailing, beginning with the chain-store revolution before World War II, and followed by the growth of supermarkets in the postwar era. There has been increasing backward integration by food retailers into food manufacturing, as well as growth of conglomerate food firms. Some of these developments have led to greater efficiency in food distribution; others may have had a detrimental effect on competition. It is impossible in this response to provide an extensive appraisal of recent structural and competitive developments in food retailing. A detailed discussion of these subjects is provided by a 1966 study of the National Commission on Food Marketing.[8]

Question 4—Market Performance

What costs are imposed on the economy by lack of effective price competition in the food industry? How does the food industry compare with other industries in this regard? (Please supply with respect to these questions the FTC Bureau of Economics study of costs imposed on the economy by lack of effective price competition in 100 selected industries).

Answer:

As indicated in response to the previous question, there is not a single monolithic "food industry," but rather many separate food products, which go through several stages of production and distribution. Competitive conditions vary for individual products and for separate stages. The agricultural stage is for the most part characterized by vigorous, effective price competition.

With respect to food processing or manufacturing, market structures vary for individual products from highly oligopolistic to basically competitive. There are likely to be corresponding variations in the effectiveness of price competition.[9]

In food retailing, competitive conditions are also somewhat mixed. In local market areas where concentration levels are high and a few food chains have a large share of the market, price competition is likely to be sluggish. Market areas where concentration levels are lower are likely to have more vigorous price com-

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[5] Price flexibility, technical efficiency, product innovation, and profit rates near the competitive norm are dimensions often considered.

[6] Source: *Economic Report of the President*, January 1973. p. 281.

[7] Food wholesaling is not separately discussed by this response. There is a considerable overlap in wholesaling and retailing functions of chain retailers and it is difficult to separately describe the market structure of food wholesaling.

[8] Technical Study No. 7, *Organization and Competition in Retailing*, National Commission on Food Marketing, June 1966.

[9] This does not mean that there is a perfect correlation between market structure and price competition, but various econometric studies have demonstrated a general relationship. Although it is not possible in this response to systematically analyze the causal factors, the extent of price flexibility and profit rates are known to vary widely among individual food products.

petition. Although it is difficult to generalize, the "food industry" as a whole would not appear to be high on a list of industries lacking in price competition.

With respect to the FTC Bureau of Economics "study of costs imposed on the economy by lack of effective price competition in 100 selected industries," it should be noted that this study was never officially released. The study was described in a journal article,[10] and estimates of "monopoly overcharge" in 100 industries presented. The only thing that can be said about these estimates is that they are based on preliminary research within the Bureau of Economics and are subject to a wide margin of error. The conceptual and data problems involved in making such estimates were overwhelming, and the Bureau of Economics has not been able to refine the estimates to the point where they are usable for policy purposes.

Question 5—Price Increases

What are the implications of recent increases in food prices of competition in the food industry? To what extent does a reduction in supply and increase in price resulting from factors beyond our control (e.g. bad weather), increase the market power and ability to engage in deceptive practices of companies with significant market shares?

Answer:

It is not clear that temporary reductions in supply of food and increases in price will in any way enhance the market power or ability to engage in deceptive practices of firms with significant market shares. Reductions in supply would benefit larger firms only if these firms were somehow able to obtain access to crops while their smaller rivals could not. While there is some vertical integration of food processors and retailers back into crop production, this is rather insignificant. Most agricultural markets are "free" in the sense that anyone willing to pay the price can obtain supplies. Granted, when harvests are poor, prices are likely to be high, but there is no reason to believe that large firms gain any particular advantage.

Nor is it clear that reductions in supply and high prices would permit large food retailers to engage in deceptive practices to a greater extent than their smaller rivals. Periods of shortage, of course, place all food retailers in a position to engage more freely in deceptive acts. Consumers cannot be as fussy if they have difficulty in obtaining adequate supplies of a product. Small stores might actually be in a better position to get away with deceptive acts than large chains, who are exposed to the glare of publicity during periods of public concern about food prices.

Problems of deception and possibly access to supplies are likely to be greater during periods of *shortage* at the retail level than merely periods of high prices. A shortage will occur if prices are artifically held down (as by price controls) below a level at which supply is equal to demand. If prices are not permitted to rise to market-clearing levels, then a black market may develop. During prolonged periods of shortage accompanied by extensive black market activities, large firms might gain advantages over their smaller rivals. This is not likely to occur as a result of brief spurts in price caused by bad weather or some other temporary phenomenon.

Recent price increases—It would appear that food prices have risen recently for two principal reasons: First, there has been a general increase in aggregate demand, and all prices have risen correspondingly. Food prices matched the increase in the general price index from 1967–72, for example. The Consumer Price Index for all items rose 25.3 percent over this period, while food prices rose about the same amount, 23.5 percent. Thus, there was nothing particularly remarkable about the increase in food prices through 1972. It was merely a reflection of generalized inflation throughout the economy.

In 1973, however, food prices rose dramatically. The Consumer price index for items rose 2.6 percent between December 1972 and April 1973, while the index for food rose three times as fast, by 8.3 percent.[11] The sharp increase in food prices during 1973 appears a direct result of increases at the farm level, particularly for meat. Livestock prices rose 27 percent and poultry prices 64 percent between December 1972 and March 1973. As indicated earlier, in a basically competitive market such as agriculture, prices can be very volatile.

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[10] "FTC and Phase II: The McGovern Papers, "*Antitrust Law and Economics Review*, Spring 1972 pp. 18–36.

[11] Source: Bureau of Labor Statistics.

The recent increases in food prices do not indicate that there has been a deterioration in food industry competition, nor are they likely to entrench existing market power. They are a reflection of general inflation reinforced by supply problems at the farm level.

TABLE 2-6.—MARKET SHARES OF LOCALLY LARGEST 4, 8, AND 20 GROCERY COMPANIES IN 218 STANDARD METROPOLITAN STATISTICAL AREAS, 1954, 1958, 1963, and 1967

	Percentage of grocery store sales accounted for by—											
	Top 4 grocery store companies				Top 8 grocery store companies				Top 20 grocery store companies			
	1954	1958	1963	1967	1954	1958	1963	1967	1954	1958	1963	1967
Abilene, Tex	44.0	54.3	54.4	52.2	52.9	65.5	68.4	66.2	68.0	79.3	83.7	84.8
Akron, Ohio	48.5	61.0	62.1	52.6	55.3	70.8	71.2	72.7	63.2	75.6	78.3	80.7
Albany, Ga	45.5	49.3	51.7	50.3	60.3	63.1	66.1	67.5	75.4	80.7	80.3	82.5
Albany, N.Y., etc	39.3	47.5	47.8	44.4	50.8	54.9	57.7	58.5	57.7	62.9	66.3	68.5
Albuquerque, N. Mex	49.8	60.3	68.7	69.5	62.3	71.9	74.0	79.5	74.4	81.8	82.7	88.5
Allentown, Pa., etc	49.1	54.7	52.3	51.1	53.5	60.9	58.4	62.6	58.3	68.3	67.6	73.1
Altoona, Pa	65.9	67.8	64.2	61.3	68.8	71.2	76.8	76.5	74.4	77.7	83.1	85.0
Amarillo, Tex	62.5	68.9	62.8	60.9	72.3	75.7	70.9	74.6	83.1	86.9	86.4	89.3
Anaheim, Calif., etc	39.6	47.1	43.2	38.6	54.1	63.0	61.8	58.8	66.8	77.2	79.6	83.2
Anderson, Ind	38.6	38.4	42.1	49.8	58.2	63.8	63.6	67.5	77.6	85.8	87.4	91.3
Ann Arbor, Mich	55.5	59.7	61.0	66.0	62.6	67.7	70.9	77.9	72.8	79.5	81.9	87.4
Asheville, N.C	(1)	67.9	64.1	67.4	62.7	73.8	70.8	77.5	70.4	80.0	79.3	85.1
Atlanta, Ga	53.9	55.6	60.5	60.0	60.3	61.5	67.0	67.9	66.1	67.3	72.1	73.1
Atlantic City, N.J	57.0	62.3	56.7	58.5	62.8	69.5	71.8	72.5	69.3	75.7	79.5	83.0
Augusta, Ga	48.8	48.8	55.2	48.0	59.1	60.6	63.5	60.9	68.0	70.2	72.3	73.8
Austin, Tex	44.6	46.1	45.6	47.2	60.6	63.4	61.6	64.5	77.7	82.6	84.8	86.7
Bakersfield, Calif	31.1	31.4	35.8	35.5	39.4	39.8	46.1	45.7	50.3	53.4	60.5	61.3
Baltimore, Md	47.9	49.9	53.9	55.0	50.2	55.4	61.3	64.5	54.8	60.5	67.3	70.0
Baton Rouge, La	52.9	61.8	61.0	45.7	59.4	70.7	71.6	62.1	67.0	76.7	80.0	74.0
Bay City, Mich	38.3	48.0	52.2	65.0	46.7	61.9	66.9	76.3	57.5	72.9	77.5	84.7
Beaumont, Tex., etc	37.0	41.1	41.6	38.1	44.5	46.8	48.5	46.4	56.6	57.4	59.2	61.3
Billings, Mont	49.6	47.9	51.6	42.4	63.1	64.5	66.2	63.6	77.9	80.8	86.2	88.6
Biloxi-Gulfport				60.1				71.2				81.4
Binghampton, N.Y	53.8	51.4	52.0	50.6	64.2	67.3	67.9	67.0	69.7	77.3	77.6	80.0
Birmingham, Ala	42.1	46.1	42.0	37.7	47.1	55.9	53.7	47.2	55.7	63.6	64.3	58.3
Bloomington—Normal				48.6				62.8				83.9
Boise, Idaho	47.1	40.7	63.9	63.4	59.8	55.5	74.2	77.8	74.8	76.4	87.4	90.5
Boston, Mass	56.2	47.6	49.7	47.4	63.6	58.5	60.0	57.2	76.7	64.4	66.0	66.2
Bridgeport, Conn	(1)	56.2	52.3	45.4	57.1	64.3	67.6	64.6	64.7	72.4	74.5	77.0
Brockton, Mass	46.0	61.8	59.0	62.0	63.9	72.5	74.3	77.5	74.0	80.8	83.7	87.9
Brownsville, Tex	30.7	33.0	39.3	47.1	41.3	48.0	53.4	58.6	58.4	66.2	71.5	77.0
Buffalo, N.Y	59.8	56.4	46.9	41.0	62.0	58.7	53.7	51.7	65.3	63.3	63.1	62.9
Canton, Ohio	30.0	39.2	39.0	33.5	42.2	53.5	52.0	48.1	59.6	65.7	69.2	74.5
Cedar Rapids, Iowa	45.1	55.9	63.9	80.7	57.4	75.1	78.0	86.2	67.9	83.8	87.5	93.2
Champaign, Ill	58.2	61.0	50.5	51.5	66.8	71.9	65.6	67.4	77.1	87.4	87.4	89.9
Charleston, S.C	28.8	35.6	35.2	33.7	45.4	51.7	50.9	53.7	58.5	66.2	64.8	72.0
Charleston, W. Va	54.4	59.1	56.8	52.0	58.4	65.5	63.9	59.6	64.8	71.9	73.6	72.9
Charlotte, N.C	50.1	58.4	57.0	49.7	58.2	65.9	67.6	68.5	66.6	72.9	75.1	76.2
Chattanooga, Tenn	38.2	35.6	43.8	49.3	51.1	47.6	54.9	58.6	61.4	57.7	69.6	73.0
Chicago, Ill	49.0	51.9	51.9	53.6	57.7	59.3	61.4	63.0	59.3	62.7	65.5	68.0
Cincinnati, Ohio	49.7	51.4	49.0	46.7	51.7	53.9	53.0	56.2	54.9	58.4	59.2	65.8
Cleveland, Ohio	51.1	53.0	56.0	58.4	57.1	61.6	61.8	68.1	60.8	66.8	67.6	73.3
Colorado Springs, Colo	58.1	66.2	69.8	59.4	71.3	80.8	88.7	83.3	82.4	89.8	96.2	95.4
Columbia, S.C	49.1	47.7	51.4	48.1	58.1	53.7	57.2	54.8	69.0	63.4	67.3	67.2
Columbus, Ga	36.4	41.3	37.3	34.0	48.5	50.3	51.2	45.2	59.4	62.7	67.4	62.2
Columbus, Ohio	54.9	56.9	53.2	52.9	58.6	61.9	59.6	66.4	62.9	69.1	67.5	73.6
Corpus Cristi, Tex	42.9	51.8	53.4	50.7	51.0	63.2	69.7	61.9	61.4	75.7	83.3	80.0
Dallas, Tex	53.1	47.1	45.7	41.9	63.4	58.3	61.4	60.4	67.6	66.2	69.9	72.2
Davenport, Iowa, etc	50.2	55.1	54.1	57.2	58.5	63.3	65.1	71.4	67.4	72.6	76.3	80.9
Dayton, Ohio	45.9	45.2	43.2	37.0	56.7	54.9	51.0	46.2	63.6	63.8	61.3	60.8
Decatur, Ill	54.2	64.5	63.2	63.3	67.6	74.6	75.6	76.5	79.0	85.6	87.7	90.1
Denver, Colo	67.1	66.9	70.4	66.0	72.9	72.3	75.7	74.9	77.9	77.9	81.3	84.3
Des Moines, Iowa	36.9	41.4	33.9	44.4	44.8	51.3	49.3	59.1	56.0	66.3	71.3	80.4
Detroit, Mich	38.5	49.9	52.1	49.4	45.5	57.9	62.1	69.8	50.5	62.3	66.6	73.4
Dubuque, Iowa	43.8	54.6	65.5	57.7	54.0	65.4	75.2	74.3	66.9	79.1	88.0	86.5
Duluth, Minn	28.1	33.4	34.5	34.4	33.9	39.4	44.8	47.0	44.3	51.8	60.8	65.6
Durham, N.C	48.9	55.9	64.3	45.1	59.0	64.6	69.8	48.7	70.0	75.3	78.3	54.9
El Paso, Tex	53.9	53.5	53.0	48.1	60.4	63.0	61.7	59.7	70.6	76.1	75.9	78.1
Erie, Pa	52.0	58.2	49.3	48.0	58.9	63.3	57.9	58.2	66.8	71.3	71.0	72.6
Eugene, Oreg	39.0	54.7	59.4	55.3	50.7	63.6	69.6	67.5	64.1	74.7	80.0	79.7
Evansville, Ind	42.4	43.8	42.7	40.1	54.4	55.5	55.0	62.6	64.6	70.6	71.9	80.7
Fall River, Mass	53.7	54.6	56.4	61.2	59.2	68.6	67.8	76.3	67.8	75.6	76.6	87.1
Fargo, N. Dak	42.1	44.1	49.9	55.2	53.8	60.9	65.2	72.2	65.7	74.9	78.9	84.7
Fayetteville, N.C				56.4				63.4				73.8
Fitchburg, Mass	(1)	41.6	37.1	42.4	(1)	66.7	58.9	67.4	(1)	81.8	82.6	89.5
Flint, Mich	43.4	53.6	53.1	60.6	50.6	62.4	63.4	67.6	60.0	71.9	72.6	77.4
Fort Lauderdale, Fla	72.3	70.5	65.5	68.6	78.8	78.7	79.7	81.0	84.2	87.5	88.9	89.0
Fort Smith, Ark	39.1	48.3	34.6	43.8	56.4	65.7	47.4	55.5	75.4	80.5	63.9	66.1
Fort Wayne, Ind	55.0	60.8	57.8	62.9	63.7	81.8	79.4	83.5	71.3	88.3	87.4	93.3
Fort Worth, Tex	49.6	46.4	37.1	60.0	59.7	55.4	49.5	69.6	69.9	68.8	72.9	78.6

TABLE 2-6.—MARKET SHARES OF LOCALLY LARGEST 4, 8, AND 20 GROCERY COMPANIES IN 218 STANDARD METROPOLITAN STATISTICAL AREAS, 1954, 1958, 1963, and 1967—Continued

	Percentage of grocery store sales accounted for by—											
	Top 4 grocery store companies				Top 8 grocery store companies				Top 20 grocery store companies			
	1954	1958	1963	1967	1954	1958	1963	1967	1954	1958	1963	1967
Fresno, Calif.	22.7	27.7	23.5	24.6	33.4	37.1	37.2	36.7	46.1	51.8	55.6	54.4
Gadsden, Ala.	35.8	44.6	37.5	38.9	41.8	55.9	51.3	55.1	51.7	68.5	65.2	70.3
Galveston, Tex.	27.0	34.2	40.3	37.7	39.9	46.9	51.9	51.2	59.3	68.0	70.8	71.8
Gary, Ind.	38.9	34.4	29.3	33.9	43.7	43.4	47.8	52.3	53.0	59.0	68.2	73.7
Grand Rapids, Mich.	40.3	44.9	44.0	52.0	46.8	52.0	56.3	62.5	55.9	61.8	65.4	74.3
Great Falls, Mont.	48.4	63.0	75.6	69.1	60.4	71.4	82.6	80.2	79.0	82.4	92.6	90.6
Green Bay, Wis.	45.2	50.1	56.5	57.6	59.0	67.5	68.0	68.3	72.3	82.0	84.3	86.7
Greensboro, N.C.	45.8	45.8	48.4	37.9	50.6	53.3	60.3	54.4	59.0	63.1	69.1	65.5
Greenville, S.C.	49.1	57.7	55.6	57.9	57.4	68.8	67.3	70.3	66.3	78.3	77.2	80.3
Hamilton, Ohio	37.6	55.0	50.5	46.6	45.1	62.8	66.2	63.9	54.4	72.2	76.7	79.0
Harrisburg, Pa.	49.7	48.1	50.9	56.0	56.3	58.6	60.5	68.5	62.4	69.6	71.2	78.2
Hartford, Conn.	(1)	48.6	48.4	47.9	56.2	60.7	63.8	63.6	64.7	68.6	72.6	75.3
Honolulu, Hawaii	29.7	37.8	52.1	48.5	36.8	49.1	65.3	65.7	47.9	61.8	79.1	75.1
Houston, Tex.	35.5	33.2	35.1	32.2	42.3	41.5	42.3	42.0	49.4	49.3	49.8	52.0
Huntington, W. Va.	37.2	47.5	38.8	32.0	44.1	53.6	46.6	44.9	53.2	62.9	58.5	60.2
Huntsville, Ala.	30.8	34.3	49.9	55.4	42.4	50.1	58.6	66.1	53.0	64.7	70.1	78.4
Indianapolis, Ind.	48.5	55.6	60.0	59.3	56.8	64.5	64.1	69.4	65.7	71.0	70.8	78.8
Jackson, Mich.	46.8	54.0	52.5	56.8	53.4	65.2	65.1	74.5	64.1	76.2	77.8	85.3
Jackson, Miss.	51.5	48.9	55.9	51.8	60.8	64.6	66.0	65.3	67.9	73.9	75.8	75.6
Jacksonville, Fla.	52.0	62.7	61.3	61.0	67.5	75.5	74.9	78.8	78.0	81.2	82.2	85.2
Jersey City, N.J.	54.3	52.0	44.3	43.2	60.8	59.0	54.8	58.6	66.4	64.4	66.9	73.2
Johnstown, Pa.	(1)	55.8	65.8	56.3	52.5	60.7	63.9	64.3	58.4	68.0	71.3	74.4
Kalamazoo, Mich.	33.4	41.9	56.7	72.2	45.8	59.6	70.6	87.1	63.0	74.8	82.8	93.3
Kansas City, Mo.	48.1	49.8	49.1	41.8	52.7	57.3	55.4	49.6	59.6	66.1	65.0	63.5
Kenosha, Wis.	45.3	44.6	49.3	46.5	54.0	58.3	65.8	67.0	64.0	73.8	78.4	82.6
Knoxville, Tenn.	48.3	55.5	60.1	56.2	45.2	59.4	65.4	63.8	61.3	66.5	72.6	72.9
Lafayette, La.	38.1	52.2	55.7	52.4	45.4	59.3	63.2	62.3	58.6	70.7	76.3	73.4
Lafayette, Ind.				56.9				86.4				96.6
Lake Charles, La.	33.4	44.9	41.7	50.8	42.7	56.7	56.8	65.6	55.9	69.4	71.2	78.7
Lancaster, Pa.	42.4	45.7	48.1	49.2	48.3	52.2	55.0	56.3	56.9	62.3	64.4	68.2
Lansing, Mich.	48.2	36.1	32.1	41.1	56.5	48.4	47.3	55.0	66.2	62.9	61.5	68.2
Laredo, Tex.	48.5	48.8	45.1	53.4	65.0	63.2	60.5	71.3	81.5	81.7	81.6	87.6
Las Vegas, Nev.	46.4	46.6	52.8	61.2	62.6	64.5	71.8	83.6	5859	86.6	90.1	94.2
Lawrence, Mass.	43.0	46.6	43.0	51.7	52.4	55.2	60.1	64.1	61.1	57.0	75.1	80.7
Lawton, Okla.	54.0	48.9	50.0	52.0	60.9	62.0	64.3	68.0	73.3	78.6	82.9	87.2
Lewiston, Maine	(1)	30.8	32.7	38.9	(1)	46.8	50.2	56.3	(1)	62.9	68.6	74.3
Lexington, Ky.	47.1	54.9	61.2	59.0	54.3	64.1	70.6	72.8	68.5	77.1	81.7	82.3
Lima, Ohio	50.4	52.2	72.1	56.4	60.8	68.1	80.3	65.4	71.6	78.9	87.6	79.4
Lincoln, Nebr.	44.2	50.8	54.2	51.9	54.1	62.6	66.7	62.7	70.5	79.0	83.9	81.4
Little Rock, Ark.	51.4	(1)	55.1	62.7	54.9	59.3	62.1	67.3	60.8	66.4	70.0	75.4
Lorain, Ohio	44.5	54.6	53.9	45.6	53.5	62.4	62.8	61.2	63.7	72.4	74.3	78.7
Los Angeles, Calif.	29.6	24.6	30.3	28.5	40.6	39.6	43.1	46.3	53.0	54.8	60.5	67.8
Louisville, Ky.	51.2	57.7	60.3	55.8	55.1	62.2	65.0	62.1	59.7	67.5	71.3	69.4
Lowell, Mass.	40.0	38.8	37.2	58.5	52.0	58.6	58.8	71.7	64.8	72.4	77.8	86.4
Lubbock, Tex.	58.0	60.1	62.7	64.5	62.8	65.8	71.0	77.2	71.5	75.1	81.7	86.4
Lynchburg, Va.	38.7	39.5	40.9	39.4	43.6	49.0	51.4	53.6	54.2	60.8	63.8	69.3
Macon, Ga.	38.0	43.1	47.6	48.8	53.2	58.0	62.8	65.2	66.3	71.2	76.1	78.9
Madison, Wis.	41.5	43.2	40.6	40.4	52.6	54.6	55.9	52.8	62.6	66.4	70.1	70.1
Manchester, N.H.	41.6	46.4	43.7	47.1	51.1	54.4	61.4	60.0	61.5	66.8	73.3	75.0
Mansfield, Ohio				54.6				70.7				87.9
McAllen-Pharr-Edinburg, Tex.				37.9				46.1				61.8
Memphis, Tenn.	23.1	32.7	28.9	35.9	30.8	40.0	42.8	49.3	40.2	50.3	55.9	59.6
Meriden, Conn.	57.4	60.8	67.1	68.2	65.9	70.9	78.9	79.6	80.0	84.0	91.2	91.8
Miami, Fla.	55.5	62.6	53.3	60.5	69.4	73.0	73.6	74.1	76.7	79.3	80.2	80.6
Midland, Tex.	51.0	49.9	56.5	50.6	66.2	66.4	66.9	66.3	89.3	89.6	85.8	88.2
Milwaukee, Wis.	42.6	46.7	39.9	31.6	47.5	51.7	47.3	41.6	55.3	60.6	56.6	52.5
Minneapolis, Minn.	31.4	38.5	39.3	43.7	38.1	44.3	48.7	54.3	46.9	52.6	60.7	63.7
Mobile, Ala.	43.6	48.0	46.2	50.6	56.8	59.2	61.7	66.3	66.1	73.7	72.8	78.6
Monroe, La.	37.5	39.1	55.0	51.0	52.4	52.1	69.7	65.0	64.8	68.4	84.1	78.7
Montgomery, Ala.	49.9	62.5	53.7	55.8	58.8	68.4	63.7	68.2	67.0	75.9	73.2	78.2
Muncie, Ind.	39.4	60.4	44.6	61.0	55.4	71.5	65.5	77.1	75.4	85.1	85.8	93.5
Muskegon, Mich.	40.1	47.5	49.7	60.2	47.7	56.3	59.3	69.5	58.1	67.5	72.2	81.2
Nashville, Tenn.	50.4	59.0	52.1	58.2	59.2	67.1	56.2	62.2	66.8	74.0	62.4	69.2
New Bedford, Mass.	38.4	44.0	40.5	51.5	54.5	59.9	63.9	71.9	66.7	69.8	74.5	81.1
New Britain, Conn.	51.8	46.4	50.6	47.8	59.9	60.3	71.1	68.8	69.1	74.0	84.4	85.1
New Haven, Conn.	38.4	44.0	48.2	54.4	47.1	52.9	60.8	66.4	56.2	64.5	71.3	76.2
New London, Conn.	(1)	(1)	53.8	58.1	(1)	(1)	66.3	74.6	(1)	(1)	77.8	85.0
New Orleans, La.	36.0	44.8	52.0	54.4	41.7	55.2	58.6	61.6	50.5	64.2	67.5	71.4
New York, N.Y.	41.1	36.7	34.5	33.0	47.6	45.4	47.6	45.0	54.7	54.4	56.9	58.7
Newark, N.J.	52.8	47.9	40.2	42.5	60.1	56.4	51.5	57.7	66.1	65.8	65.1	72.0
Newport News, Va.	62.0	63.6	60.1	60.5	70.2	76.4	76.2	82.0	77.3	84.3	88.5	92.7
Norfolk, Va.	48.7	39.1	46.1	51.6	55.5	49.8	56.3	67.3	63.9	65.6	71.6	83.4
Norwalk, Conn.	(1)	(1)	65.0	59.4	(1)	(1)	77.8	79.8	(1)	(1)	87.5	90.5
Odessa, Tex.	50.2	49.8	51.8	52.1	68.5	66.9	71.6	77.4	86.3	82.4	92.3	90.8
Ogden, Utah	52.0	61.5	60.2	D	65.8	72.1	78.8	.....	80.7	86.0	90.5	.....
Oklahoma City, Okla.	40.3	40.0	40.2	38.8	45.5	46.7	46.9	46.7	56.7	59.1	58.9	60.3

TABLE 2-6.—MARKET SHARES OF LOCALLY LARGEST 4, 8, AND 20 GROCERY COMPANIES IN 218 STANDARD METROPOLITAN STATISTICAL AREAS, 1954, 1958, 1963, and 1967—Continued

	Percentage of grocery store sales accounted for by—											
	Top 4 grocery store companies				Top 8 grocery store companies				Top 20 grocery store companies			
	1954	1958	1963	1967	1954	1958	1963	1967	1954	1958	1963	1967
Omaha, Nebr	38.9	45.1	53.5	55.7	43.9	51.7	61.7	69.7	54.1	62.8	71.1	80.4
Orlando, Fla	63.2	62.5	63.8	61.0	68.1	70.6	75.6	76.2	76.1	79.0	83.8	86.8
Oxnard-Ventura, Calif				46.4				62.8				82.1
Paterson, N.J	64.2	60.6	48.6	51.1	68.4	66.9	59.3	61.6	73.8	73.6	71.9	77.0
Pensacola, Fla	37.4	49.7	43.1	42.7	48.3	60.5	59.7	58.3	60.5	72.6	76.7	76.5
Peoria, Ill	38.4	45.8	37.9	36.2	45.6	52.8	52.8	51.4	57.5	66.5	67.7	67.9
Philadelphia, Pa	52.6	60.3	60.7	59.8	56.9	63.3	63.7	67.4	59.0	65.9	67.1	71.7
Phoenix, Ariz	45.4	46.1	46.6	39.8	50.9	57.9	63.5	62.7	60.6	70.1	78.0	83.8
Pine Bluff, Ark	39.7	48.7	43.5	58.6	51.2	60.7	54.6	67.5	63.9	73.4	71.8	79.4
Pittsburgh, Pa	45.0	53.2	51.7	45.0	50.6	60.9	59.7	54.0	55.6	66.7	65.0	60.8
Pittsfield, Mass	57.5	61.3	69.7	66.7	67.1	73.1	81.0	83.0	79.6	84.2	90.0	92.4
Portland, Maine	43.1	41.2	49.3	40.1	49.6	53.6	63.6	57.0	60.5	67.1	81.7	75.2
Portland, Oreg	39.6	43.1	35.3	40.7	45.8	48.7	48.5	55.6	55.1	57.1	58.4	66.4
Providence, R.I	48.7	48.9	50.9	58.5	54.0	58.5	65.9	74.9	60.3	67.2	72.2	80.5
Provo, Utah	40.6	39.4	49.8	50.3	52.0	52.4	62.7	69.2	70.8	73.3	82.8	87.5
Pueblo, Colo	50.1	53.4	62.0	60.2	60.1	66.4	75.1	75.6	74.1	82.1	86.0	90.8
Racine, Wis	38.5	51.2	52.9	43.0	50.0	63.2	64.9	62.0	62.2	77.4	77.1	81.0
Raleigh, N.C	47.9	56.8	58.8	61.1	54.2	64.0	62.7	65.6	63.3	72.8	69.7	73.5
Reading, Pa	46.9	44.8	48.0	46.7	55.2	53.4	60.3	57.6	63.4	64.7	70.3	70.8
Reno, Nev	48.2	54.4	65.6	76.1	63.2	72.5	79.4	89.9	83.2	88.2	92.9	96.5
Richmond, Va	50.5	47.9	49.9	50.4	57.9	57.7	60.4	62.2	65.2	69.7	72.4	77.8
Roanoke, Va	58.8	62.7	66.8	69.2	63.6	68.6	75.9	78.6	72.0	76.9	82.2	86.1
Rochester, N.Y	58.5	65.7	55.5	56.2	62.0	69.2	61.9	64.2	66.0	73.5	67.6	72.0
Rockford, Ill	43.9	50.8	41.0	42.1	52.2	60.1	57.4	64.2	62.6	74.0	76.6	82.4
Sacramento, Calif	40.6	44.5	36.3	40.1	54.5	51.3	47.4	58.4	65.6	63.2	65.1	72.2
Saginaw, Mich	29.9	37.0	46.9	51.3	36.6	50.2	58.1	64.0	47.9	61.5	68.8	76.1
St. Joseph, Mo	42.7	45.8	51.7	50.6	53.0	61.2	69.4	70.8	66.8	76.5	53.6	87.0
St. Louis, Mo	34.6	42.7	42.9	39.3	44.7	49.1	50.6	51.3	49.3	54.2	56.8	59.9
Salem, Oreg				50.2				63.2				79.4
Salinas-Monterey				42.4				56.9				70.4
Salt Lake City, Utah	37.4	42.2	50.3	54.4	44.6	50.3	56.8	64.5	56.3	62.6	67.3	74.1
San Angelo, Tex	65.5	66.3	59.8	56.2	72.6	75.2	71.0	74.3	83.3	87.6	83.5	90.4
San Antonio, Tex	50.0	47.9	54.4	53.5	55.3	55.3	61.9	61.8	60.5	66.1	70.0	72.6
San Bernardino, Calif	29.8	37.2	38.1	41.6	36.9	46.5	55.9	62.2	52.8	59.0	68.3	71.2
San Diego, Calif	41.1	40.6	52.5	51.0	49.0	50.5	64.0	67.7	58.1	61.5	72.7	76.8
San Francisco, Calif	27.1	28.6	33.0	40.4	33.5	53.3	42.9	49.3	40.8	44.5	55.2	62.6
San Jose, Calif	28.4	30.7	33.9	37.8	37.3	40.4	43.7	49.6	52.4	55.9	59.2	66.3
Santa Barbara, Calif	47.0	45.7	52.6	60.0	57.2	56.9	64.2	72.0	69.8	75.0	80.8	85.2
Savannah, Ga	33.7	32.1	34.7	41.2	46.9	48.1	52.6	55.4	61.3	65.5	74.3	73.6
Scranton, Pa	50.2	47.6	50.6	55.2	53.7	62.3	61.6	67.2	58.8	69.4	69.0	75.1
Seattle, Wash	39.7	38.4	41.1	41.5	45.1	46.4	51.8	56.0	52.6	54.9	61.0	67.5
Sherman-Denison, Tex				50.5				64.0				76.4
Shreveport, La	48.6	57.1	54.4	51.8	52.7	62.2	64.6	64.8	59.6	70.7	75.6	73.8
Sioux City, Iowa	42.8	46.3	44.1	49.3	58.9	60.0	56.2	65.0	68.9	74.8	75.3	81.4
Sioux Falls, S. Dak	67.2	62.3	70.9	72.3	73.8	72.7	80.9	84.8	85.6	85.7	94.7	97.4
South Bend, Ind	41.2	46.6	42.4	46.7	47.3	56.3	56.2	59.3	55.6	67.4	72.8	74.8
Spokane, Wash	38.4	47.0	54.7	56.3	51.1	59.1	65.4	68.1	65.1	70.1	75.6	78.6
Springfield, Ill	46.5	51.7	47.2	49.4	54.9	63.7	62.6	68.6	64.7	75.9	78.0	85.2
Springfield, Mo	46.3	50.5	54.8	60.5	57.6	62.4	69.1	78.0	69.2	73.6	82.4	87.3
Springfield, Ohio	50.5	58.9	49.6	56.6	63.7	69.9	63.6	74.1	72.9	79.6	79.7	89.2
Springfield, Mass	45.2	45.4	43.5	44.4	54.1	59.2	63.2	66.6	62.4	70.0	72.7	77.6
Stamford, Conn	53.8	59.9	45.9	46.2	65.0	73.8	62.1	59.5	75.4	83.8	84.5	82.3
Steubenville, Ohio	(1)	59.5	55.2	57.3	(1)	62.4	63.6	68.5	(1)	67.8	71.3	76.5
Stockton, Calif	23.8	25.4	26.1	28.3	34.8	37.9	38.2	43.3	50.4	56.9	59.5	65.3
Syracuse, N.Y	39.5	42.7	40.2	33.8	49.5	57.3	53.3	50.0	59.7	64.9	63.8	63.5
Tacoma, Wash	33.7	39.5	41.3	46.0	43.8	53.1	56.9	62.9	57.6	66.0	72.8	78.9
Tallahasee, Fla				63.1				77.1				89.7
Tampa, Fla	51.1	60.4	62.3	63.1	60.1	70.1	75.1	77.3	65.3	74.8	81.1	84.4
Terre Haute, Ind	60.5	60.9	52.5	54.2	64.1	67.0	60.8	67.1	70.4	76.3	71.0	77.0
Texarkana, Ark	27.3	47.9	71.0	39.4	34.7	54.8	51.0	53.3	46.1	65.1	66.0	67.5
Toledo, Ohio	47.8	52.6	59.4	62.5	58.1	62.6	67.8	74.9	67.1	74.1	76.2	81.8
Topeka, Kans	31.5	32.6	32.3	49.3	46.7	52.0	52.9	65.4	64.3	75.0	82.6	86.3
Trenton, N.J	63.9	61.3	59.9	53.6	67.7	70.0	72.3	73.7	72.1	76.5	79.8	84.7
Tucson, Ariz	53.6	54.8	48.6	48.4	60.9	66.5	65.1	66.7	70.1	76.3	78.6	82.4
Tulsa, Okla	45.4	46.3	47.8	50.6	53.9	53.7	54.3	62.2	62.2	66.8	65.0	73.6
Tuscaloosa, Ala	36.1	41.7	39.3	45.7	44.8	54.9	54.1	64.9	57.4	68.5	69.3	80.6
Tyler, Tex	40.0	47.5	61.3	57.4	56.9	64.5	73.3	71.5	73.6	78.6	83.5	84.7
Utica, N.Y	37.5	42.3	38.3	41.4	49.7	61.8	58.9	64.6	59.3	70.4	70.3	75.4
Vallejo, Calif	(1)	(1)	36.9	41.6	(1)	(1)	51.5	56.2	(1)	(1)	73.6	78.6
Vineland, N.J				64.1				75.6				84.2
Waco, Tex	42.4	50.4	48.8	48.3	54.8	59.6	59.8	60.2	67.0	69.9	70.9	72.8
Washington, D.C	56.0	59.7	67.3	70.3	64.2	70.2	78.0	82.5	69.9	77.5	83.7	86.9
Waterbury, Conn	39.0	39.9	46.0	50.6	52.9	54.9	59.2	65.2	63.1	71.0	73.8	77.1

TABLE 2-6.—MARKET SHARES OF LOCALLY LARGEST 4, 8, AND 20 GROCERY COMPANIES IN 218 STANDARD METROPOLITAN STATISTICAL AREAS, 1954, 1958, 1963, and 1967—Continued

	Percentage of grocery store sales accounted for by—											
	Top 4 grocery store companies				Top 8 grocery store companies				Top 20 grocery store companies			
	1954	1958	1963	1967	1954	1958	1963	1967	1954	1958	1963	1967
Waterloo, Iowa	42.6	38.5	42.9	48.7	60.2	55.3	62.9	67.5	71.1	78.1	83.7	87.4
West Palm Beach, Fla	63.6	61.2	66.2	63.1	72.3	70.9	75.9	74.2	80.9	79.1	84.9	86.5
Wheeling, W. Va	46.6	56.4	56.6	54.8	52.6	61.9	65.2	64.5	57.1	67.4	72.0	75.9
Wichita, Kans	52.7	47.5	41.9	42.4	60.8	56.9	54.4	58.0	73.2	71.8	70.4	74.2
Wichita Falls, Tex	52.2	52.8	57.5	55.4	60.1	65.1	68.9	70.6	72.0	80.0	81.1	82.4
Wilkes-Barre, Pa	49.1	54.9	55.7	58.5	52.7	61.3	61.6	65.1	57.4	66.8	67.5	73.0
Wilmington, Del	59.6	63.7	66.1	68.4	65.2	74.5	76.5	79.3	71.0	79.4	81.7	85.3
Wilmington, N.C				54.3				68.8				82.4
Winston-Salem, N.C	39.2	46.2	49.2		50.4	58.8	59.7		59.2	67.3	73.3	
Worcester, Mass	42.2	39.6	27.0	30.9	48.2	51.0	40.4	47.3	59.5	66.2	63.5	70.3
York, Pa	36.1	45.8	44.3	47.1	40.3	54.0	55.9	62.0	47.0	61.2	65.6	71.7
Youngstown, Ohio	44.0	50.1	51.8	44.0	49.2	56.2	57.3	56.0	55.3	63.5	66.2	67.5
Average	45.5	49.3	50.1	51.1	54.4	59.9	62.0	64.8	64.5	71.0	74.3	77.7

[1] Not available.

Source: 1954, 1958, and 1963 special tabulation by the Census for the National Commission on Food Marketing. For 1967 a special tabulation by the Bureau of the Census for the Federal Trade Commission.

JULY 24, 1973.

Hon. LEWIS A. ENGMAN,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. ENGMAN: As I indicated to Mr. Halverson and Mr. Mann at the conclusion of their testimony on competitive problems in the food industry of June 28, 1973, before the Subcommittee on Monopolies and Commercial Law, there would be some additional questions the Subcommittee would submit to the Federal Trade Commission at the conclusion of its hearings.

Your replies to the enclosed questions are expected to be of considerable assistance to us.

Your cooperation in this matter of a further response is greatly appreciated.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

Enclosure.

JULY 24, 1973.

QUESTIONS OF THE SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW FOR THE FEDERAL TRADE COMMISSION

1. What would be the status of farmer cooperatives under the antitrust laws if there were not a Capper-Volstead Act? Would this mean that all cooperative activities of farmers would be illegal?

2. Has the FTC ever urged the Secretary of Agriculture to take action under section 2 of the Capper-Volstead Act to prevent a cooperative from enhancing prices unduly? What activities has the FTC undertaken to ensure that the antitrust exemption in Capper-Volstead Act is kept within its statutory limits?

3. Would the FTC recommend legislation which would permit it to gather economic and financial information on the effect of an antitrust exemption such as the Capper-Volstead Act?

4. Is the present antitrust exemption for cooperatives more or less than that possessed by labor unions?

5. Section 2 of the Capper-Volstead Act, U.S.C. 292 appears to make it mandatory for the Secretary of Agriculture to act when there is reason to believe that prices are enhanced unduly by a cooperative. It says that "(i)f the Secretary . . . shall have reason . . . he shall serve upon such association a complaint." What is the interpretation of the FTC of section 2?

6. Are activities by cooperatives to purchase equipment used in agricultural production and other activity not involving marketing exempt from the antitrust laws?

7. Are mergers by cooperatives exempt from the antitrust laws? Is there a difference between Section 7 of the Clayton Act and Section 1 and 2 of the Sherman Act in this regard?

8. What is the FTC's understanding of the informal operating arrangement with the Antitrust Division whereby (i) certain kinds of violations and (ii) certain areas of industry are the enforcement responsibility of one agency or the other? Please be specific about (i) and (ii). What areas of industry presently are the responsibility of the FTC and of the Antitrust Division?

9. Would the FTC recommend modification or repeal of USDA marketing order authority?

10. What kind of liaison has the FTC had with the Price Commission?

11. Does the operation of the Price Commission raise any anticompetitive dangers?

12. The publication Supermarket News reported on Monday, July 16, 1973, page 2, that the price freeze of the past few months triggered tie-in practices and other activities designed to ameliorate its effects, but which also violate the antitrust laws. Do you have evidence that this kind of activity has taken place? Is there any evidence that such activity will end with the enforcement of Phase IV? What is the FTC doing to investigate and prevent these anticompetitive consequences of the price freeze?

13. The Subcommittee recently heard testimony recommending that enforcement of the Packers and Stockyards Act be shifted from USDA to the FTC. What is the FTC's view on enforcement of the Packers and Stockyards Act presently, and the recommendation to shift its enforcement to the FTC?

14. The FTC's Advisory Opinion No. 147 on backhauls was criticized several times in testimony before the Subcommittee. What is the FTC doing to revise this opinion?

15. Economic effect of law enforcement—The National Commission on Food Marketing in its 1966 Final Report concluded that, in view of a variety of enforcement problems: "A study and reappraisal of the Robinson-Patman Act and its administration is now appropriate, in order to determine needed revisions in light of current economic conditions and overall antitrust policies."

Furthermore, in 1970, two FTC attorneys testified before the House Select Committee on Small Business that in some instances the Robinson-Patman Act is being enforced in a manner which has anticompetitive effects.

a. What steps are being taken to review the economic effect of enforcement of the Robinson-Patman Act with regard to food prices and other prices generally?

b. Do you have any indication at this time as to whether Robinson-Patman Act enforcement is having any specific effects on food prices—either positive or negative?

c. In whatever report the FTC may prepare on this subject, identify enforcement effects in the food industry and food-related industries?

16. The FTC's 1966 Economic Report on the Structure and Competitive Behavior of Food Retailing indicated that on the basis of 1963 figures supermarket concentration in many metropolitan areas was near or exceeded the level of 50% for the four leading firms, and that concentration was increasing when compared to previous figures.

a. Has this trend continued or accelerated since 1963?

b. How do the more recent figures compare to those for 1963?

c. What has FTC done to prevent increased market concentration in metropolitan areas where the concentration rates indicate competitive problems exist or would result from substantially increased concentration?

d. What has the FTC done to reduce concentration in markets where the concentration ratios indicate competitive problems may already exist?

Are there areas where mergers have contributed to present levels of concentration? What are these?

17. Between 1960 and 1969, the FTC published 11 economic reports related to the food industries. Since 1969, it has published only one. Is there any reason for the reduced number of economic reports related to food? Has this reduction been compensated for by publications about other areas?

18. We understand from your testimony that the Business Advisory Council has recommended that the Quarterly Financial Report be transferred from the FTC to the Bureau of the Census if the FTC obtains line of business data. Could you provide for us a list of food industry representatives on the Business Advisory Council?

19. Food advertising—The National Commission on Food Marketing, in its 1966 Final Report stated that it was unable to study the competitive effect of advertising discounts and advertising rate variations granted to food advertisers by the media. It recommended, therefore: ". . . it would be appropriate for the Federal Trade Commission to investigate advertising rates for the purpose of examining discounts, other variations in charges, their justifications, and rate-making methods."

a. Has any study of this subject been made by the FTC, and if so, what conclusions have been reached, and what actions initiated?

b. If no such study has been initiated to date, does the FTC consider that one would be of value? What priority should such a study be given?

[Answers to the above questions are in app. 12, at p. 695.]

APPENDIX 3

U.S. SENATE,
Washington, D.C., July 10, 1973.

Hon. PETER W. RODINO, JR.,
Chairman, House Judiciary Committee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We are very pleased with your action in conducting a series of hearings to investigate competition and enforcement of antitrust laws in the food industry. This is an area in which we fully share your interest and concern.

We particularly share the concern expressed in your statement that "the alarming and unprecedented increases in food prices this year have raised widespread concern that we are failing to assure the ample supply of food that is so critical to our nation's health and welfare." As you so cogently argue, "developments in the food industry in a number of areas suggest that the competition guarded by our antitrust laws is being jeopardized."

We note with interest that the representative of the Department of Justice remarked in his opening statement that "in 1973, however, several areas of farming would appear to be increasingly represented by large corporations, capable of engaging in long range planning with a significant degree of control over output. The poultry industry is well along in this development, with beef and pork following a modest distance behind."

Despite this admission of corporation influence, the bulk of Mr. Kauper's remarks were directed against cooperatives and marketing orders. This leaves us with the impression that the agency given the responsibility for protecting farmers against antitrust activities is more concerned with the activites of the farmers themselves.

Again, we applaud your activities in conducting these oversight hearings. We will follow the remaining days of testimony with great interest.

We would respectfully urge however, that as soon as practicable upon completion of the oversight hearings, additional legislative hearings be scheduled. These hearings should look at H.R. 4531, the Family Farm Antitrust Act, and similar legislation which seek to deal with antitrust implications in the food industry.

We are also enclosing for your information a copy of a study by Professor Rodefeld of Michigan State University. Professor Rorefeld has done extensive study into corporate influence in American agriculture. As you can see, he contends that this influence is far more pervasive than commonly supposed.

Please feel free to include this letter in the record of your oversight hearings. We would appreciate the opportunity to testify in greater detail at such time as legislative hearings are scheduled.

With best wishes,

Sincerely,

GEORGE MCGOVERN,
U.S. Senate.

JAMES ABOUREZK,
U.S. Senate.

[From the Congressional Record, Thursday, May 31, 1973]

NEW LIGHT ON THE FAMILY FARM

Mr. MCGOVERN. Mr. President, those of us in the Congress who have spoken frequently of the importance of the family farm in the American economy and society have been subject to criticism by those who do not share our view.

Last year, the Department of Agriculture, accusing us of crying wolf, claimed that corporate farming was no danger to the family farm.

20-481—73——29

Although I have agreed with the Secretary of Agriculture, Mr. Butz, on many occasions in the last few months, he and I do not agree on what is happening to the family farm in America. Last July, Secretary Butz sought to characterize my warnings against intrusions of corporate farming as an attempt on my part to create a straw man. At a press conference in Kansas City, Mo., on July 17, the Secretary said corporate farms amounted to only 1 percent of all farming, and claimed that most corporate farms were family corporations.

Secretary Butz' claim that only 1 percent of America's farms are corporate farms apparently is based on research by USDA economists over the past 2 years which attempted tn analyze census of agriculture data. That study apparently served also as the basis for testimony last year by J. Phil Campbell, Under Secretary of Agriculture, in opposition to a bill which would have limited nonresident nonfamily corporation farming.

As a corollary to Secretary Butz' statement that only 1 percent of the farms are corporate farms, Under Secretary Campbell maintained that family farms produce 95 percent of America's farm production.

During recent days, Mr. President, new evidence has come to light which suggests that the optimistic picture which the USDA paints of the future of the family farm may not be so bright after all.

It is in the form of a paper delivered by Prof. Richard D. Rodefeld of the Department of Sociology, Michigan States University, East Lansing, Mich., on April 27, 1973, to the First Conference on Land Reform in San Francisco, Calif.

Professor Rodefeld's conclusions are disturbing to me as a Senator from a State in which the family farm and ranch has been the economic and social backbone since the land was settled.

Whereas USDA continues to maintain that family farms dominate farm numbers, farm production and sales, and that there has been no trend from family farms to corporate farms, the Rodefeld paper contends differently.

Based on a searching analysis of USDA's research methods and results, backed up by a prodigious amount of his own original research, Professor Rodefeld concludes that: First, family farms are less dominant numerically than supposed; second, family farms do not dominate farm production and sales and have not at least since 1959; third, there has been at least a 20-year trend of erosion of family farms and growth of nonfamily farms in terms of their proportion of sales of farm products; fourth, corporate farms presently account for a significant proportion of all farm product sales; and fifth, from 1959 through 1964, corporate farm numbers and sales increased at a rate substantially greater than that of family farm numbers and sales.

According to Professor Rodefeld, family farms accounted for 80 percent of the farm numbers, but since corporate and industrial-type farms are much larger units, family farms sold only 50 percent of farm products in 1959 and only 49 percent in 1964. It is his statement that corporate or industrial size farms increased in number by 23 percent from 1959 to 1964, while the number of family farm units decreased by 12 percent. Simultaneously, he maintains, corporate and industrial size farms increased their sales by 73 percent while family farm sales grew by only 12 percent.

While this new information obviously troubles those of us who represent rural areas, it should cause great concern to every urban Members of Congress and to every resident of city and suburb as well.

For a continued erosion of the family farm, and its replacement by corporate farm, means two things to the majority of Americans who do not live in rural America:

First. Continued depopulation of rural areas means continued crowding in the cities and suburbs, with a reduction in the quality of life both in the city and countryside.

Second. Corporate control of agriculture inevitably means higher food prices.

A South Dakota farm widow wrote a poignant letter to me last week:

"My husband . . . was completely tied to the work, and we never got our time together as we both worked so hard. I always went to the field from early spring through cornpicking until my health failed too.

"My point is you have to love this land to do this—and work, and hope, and pray.

"Now if corporations own the land and run it, they will have hired labor. Most people nowadays want shorter work hours and work weeks and most of labor never renews contracts without raises. So you know and I know these big companies are going to pass on the costs, which we never are able to do.

"Think what food will cost! I believe, for the good of our whole country, we must preserve the family farmer—not let it get in the hands of a few to price things as they wish.

"I think rural people should be classed as human beings, not just slaves to feed the world."

This woman's letter in an articulate expression, from the heart of rural America of the threat which Professor Rodefeld describes, but which the Department of Agriculture hopes to ignore.

There is clear evidence that the South Dakota farm woman is correct in warning that higher food prices result from corporate farm ownership. The single argument advanced in justification of large-scale, corporate-type farming is efficiency in bigness.

Last month, the Senate Committee on Agriculture and Forestry held a field hearing at Huron, S. Dak. One of the documents included in the record of that hearing is a study done for USEDA's own Economic Research Service entitled, "Midwestern Corn Farms: Economic Status and the Potential for Large and Family-Sized Units."

The authors of that study conclude that the large farms—they used 5,000 acres of Illinois corn land for a model—can obtain some economic advantages not available to family-sized corn farms—they used 500 acres for this study. But, they concluded, such efficiencies are not due to better operation but to external financial factors:

"They can employ various measures to reduce or eliminate Federal income tax costs . . . obtaining discounts on inputs purchased in large volume . . . such as petroleum products, machinery, crop chemicals, fertilizer, and seed, that was 20 percent greater than that obtained by a 500-acre family-sized corn farm"

The report demonstrates once again that "efficiency" of large, corporate-style farming is illusory; it is based not on farm operations but on external factors such as loopholes in tax laws.

Studies by the South Dakota Crop and Livestock Reporting Service and others have shown that, for every six farms which goes out of business, one store on a small town's main street fails also.

So all of us should be concerned, as indeed many of us are. A year ago in March, the Public Broadcasting Service television program, "The Advocates," debated whether Congress should prohibit large corporations from farming. More than 81 percent of the respondents agreed; fewer than 18 percent opposed the view that corporations should be kept from farming.

Mr. President, there is pending before the Senate Committee on the Judiciary S. 950, the Family Farm Antitrust Act of 1973, which I have cosponsored with Senators Nelson, Abourezk, Metcalf, McGee, Hatfield, and Burdick.

Our bill would amend the Clayton Act to prohibit persons with nonfarming assets of more than $3 million from engaging in agriculture, and requires that those presently over that standard divest themselves of their prohibited holdings within 5 years. The bill creates authority for the Farmers Home Administration to acquire, at fair market value, any holdings which would be divested as a result of this legislation. In turn, Farmers Home Administration would be required to sell such acquisitions in 2 years or less.

The findings of Professor Rodefeld underscore the need for enactment of the Family Farm Antitrust Act of 1973. The Nation can ill afford to delay the decisive steps which will be required to reverse the migration of people from rural to urban areas. This bill is one step.

I ask unanimous consent that the text of Professor Rodefeld's paper be printed in the Record.

There being no objection, the paper was ordered to be printed in the Record, as follows:

A Reassessment of the Status and Trends in "Family" and "Corporate" Farms in U.S. Society

(By Prof. Richard D. Rodefeld)

PREFACE

"We in the National Farmers Union believe 'the corporate invasion of American agriculture' by non-farm interests is real. It is leaving behind 'wasted towns, deserted communities, depleted resources, empty institutions, and people without

hope and without a future.' The invasion is still in the beginning stage. Some people see this trend as inevitable—that is, cannot be stopped. Not only can it be stopped, it must be stopped." (Tony T. DeChant, President, National Farmers Union from the introduction to *The Corporate Invasion of American Agriculture.*)

"These data document the extremely low involvement of nonfamily types of corporations in farming and refute the alleged take-over of farming by outside corporations." (Testimony of J. Phil Campbell, Under Secretary, Department of Agriculture, p. 20, *Family Farm Act.* Hearings Before Antitrust Subcommittee, March 22, 1972.)

"This group of fairly conservative agricultural economists (more than a dozen agricultural economists teaching at Midwest Universities) expects a continued increase in the concentration of production on fewer and fewer farms. In 25 years, this could result in a nearly complete demise of typical family farms in the units classified as commercial full-time farms." (Statement of Dr. Leonard Kyle, Michigan State University Agricultural Economist. *The State Journal,* Lansing, Michigan, Apr. 15, 1973.)

"In conclusion I would say we do not feel this bill is necessary (The Family Farm Act of 1973) because the facts of the case in agriculture do not point to any conclusion that the family farm is presently in jeopardy." (Testimony of J. Phil Campbell, Under Secretary, Dept. of Agriculture, p. 24, *Family Farm Act* . . . , March 22, 1972.)

"The large integrated agribusiness concerns and conglomerates are taking over farming and ranching today in this country. Either laws now on the books or those who are supposed to enforce them are failing to stem the tide that threatens the very existence of the remaining individual farm and ranch operators." (Testimony of Oren Lee Staley, President, National Farmers Organization, p. 101, *Family Farm Act,* . . . March 22, 1972.)

"Subsequently, the Board of Directors of the American Farm Bureau Federation gave consideration to provisions of H.R. 11654 (Family Farm Act of 1973). On the basis of present available data relative to corporate farming in the United States, the Board took action opposing the principles of this legislation." . . . "The entry of huge conglomerate corporations into agriculture in recent years has attracted a great deal of attention; however, there is little solid evidence that this is a serious problem." (Letter submitted to the Hearings record by William J. Kuhfuss, President, American Farm Bureau Federation, p. 138, *Family Farm Act.* . . . March 22, 1972.

"Chairman CELLER (addressing a question to Sec. Campbell). Tenneco recently sold 30,000 of its 130,000 acres of California farmland. Did you encourage that, or had you admonished them in any way?

Mr. CAMPBELL. We had nothing to do with that, Mr. Chairman.

"Chairman CELLER. Why shouldn't you have something to do with that? Or more accurately, what was your interest?

"Mr CAMPBELL. Under the free enterprise competitive system, it took care of itself, and we had no law to do anything in the first place, and we would not be suggesting that we be given any authority because our family farmers are doing so well for themselves these people can't compete with them.

"Chairman CELLER. Would you want the Congress to give you some authority in that regard?

"Mr. CAMPBELL. Not at the present time, because our family farmers are taking care of the problems themselves.

"Chairman CELLER. You would not want any authority after the cow gets out of the stable, but as a prevention you want some authority?

"Mr. CAMPBELL. Not at the present time, because we see no danger to the family farm at all Mr. Chairman. .

"Mr HUNGATE (U.S. Representative in Congress from the State of Missouri). Thank you Mr. Chairman (Celler). Mr. Secretary, I want to be sure I understand this. Was it actually your statement, as I understood it, that the family farm is in no jeopardy?

"Mr. CAMPBELL. That is correct. The figures I have given show that the family farmer produces 95 percent of everything that is being produced today." (The figures referred to show that family-sized farms in 1968 were estimated to account for 95 percent of all farms and 65 percent of all products sold). (Verbal Testimony, *Family Farm Act,* pp. 29–30 . . . March 22, 1972).

"INTRODUCTION

"As indicated in the program the subject I will be addressing today is the role of the USDA and land grant colleges in relation to the needs of family farmers. There are a number of ways in which this question could be addressed. For instance, a list of all the major needs of family farmers could be complied followed by an analysis and discussion of the extent to which the USDA and land grant colleges (LGC) have met or failed to meet these needs. Further analysis could be carried out to determine the major reasons for success and/or failure in meeting these needs. This would be an interesting, informative and valuable exercise. This is not what I will attempt today, however.

"Instead I would like to address two specific needs of family farmers which really take precedence over all others. The first is the need of survival. The second need is for the larger society to have the most accurate, unbiased, and complete information as possible on: the present status of family and nonfamily farms; changes taking place in their status (trends); the causes of any such changes; and the implications or effects for society (costs and benefits) of any changes in their status. The society must have this information if it hopes to formulate, enact and implement policies for the farm and rural sector which will maximize the positive effects emanating to it from the rural sector and minimize the negative effects.

"Of these two needs, the second clearly precedes the first in importance because society, through its elected representatives, will decide what the future of family farms is to be. Family farmers and rural people assuredly will play an active role in this decision-making process. Fifty or 60 years ago this activity would have been decisive. Farmers and those dependent upon them for their livelihood comprised a majority of the population and certainly would have voted for collective self-preservation. The resulting societal decision unquestionably would have to preserve or enhance the status of family farms. Today, however, family farmers and those dependent on them do not have this power.

"Farmers presently comprise less than 5 percent of the population and only 22 percent of the total population is rural nonfarm. Farmer and rural political strength has eroded through their reduced numbers and proportion of the electorate and the one-man, one-vote rule. Today and in the future, the status of family farmers will be determined by the nonfarm, nonrural majority through its elected national and state representatives. Furthermore, the status of family farms will be preserved and enhanced by society only if they are believed by society to be in its collective best interests. Rather strong evidence exists which suggests family farms, historically and presently, are still preferred by a majority of the population, at least in principle.

"A serious problem arises at this point, however. Most of society knows little about present day farming and rural society. How can society make any sound policy decisions about family farms or anything else "rural" when collectively it knows so little about these subjects? Society must of necessity rely on other institutions, organizations and specialists for this information. Farmer, rural people and their organizations perform this function or fulfill this societal need to a certain extent. Society cannot rely exclusively or primarily on these sources, however. The identification of problems and their causes may be inadequate or incorrect. If so, remedial action on the part of society will be ineffective. The magnitude of problems may be exaggerated resulting in unnecessary or wasted societal expenditures. Furthermore, these sources have vested interests. The policies they recommended as being best for themselves may or may not be the best for society as a whole. Society clearly needs additional information from sources relatively independent of farmers and rural people. Society has given a major charge and responsibility for the provision of this information to the USDA Land Grant College (LGC) system.

"The larger society, through its taxes and policies, makes the USDA–LGC system possible. In this sense, these institutions are responsible first and foremost to the larger, urban society. Many things are expected in return for this support, the most relevant of which for this paper are: a monitoring of the present status of family and nonfamily farms; the discovery of any significant changes taking place or foreseen in the relative positions of family and nonfamily farms; a specification of the causes of any such changes in farm types; and, a specification of the implication or effects, positive and negative, for all levels of society, of a change from family to nonfamily farm types (or vice-versa). Society also expects

that this information and its interpretations and recommendations will be objective, unbiased, accurate and will be communicated in a like manner to society's elected representatives and policy makers.

"Since society relies to such a great extent on the USDA LGC system for its farm information, what assurances does society have it is receiving high quality information from this source. One of the safeguards which functions to assure this is the training process of future USDA LGC staff members where students are taught and acquire the skills, values and commitments of objective scientists searching for truth. If for any reason this process fails, professional socities and journals have been created and function as institutional forces not only to disseminate knowledge and research findings, but also to insure these findings are free from major biases and inaccuracies and follow the established dictums of logic and scientific inquiry. The subjection of manuscripts to the critical review of colleagues is the common procedure followed in obtaining this assessment. Thus, the society has numerous reasons to believe or assume it is obtaining accurate information and sound recommendations about family farms from the USDA–LGC system. This, of course, does not speak to the point of how society can insure that needed research gets carried out.[1]

"If society will decide the future of the family farm; and the USDA–LGC system is to be the major source of the information those decisions are based on, then in essence, the USDA–LGC system will determine the future of the family farm through its research and recommendations. This situation suggests a third major family farm need, the need for the USDA–LGC system to obtain the maximum amount of accurate information on the present status of family and nonfamily farms changes occurring in the relative importance of these farms, the causes of any such changes, and the implication for society of any such changes and the effective communication of this knowledge to society. If this need is satisfied then society's need for this information will also be satisfied.

"Assuming family farms maximize positive benefits to society emanating from the rural sector and that society recognizing this, still prefers family farms, then any accurate assessments of family farms by the USDA LGC system can only help the status of family farms. If family farms are found by the USDA LGC system to be dominant numerically and in production and sales and their proportions in these areas are not declining relative to nonfamily types of farms (including "corporate" farms), this is evidence the society's policies formulated and enacted to maintain and enhance family farms are succeeding. These policies will be maintained and it is unlikely any major changes will be proposed or made in this area.

"On the other hand, if family farms are found by the USDA–LGC system to be less dominant than previously thought; not dominant in production and sales; and declining in importance relative to nonfamily and corporate farms; then society will rightfully conclude that its policies designed to maintain family farms were failing. Hopefully, the USDA LGC system in this situation could point out where the family farm policies had failed, what changes in these policies were suggested and recommended what new programs and policies might be needed. The necessary changes could be made by society and family farms would be returned to their former status.

"In other words, as long as the USDA–LGC system does the job society and family farmers expect it to in this area, no one will lose—society, family farmers or the USDA–LGC system. What the effects be, however, if the USDA–LGC system fails in its responsibilities to society and family farmers in this area, i.e., if it provides society with inaccurate, misleading and inadequate information about the status and changing status of family and nonfamily farms and as a result recommends unsound and incorrect policies to society?

"If the USDA–LGC system concludes family farms are declining, when in reality they are not, the major effects would be: additional legislation supportive of family farms and/or detrimental to nonfamily farms, which would improve the status or family farms in society and perhaps increase the positive effects to society emanating from the rural sector. Since both family farmers and society would either be gaining or not losing from this USDA–LGC system error, confidence in the reliability of this system probably would not be greatly diminished, it might even be enhanced.

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[1] This is another matter entirely and is a subject worthy of much more thought and discussion than has occurred to date.

"The other incorrect position which the USDA-LGC system could reach in this area is to conclude family farms are increasing or remaining stable in status while in reality they are declining in status and being replaced by nonfamily farms. In this situation, the society would be inactive, policy-wise, because there would be no evident reason or justification for action. Because of this inaction, family farmers would continue to be replaced by nonfamily farms. Family farmers, society and the USDA–LGC system would all lose in this situation. Family farmers would increasingly be lost to a society which in reality, preferred family farms, desired their retention and believed them to provide more positive benefits than nonfamily farms. The status, legitimacy and confidence in the reliability of the USDA–LGS system vis-a-vis both family farmers and society as a whole, would be greatly diminished if the USDA–LGC system made such an error, and as a result irreparable, unjustifiable damage was done to family farmers by society.

"If, as has been assumed, family farms maximize benefits and minimize costs to society and as a result society desires policies supportive of family farms, then clearly this last situation, where everyone loses and only nonfamily farms gain, is to be avoided at all costs. I only present this lengthy introduction because of my belief it is this last situation, the least desirable of all for everyone, we are presently entering.

"As indicated by the quotes at the beginning of this paper, the USDA and others accepting the USDA's evidence, such as the Farm Bureau, argue that:

"1. Family farms presently dominate farm numbers.

"2. Family farms presently dominate farm production and sales.

"3. There has been no trend away from family farms or toward nonfamily farms in terms of their proportions of:

"a. Farm numbers

"b. Farm sales.

"4. The number and importance of "corporate" farms in the U.S. is an insignificant proportion of total farm numbers and average.

"Thus, the USDA and others following their lead see no present problems with "corporate" farms, nonfamily farms or with family farm decline. Furthermore, there is no indication they expect any of these problems in the immediate future. As a result, no need is perceived for "pro" family farms or "anti" corporate farm legislation. The USDA desires no additional power to deal with what they view as a nonexistent "corporate" farm problem.

"Unfortunately for family farmers, society and the USDA–LGC system, I think the USDA, Farm Bureau and others are more wrong than right on these issues. I will argue and present evidence showing:

"1. Family farms are less dominant numerically than supposed.

"2. Family farms do not dominate farm production and sales and have not since at least 1959.

"3. There has in fact been a clear, uninterrupted 20-year trend away from family farms and toward nonfamily farms in terms of their proportion of all farm sales.

"4. "Corporate" farms presently account for a significant proportion of all farm sales.

"5. From 1959 to 1964, (the only time period for which adequate data was available corporate farm numbers and sales increased at a rate substantially greater than for family farms.

"The remainder of this paper will be devoted to developing and presenting the evidence upon which these assertions are based. I will begin by summarizing the evidence upon which the USDA has based its position followed by a critical review of this evidence and the presentation of new evidence. The paper will conclude with a summary and recommendations.

"THE USDA CASE SUPPORTING FAMILY FARM PREDOMINANCE AND STABILITY OVER TIME

"Evidence supportive of the USDA claims has (or could have) been derived and based on four types of information: research carried out by R. Nikolitch, based on special Census of Agriculture tabulations on family and larger than family sized farms; Census of Agriculture land tenure data; Census of Agriculture and USDA—ERS survey data on farms classified by type of business organization; and Nikolitch data on the composition of the total farm work force.

"If there is any one piece of evidence most crucial and central to the USDA position, it is the results of a special Census of Agriculture tabulation carried out by R. Nikolitch. Nikolitch divided all farms into two categories: those where

the majority of the work was done by the farm operator and his family, and those farms were hired labor did more than half the work. Most would undoubtedly agree this classification is quite reasonable and useful. Everyone would agree that "family" farms are worked primarily by family members and that farms using large quantities of hired labor are "nonfamily". This definition of "family" farms is the same as that used by the USDA. (Family Farm Act of 1972, 1950).

"Nikolitch classified all farms into these two categories for 1949, 1959, 1964 and 1969 (estimates) and then analyzed various characteristics of the two farm types for the various years. The USDA in testifying against the Family Farm Act of 1972 quoted one of the major findings of this research as follows: "Family Farms, those using predominantly family labor, make up about 95 percent of all farms and produce 65 percent of all farm products sold in the U.S. Although these percentages have fluctuated slightly, they have been substantially the same for the last 30 years, despite the decline in total farm numbers." (Ibid, pp. 17–18). This quote and evidence is based on Nikolitch's research which showed family farms accounted for 95 percent of all farms in 1949 and 1969 and 63 and 62 percent of all farm sales in these respective years. "Other" or larger-than-family sized farms were found to account for 5 percent of all farms in 1949 and 1969 and 37 and 38 percent of all sales in these respective years. (Nikolitch, p. 4). If one accepts the definitions of "family" and "nonfamily" farms used in this research, then the data presented does in fact show present family farm predominance in numbers and sales and no difference in this status from 1949 to 1969.

"The second source of evidence which could be used to demonstrate the predominant position of family in U.S. society and no lessening of this predominance over time is land tenure data from the Census of Agriculture. Up to 1969 the Census of Agriculture classified all farm operators in terms of their relationship to land ownership. The resultant four categories of operators were: full owners (operator owned all land); part owners (operator owned and rented land); hired manager (operator owned none of land); and tenants (all lands rented by the operator).

"If most or all "family" farms are defined or thought of as family owned and managed farms; then a present predominance of "owner-operated" farms would seem to be consistent with the assertion that "family" farms also are presently predominant. If owner-operated (family owned and managed) farms are found to have been predominant in the past and presently, and their position relative to nonowner-operated farms has remained stable or improved over time, then these findings would be consistent with the assertion family farms are presently predominant and not declining. This is in fact what the data on farms classified by land tenure show.

"Presently, owner-operated farms (full and part) occupy a clear, predominant position numerically and acreage-wise. The predominant position of owner-operated farms relative to nonowner-operated farms in the areas assessed has increased over time. Essencially the same results would be observed if proportion of all sales was assessed. In 1964, owner operated farms accounted for approximately 75 percent of all farm sales. Tenant operated farms have declined in numbers and land operated since 1935, while hired manager operated farms have consistently accounted for less than one percent of all farms and about 10 percent of the farm land. These findings then are also consistent with the assertion "family" farms are presently predominant and are not declining relative to "nonfamily" farms.

TABLE 1—PERCENTAGE DISTRIBUTION OF FARMS AND LAND IN FARMS, BY TENURE OF OPERATOR, UNITED STATES, 1900-69 (MOYER, ET AL., P. 14 AND 1969 CENSUS OF AGRICULTURE)

	Farms		Land	
	Owner operated	Nonowner operated	Owner operated	Nonowner operated
1900	63.7	36.3	66.3	33.7
1920	80.9	39.1	65.7	33.3
1940	80.7	39.3	64.3	35.7
1964	82.4	17.6	76.7	23.3
1969	88.1	11.9	86.9	13.1

"The third source of information and evidence used by the USDA is that based on the classification of farms by type of organization: individual or family (sole proprietorship); corporation (10 or fewer shareholders or more than 10 shareholders), and other. In reality this classification is based on the type of legal owner. The first information of this kind was obtained in a nationwide USDA-ERS survey of all legally incorporated businesses with agricultural operations in 1967 which was initiated in response to concern at that time with "corporate" farms. The second source of information about farms classified by type of organization is the 1969 Census of Agriculture, which in that year classified farms for the first time in this way. According to the Census, "This information was collected for class 1–5 farms in response to the demand for data more descriptive of current farm organizational structure than the traditional tenure of farm operator classification." (1969 *Census of Agriculture*, Vol. I, p. A–6).

"Since no nationwide data exists on farms classified in this manner before 1969, no assessment of trends is possible. It is, of course, possible to assess the present status of such farm. If most or all "family" farms are defined or thought of as farms which are owned by an individual or family, then a present predominance of individual or family owned farms would be consistent with the assertion that "family" farms are presently predominant in society. Similiarly if "family" farms are in actuality presently predominant, then "nonfamily" owned farms cannot be predominant or very significant. In terms of this classification method, farms organized as a sole proprietorship (owned by an individual or family) and most partnerships would clearly fall in the category of family owned farms. The USDA has also argued that all or most of the corporations with 10 or fewer shareholders are also family owned. In 1972 Secretary of Agriculture Butz stated "Less than one percent of our total farms are corporate farms, and about 6 out of 7 (86%) of these are family corporation farms. They are really family farms." (*Wisconsin Agriculturist*, p. 12). The 86 percent referred to by Sec. Butz would consist almost entirely of those corporations with 10 or fewer shareholders.

"Sole proprietorships, partnerships and corporations with 10 or fewer shareholders will therefore be viewed as largely or exclusively individual or family owned farms. Farm corporations with more than 10 shareholders will be viewed as nonfamily owned farms. In 1969, sole proprietorships, partnerships and family corporations accounted for 85.4, 12.8 and 1.1 percent of all commercial farm numbers respectively (99.3 percent of the total) and 72.5, 17.8 and 7.2 percent respectively of all commercial farm acreage (97.5% total). Nonfamily owned farm corporations accounted for .1 percent (1,797) of all commercial farm numbers and 1.6 percent of all acreage (14,360,000). (1969 *Census of Agriculture*.)

"Based on its 1967 survey of corporations with farming operations, the USDA estimated "sales from all corporate farms accounted for about eight percent of total sales of all farms. Sales from nonfamily types of farm corporations were about two percent of total sales." (Family Farm Act of 1972, p. 20). If all or most "family" farms are owned by an individual or family, this data is consistent with the assertion family farms are presently predominant in society. The low number and acreage of "nonfamily" owned farm corporations is consistent with the assertion "corporate" farms are presently of little significance.

"The fourth source of data used by the USDA to support its contentions about the status of "family" and "nonfamily" or "corporate" farms is the composition of the farm work force. The interest on this question apparently stems from the work of Nikolitch who has argued "If technological and other economic changes had an adverse effect on family farms, several consequences would follow. . . . Family labor would represent a decreasing proportion of total farm labor." (*Size, Structure and Future of Farming*, p. 251.) The USDA summarizes the data in this area as follows: "Although the proportion of labor hired has remained fairly constant at 25 to 30 percent of total labor used on farms, the total amount of hired labor has declined steadily with the decline in total farm population. Operator and family labor provides about 70 to 75 percent of the total labor used on farms, and has provided about this proportion at least since the mid-1950's." (Family Farm Act of 1972, p. 19.) If "family" farms are defined or viewed as farms where the family does all or the majority of work, this data is consistent with the assertion family farms are predominant presently and are not declining and the reverse is suggested vis-a-vis "nonfamily" or "corporate" farms which use large amounts of hired labor.

"If family farms are in fact dominant, then you would also have to observe a predominance of: family-size farms, owner-operated farms, individual and family owned farms, and family worked farms. The data used by the USDA (or which

could be) provides evidence demonstrating rather convincingly that each of these four conditions consistent with family farm dominance does in fact exist. Corresponding evidence of an equally convincing nature is presented for three of these areas showing little change in the level of predominance over time.

"Based on this evidence, the USDA and others have concluded in rather strong terms: family farms are predominant in numbers and sales, corporate or nonfamily farms are relatively insignificant in numbers and sales; family farms are not declining in their proporation of numbers and sales; and corporate or nonfamily farms are not increasing in these areas. Apparently the vast majority of land-grant college personnel with interests and competencies in this area agree with the USDA, judging from the relative lack or nonexistence of any significant challenges to these conclusions or assumptions. It is clear from the quotes in the preface not everyone agrees with the USDA's conclusions, but the empirical base for these disagreements is almost nonexistent or highly questionable.

"THE CASE AGAINST THE USDA AND THE BELIEF IN FAMILY FARM DOMINANCE

"Given the reasonable logic and the quality and quantity of the evidence upon which the USDA conclusions are based, any challenge, let alone a significant or major one, would seem doomed to an early and futile death. I hope I can demonstrate this is not the case because of the immense social, political and economic implications associated with the issue of family and nonfamily or corporate farms. I will begin by addressing each of the four major bodies of evidence used to support the USDA's conclusions.

"THE CLASSIFICATION OF FARMS BY AMOUNT OF LABOR HIRED

"The argument and supporting evidence used by the USDA to argue there has been no decline in family-sized farms relative to larger than family sized farms over the last 30 years has four errors or misrepresentations associated with it; one of these errors is relatively minor, the other three quite significant. In order to understand these errors or misrepresentations, the Nikolitch findings used by the USDA are reproduced in Table 2.

TABLE 2—NUMBER OF FARMS AND SALES OF FARM PRODUCTS BY ALL FARMS, OTHER THAN FAMILY FARMS, AND ALL FARMS, AND AS A PERCENTAGE OF ALL FARMS, 1949, 1959, 1964, AND 1969 (NIKOLITCH, P 4)

	Number of farms				Percent of all farms				Percent of all sales			
	1949	1959	1964	1969	1949	1959	1964	1969	1949	1959	1964	1969
Size of farm (1,000 farms):												
All farms	4,905	3,695	3,150	2,726	100	100	100	100	100	100	100	100
Other than family	264	165	154	146	5	5	5	5	37	30	35	38
Family	4,641	3,530	2,996	2,580	95	95	95	95	63	70	65	62

"The first USDA error, the most minor, was their inaccurate statement of the number of years covered by their trend data. Nikolitch only assessed a 20-year period, not a 30-year period. He makes no reference to data going back to 1939, if it existed, I assume he would have included it or made reference to it. I have been unable to find any such reference in any of his work familar to me. The source of this inaccuracy is found in the foreward to the Nikolitch publication, Family-Size Farms in U.S. Agriculture, written by R. L. Mighell, Chief of the Production Resources Branch, FPED ERS (Nikolitch, p. iii). The entire paragraph in which this error occurs was repeated verbatim in the USDA testimony against the Family Farm Act of 1972 (unreferenced and without quotes). This is a minor but not insignificant point. The degree of confidence which can be accorded to trend data covering 30 years is a good deal more than what can be accorded to a 20-year period. Thus, the statement of the period covered by the trend data was inaccurate and the research findings as a result were misrepresented and misleading when communicated to audiences not familiar with the original research source. The effect of this was to accord more stability to family farms than is actually known at this time.

"The second error is one of excluding information inconsistent with the conclusion reached. From 1959 to 1969 little change occurred in the proportion of all farm numbers, family and large than family sized. The same cannot be said

concerning sales. Family sized farms experienced a decline in their proportion of total sales from 70 percent in 1959 to 65 and 62 percent in 1964 and 1969, respectively. Thus, for the most recent time period, the last ten years, family farms have been declining in their proportion of all farm sales. Assuming conditions in the future will be more similar to the 1959–69 period than the 1949–59 period, then what has happened to family farms in the last ten years should have higher predictive ability and accuracy then what happened from 1949–59 or from 1949–69. It is clear, the trend in family farm sales for the most recent ten year period is at considerable variance with the USDA's overall conclusion on this matter.

"The third error is one of rather major dimensions. Referring again to Table 2, notice the drop in other than family farm numbers from 1949 to 1959 and the corresponding drop in the proportion of all sales. The number of other than family sized farms was reduced by 99,000 farms from 1949 to 1959. This was a 37 percent decline. The number of family sized farms, on the other hand, declined by only 24 percent. The absolute amount of other than family farm sales increased from 1949–59 by only 12 percent while family sized farms increased their sales by 51 percent. This is a curious situation because conventional wisdom and accumulated knowledge suggest that smaller farms have higher mortality rates than larger farms. If so, the figure just quoted for 1949–59 should have been reversed and more like the comparable figures for the 1959–69 period. In this period family sized farms experienced a decline in their number of 27 percent while other than family farms dropped by only 11 percent.

"What happened to the other than family farms between 1949 and 1959? Some kind of economic disaster or calamity? Well, it was nothing as dramatic as that. The explanation is given by Nikolitch in a footnote to the table where these figures were derived. For the 1949 figures, he states "sharecropper operations not considered as independent farms, but as parts of respective multiple-unit operations." (Nikolitch, p. 4). This is the solution to the mystery. The numbers and sales of other than family farms in 1949 were inflated vis-a-vis the 1959–69 figures because plantations were included in the 1949 figures as single operations, most of which undoubtedly were other than family sized.

"In 1959 and later, however, these 'multiple-unit operations' were not counted as single units but instead all the sharecropper units on these places were counted separately. Hence, other than family farms experienced a big drop from 1949 to 1959 because of the loss of these multiple-unit operations. Family sized farms increased their proportion of sales considerably through the definitional acquisition of all the individual sharecropper operations and the sales which in 1949 were associated with the multiple unit operation.

"This gain by the family sized category was not detectable in the changes in farm numbers because the loss of family farms from 1949–59 more than offset the numbers gained by the definitional change.

"This third error was the direct cause of the fourth major error made by the USDA. The high level of apparent family farm stability from 1949 to 1969 was in fact a statistical artifact caused by the use of different definitions for family and other than family sized farms in 1949 and 1969. If multiple-unit sharecropper operations had been included for the years 1959, 1964 and 1969, then other than family farms would have consistently accounted for an increasing proportion of all farm sales from 1949 to 1969. Furthermore, if this had been done, then family sized farms at the present time would account for a good deal less than their present 62 percent of all farm sales. In other words, family sized farms while still predominant numberically would be a good deal less predominant in sales.

"If the same definition had been used in 1949 as in later years, then the number of other than family sized farms in 1949 would have been much lower and their proportion of all sales would have also been much lower. If this had been done, family farms would have been observed declining in their proportion of all sales consistently from 1949 to 1969 and other than family farms would have been observed consistently increasing.

"This fourth error is one of immense magnitude because if consistent definitions had been used, the conclusions reached would have been the exact opposite of those reached by Nikolitch and the USDA. This data instead of being evidence for family farm stability is in actuality evidence of systematic, linear family farm decline and larger than family size farm growth.

"Even if no additional information was to be presented in this paper, some serious questions could be raised at this point about the meaningfulness of the other evidence upon which the USDA has based its case. If family farms are

much less dominant than previously thought and/or family farms have been systematically declining in importance, why weren't these facts observable or detected in the other evidence presented by the USDA? I will attempt to answer this question in the later sections.

"Actually, Nikolitch presented a good deal of additional data which by itself should have raised some serious questions about the conclusions reported by the USDA on the present status and trends in family farms. For instance Nikolitch presented information by region on changes from 1959 to 1964 on the proportion of all sales accounted for by family sized farms. In each of the 11 regions, family sized farms declined in sales from 1959 to 1964. The amount of reduction varied from 1 to 13 points while for the U.S. as a whole, the reduction was 5 points. (Nikolitch, p. 9). This information certainly wasn't consistent with the conclusion presented by the USDA.

"The present predominant status of family sized farms inferred from their proportion of sales for the entire U.S. would also have been much less clear or certain if the USDA had presented data on the present status of family sized farms by region, state and type of production. A summary of this data appears in Table 3.

TABLE 3.—THE PERCENTAGE OF ALL FARM NUMBERS AND OF ALL SALES BY OTHER THAN FAMILY SIZED FARMS BY REGION, STATE AND TYPE OF PRODUCTION FOR 1964 (NIKOLITCH, PP. 7, 9-10)

Region	Percent		State	Percent of sales	production	Percent	
	Farms	Sales				Farms	Sales
Pacific	13	71	Arizona	89	Vegetables	17	85
Southeastern	6	56	Claifornia-Nevada	79, 70	Fruit and nuts	17	71
Mount.in	9	54	New Mexico	63	Other field crops.	20	70
Delta	8	51	Colorado-Massachusetts	57, 56	Cotton	10	58
New England	11	49	Mississippi	55	Poultry	8	43
Southern Plains	6	45	Maine-South Carolina	53	Other livestock	3	31
Lake States	2	14	Texas	52	General	5	30
Corn Belt	2	13	Arkansas	50	Dairy	6	23
Northern Plains	2	18	Louisisna	48	Tobacco	3	18
Appalachian	4	27	Washington-Oregon	46	Cash grain	3	15
			Wyoming, Georgia, Idaho	48			
			Michigan	21			
			Wisconsin, Illinois, North Dakota	13			
			Iowa	9			

[1] The percent of all farms which were other than family sized was not available on a State basis in the Nikolich publication.

"Table 3 indicates if statistics had been presented for regions, states and enterprise areas, it would have been quite clear (contrary to the impression given by the national level figures quoted by the USDA) that other than family farms were either predominant (or close to it) in most regions and states other than the midwest as early as 1964. This was also true for most types of production other than those concentrated in the midwest.

"Another shortcoming of classifying farms on the basis of quantity of labor hired is that land ownership and the ownership of nonland resources (capital) are not taken into consideration in the classification scheme. What proportion of family sized farms are owner and nonowner operated? What are the proportions for larger than family sized farms? Regardless of one's own preference as to what a family farm is, the questions of whether or not (or to what extent) the farm operator owns the land (or hold title to it) and the nonland production resources are easily defended on historical, practical and conceptual grounds as desirable and necessary elements of any ideal classification scheme (in addition to an assessment of labor). As pointed out earlier, it appears the bulk of sharecropper farms presently are included in the family sized farm category. In addition, a high proportion of other farms classified as tenant operated are undoubtedly classified as family sized. If these farms and their sales were removed from the family sized farm category, what proportion of all sales would the remaining owner operated family sized farms account for? It could conceivably be less than 50 percent. Would this alter or effect our conclusions as to whether 'family' farms are presently predominant in society?

"THE CLASSIFICATION OF FARMS BY LAND TENURE

"Given the trends in family and larger than family sized farms since 1949, some serious questions must be raised about the utility and meaningfulness of relying on and tenture data (as defined by the Census) to assess and measure significant alterations taking place in the structural characteristics of U.S. farms and changes taking place in the relative importance of different structural types. The land tenure information suggests or leads one to conclude family farms are predominant presently and their amount of predominance has been increasing. On the other hand, family sized farms have been becoming less predominant in sales since 1949 suggesting or leading one to conclude family farms are declining. The explanation for this incongruity is the fact that while the land tenture classification assesses changes taking place in the status of farms classified by the relationship of the farm operator to the ownership of the land he operates (owner and nonowner operated farms) the amount of hired labor and the ownership of nonland production resources (capital) are not included as a part of the classification.

"Because of this omission we do not know the proportions of all owner operated farms which are family and larger than family sized. The same information is also lacking for nonowner operated farms. Since family sized farms have been declining even as owner-operated farms were increasing, it's quite clear some of the owner operated farms are larger than family sized. An important question is what proportion of all owner operated farms and their sales are accounted for by farms which are larger than family sized? The land tenure classification as it exists cannot be used to assess trends on "family" farms is one includes as a minimal part of his family farm definition the requirement that the operator and his family do a majority of the work and/or that the operator owns the majority of the farm's nonland resources used in production. Since the land tenure classification excludes these two major structural dimensions or characteristics of farms, it falls far short of the ideal classification system.

"Any one using land tenure data should also be alerted to the fact that the Census changed their minimal requirements to qualify as a farm operator in 1969. The 1969 tenure classification no longer allows a meaningful distinction or classification of farms in terms of the relationship between the person managing the farm on a daily basis and the extent to which that manager owns the land managed (operated). Furthermore, pre-1969 hired manager farms are now classified as owner and tenant operated farms. The latter point explains to a large extent why owner operated farms increased in their proportion of all farm numbers, acreage and sales from 1964 to 1969. Large corporations like Tenneco and DelMonte, etc. are now classified as owner operated farms if they own any of the land they operate.

"This reclassification was made possible by changing the definition of a farm operator from 'a person . . . either doing the (farm) work himself or directly supervising the work' to 'the person in charge of the farm or ranch operation.' (1969 Census of Agriculture, p. A–6). Semantically there seems to be little difference here but what the new definition allows that the old one did not is for absentee farm owners to be classified as "owner-operators." Obviously, if one owns a farm or any part of a farm, legally and technically he is the person or entity (corporations) *in charge* of the farm operation (assuming the land owned is not all rented out).

"THE CLASSIFICATION OF FARMS BY TYPE OF ORGANIZATION

"What contribution does a knowledge of type of farm legal organization (sole proprietorship, partnership, corporation with 10 or fewer or more than 10 shareholders) make to understanding the present position or trends in the same of 'family' and 'corporate' farms and farm organizational structure generally? Was the conclusion of the USDA in the preface justified, that 'these data document the extremely low involvement of nonfamily types of corporations in farming and refute the alleged takeover of farming by outside corporations?" (Family Farm Act of 1972, p. 20).

"Technically, this information provides no evidence whatsoever on either the present or changing status of 'family' farms. As pointed out earlier, if 'family' farms are in fact predominant you would also have to observe a predominance of individual and family ownership. But, the observation of individual and family ownership predominance, by itself, does not prove 'family' farms are predominant. Why? Because on either a practical or ideal sense more informa-

tion than just type of owner is necessary to identify a 'family' farm. Family owned farms which would under no circumstances be classified as 'family' farms are: absentee family owned farms with hired managers and hired workers; and, family owned and managed farms with high inputs of hired labor. Ideally, one would also like to know if the individual or family owner was also managing the farm directly (or was absentee) and if these owners also owned the nonland production resources (capital). None of these necessary or desirable distinctions can be made by knowing only the type of owner because information is not available on the involvement of these various owners in management, labor or the provision of capital.

"Is the USDA's quoted assertion about 'corporate' farms correct? Well, as a matter of fact it is, if you accept the USDA's definition of a 'corporate' farm as exhaustive or inclusive of all 'corporate' farms. No one will argue with the USDA that all or most of the farming corporations with more than 10 shareholders are 'corporate' farms. There are very solid practical and conceptual reasons to disagree with the USDA, however, that their definition includes all 'corporate' farms. This is very clear when one begins specifying the most likely structural characteristics of those farms identified by the USDA as 'corporate'. These farms most likely are large (acreage and/or sales-wise), have absentee owners, hired managers and hired workers and provide their own capital. Many would argue that the structural characteristics just enumerated constitute the definition of a 'corporate' farm at the most general level. This type of farm is the polar extreme structurally of what Harris has defined as the ideal 'family' type farm (Harris, p. 519).

"If this structural definition of a 'corporate' farm is accepted, then it is clear the USDA definition of a 'corporate' farm not only does not include all 'corporate' farms; it probably does not even include 'most corporate' farms. For a farm to be structurally defined as 'corporate', it need not be legally incorporated. This is not true of the USDA's definition. Furthermore, the structural definition of a 'corporate' farm places no a priori limits on the minimum number of owners as with the USDA's definition. The structurally defined 'corporate' farm may have any kind or number of absentee owners. The owner may be an individual, family, small or large group of unrelated individuals or any combination of these. That the USDA's definition of a 'corporate' farm may be excluding the majority of structurally defined 'corporate' farms is indicated by research I was involved with at Wisconsin, where it was found that approximately 75 percent of all structurally defined legally incorporated 'corporate' farms were owned by an individual, family or small group of unrelated individuals. None of these 'corporate' farms would have been included in the USDA's 'corporate' farm category. The percentage of structurally defined 'corporate' farms excluded from the USDA's 'corporate' farm category undoubtedly is even greater than 75 percent because no assessment was possible on the number of such farms unincorporated in Wisconsin.

"If you accept the USDA's definition as including all 'corporate' farms, then the USDA is quite correct in its assertion that 'corporate' farms have a low involvement in farming and are light years away from predominance in farming. If you do not accept the USDA definition of a 'corporate' farm, then the USDA figures on 'corporate' farms as they define them are rock bottom estimates of the present levels of 'corporate' farms. If 'corporate' farms are defined structurally, then the USDA has not presented data documenting low 'corporate' farm involvement in agriculture and definitely has not refuted either the alleged takeover of farming by 'corporate' farms or more correctly, in terms of what has been charged, a trend toward 'corporate' farms.

"Since the 1967 USDA–ERS surveys of farming corporations has been highly quoted in the past and will undoubtedly continue to be in the future, a few comments about this research appear justified. Essentially the same definition of a 'corporate' farm was used in this research as that presently being used by the USDA so all of the previous comments apply equally as well to this research. There is one feature of this research, however, which distinguished it from the similar Census of Agriculture based data. This feature is that it may have been highly inaccurate. Information on this topic has been presented in two previous papers, so I will not go into very much detail on this (Rodefeld, March and May, 1972).

"I pointed out in these papers that in Wisconsin 37 percent of the USDA enumerated farming corportions, were not qualified for inclusion and 43 percent of all farming corporations actually found in the state were left out by the

USDA. The USDA research was found to have underestimated acres operated by 46 percent; acres rented by 298 percent, cattle fed by 46 percent, etc. This research was easily dismissed by the USDA since it only covered one state but it should be pointed out that a comparison of the 1969 Census of Agriculture data on farming corporations with the 1968 data of the USDA is consistent with the results of the Wisconsin research. For instance, the Census found 61 percent more farming corporations and 34.5 percent more acres operated by farming corporations than found in the USDA survey for the USDA as a whole.

"COMPOSITION OF THE FARM WORK FORCE

"Nikolitch and the USDA have argued (or implied) that if family farms were declining, family labor would represent a decreasing proportion of total farm labor. These authors observe no such decrease which suggests or is consistent with the assertion 'family' farms have not been declining. These arguments, data and inferences, however, are not well founded. Family farms could in fact be declining even as the proportion of family workers in the total work force remained stable. This is clearly supported by the trends in family and larger than family sized farms. The proportion of the work force hired has not changed even while larger than family sized farms over the last 20 years have accounted for an increasing proportion of all farm sales. What has been happening in the farm labor sector is quite clear. Family and hired workers have been decreasing at about the same rates even while those farms using hired labor have been increasing their work force sizes. Thus, even while all hired labor is being reduced, that remaining is becoming more highly concentrated on the larger farms. For instance from 1959 to 1964 farms with sales exceeding $100,000 increased their proportion of hired labor on all farms from 30.1 to 40.6 percent (Nikolitch, p. 18). For the same time period the average number of hired workers on commercial farms reporting regular hired workers increased from an aveage of 2.2 to 2.6 while the number on hired manager farms increased from 8.5 to 12.5 (Moyer, et al., p. 19).

"In conclusion, while stability in the proportion of the work force which is family labor is consistent with the assertion of stability in "family" farm status, the former is not and cannot be used by itself as evidence of 'family' farm stability since 'family' farms can and in fact have declined even while the proportion of the work force which was family labor remained constant.

"OTHER EVIDENCE SUGGESTING FAMILY FARM DECLINE AND LESS PREDOMINANCE THAN SUGGESTED BY THE USDA

"Other evidence also exists more supportive of my claim that "family" farms are less dominant than suggested by the USDA and have been declining in importance rather than remaining stable. The present concentration of operated farm land suggests family farms are less dominant than supposed. In 1969 farms with 1,000 or more acres (150,946) accounted for only 5.5 percent of all farms, but operated 54.4 percent (578.4 million acres) of all land in farms. Farms with 2,000 or more acres were 2.2 percent (59,907) of all farms but operated 42.8 percent (454.8 million) of all land in farms. There were 130,995 (5.9 percent farms with harvested crop land with acreage exceeding 1,000 acres that accounted for 29.3 (79.8 million acres) percent of all harvested crop land acreage. Farms with acreages exceeding 1,000 acres accounted for only 14.1 percent of all farms with irrigated acreage, but 47.8 percent (18.7 million acres) of the irrigated acreage (1969 Census of Agriculture).

"Trends in the number and proportion of sales of the largest farms also support the contention of family farm decline. The number of farms with sales exceeding $100,000 per year has increased from 20,000 (.5 percent of the total) in 1959 to 31,000 (1.0 percent) in 1964, to an estimated 54,000 (1.8 percent) in 1970. The sales accounted for by these farms has increased from $5.0 billion (16.3 percent of the total) in 1959 to $17.2 billion (32.6 percent) in 1970. (*Our 31,000 Largest Farms*, p. 4 and *Family Farm Act of 1972*, p. 24.) This is evidence of the declining position of the 'family' farm since in 1964, 86 percent of these largest farms were larger than family sized and they accounted for 92 percent of all sales by these largest farms (Nikolitch, p. 5). From 1959 to 1964, these largest farms increased their proportion of all farm sales in every single region in the U.S.

"As pointed out previously, it is technically and conceptually impossible to answer the question of what the present status of the family farm is and how this status has been changing to everyone's satisfaction with presently available data. The family sized-larger than family sized distinction probably is the most useful, insightful, and generally acceptable classification presently available. Even this classification does not assess two important farm structural characteristics, however, land ownership and the ownership of nonland production resources (capital). For policy making it would seem quite important to know the extent to which family and larger than family sized farms were owner and nonowner operated and who provided the capital on these farms (land owner, farm manager, both, neither).

"The land tenure classification is useful because prior to 1969, it assessed the relationship between land ownership and farm management, i.e., it classified farms on the basis of whether or not the farm manager (operator) owned the land which was being managed. It was deficient in the sense it did not assess the farm structural characteristics of labor and nonland resource ownership. Hence, even though owner and nonowner operated farms were distinguished, there was no way of knowing which of these farms were family sized (used little or no hired labor) and which were larger than family sized (used a good deal of hired labor). There also was no way of knowing from this classification who was providing the capital on these farms.

"A significant step forward in understanding what is happening to the 'family' farm would be a synthesis or combination of the family-larger than family sized classification with land tenure classification (owner and nonowner operated). Such a synthesis would result in four farm types. At the one extreme you would have the owner operated: family sized farm. This is a farm owned, managed and worked by an individual or family. This is the farm type which historically and presently has been predominant throughout the greater Midwestern area. It is consistent with the definition of the ideal 'family' type on the three structural dimensions included in the definition (no or little differentiation between land ownership, management and labor). The ownership of nonland production resources (capital) is the only other factor of production or input not included.

"The other extreme is the polar opposite, structurally from the preceding farm type. This is the nonowner-operated; larger than family sized farm. This is a farm with absentee ownership, and a nonland owning manager where all or most of the work is done by hired nonowning workers. Structurally, this is the most highly differentiated farm type because in contrast to the ideal 'family' type farm, different individuals provide for each of the farm structural characteristics of land ownership, management and labor. This type of farm is undoubtedly what most people have referred to as the 'corporate' or 'industrial type' farm. Undoubtedly most 'plantation' farms would also be classified in this category.

"Two farm types occupy positions between the two extreme farm types: owner operated; larger than family sized. These two types are clearly intermediate on the structural differentiation continuum since each shares a common characteristic with the extreme farm types while the extremes share no commonalities. The first of these intermediate types is a farm which is owned and managed by an individual or family where all or most of the physical labor is performed by hired nonowning workers. It is the same as the ideal 'family' type farm in the sense there is no differentiation between land ownership and management. It is different from the 'family' farm and the same as the 'corporate' farm in that the bulk of the work is done by hired workers. Many fresh vegetable, fruit, livestock ranches and some plantations would be found classified as this type of farm.

"The second intermediate type farm has absentee ownership and a nonland owning manager who himself or with his family does all or most of the work. This farm type is the same as the ideal 'family' farm since there is no differentiation between management and labor. It is different from the family farm and the same as the 'corporate' farm since it has absentee ownership and a nonland owning manager. Included in this category are all family sized rented and leased farms and farms worked on shares (50–50, 40–60, etc.) If plantations are not enumerated as single units, sharecropper farms would also be included in this category. The knowledge of nonland production resource ownership is necessary here to distinguish among the various sub-type of this general farm type.

"How many farms are there in each of these categories? How much acreage and sales are accounted for by each? What changes have taken place in the numbers and sales of each over time? This information has never been available up to this point in time because farms have never been classified in this way. I have been able, however, to determine the answers to these questions for 1959 and 1964 on the basis of existing data on family and larger than family sized farms and owner and nonowner operated farms. This information is provided in Table 4.

TABLE 4.—FARM NUMBERS, SALES, PERCENTAGE OF ALL FARM NUMBERS AND SALES AND PERCENTAGE CHANGE IN FARM NUMBERS AND SALES FOR 1959 AND 1964 BY FARM TYPE [1]

	Farms (thousands)			Sales (millions)		
	1959	1964	Percent change 1959–64	1959	1964	Percent change 1959–64
All farms	3,695	3,150	−14.7	$30,362	$35,075	+$15.5
Owner operated: Family sized (family)	2,808	2,475	−11.9	15,224	17,276	+11.9
Nonowner operated: Family sized (tenant)	721	521	−27.7	5,912	5,372	−9.1
Owner operated: Larger than family sized (larger than family)	139	122	−12.2	7,202	8,915	+23.8
Nonowner operated: Larger than family sized (industrial type)	26	32	+23.1	2,024	3,512	+73.5

	Percent of all farms		Percent of all sales	
	1959	1964	1959	1964
All farms	100.0	100.0	100.0	100.0
Family	76.0	78.6	50.1	49.3
Tenant	19.5	16.5	19.5	15.3
Larger than family	3.8	3.9	23.7	25.4
Industrial type	.7	1.0	6.7	10.0

[1] The 1st step in deriving these figures was to determine the numbers and sales for the marginals. The marginals for family and larger than family sized farms were provided by Nikolitch. The census provided the data for the owner and nonowner operated farms for 1959 and 1964. There was a problem here, however, because Nikolitch excluded all the farms in Alaska and Hawaii and all institutional farms. To get comparable marginals, these farms and their sales also had to be removed from the census land tenure totals. It was possible to determine from State data in the 1959 and 1964 Census of Agriculture the total number and sales by land tenure type of Alaska and Hawaii farms. For 1959 and 1964 these farm numbers and sales were subtracted from the U.S. totals by land tenure class. The remaining differences in total numbers and sales between the 1959 and 1964 census and Nikolitch's totals for these years was the number and sales of institutional farms removed by Nikolitch in his analysis. It was assumed all of these farms and their sales were classified in the censuses hired manager farms. Hence for 1959 and 1964, these farms and their sales were subtracted from the census hired manager numbers and sales. The remaining hired manager numbers and their sales for the 2 years were placed in the nonowner operated larger than family sized cell of the table. This was appropriate because Nikolitch classified all hired manager farms as larger than family sized. This cell, however, was not complete because Nikolitch classified all farms with 1 to 5 man-years or more of hired labor as larger than family sized. To fill out this cell it was necessary to know how many tenant operated farms were larger than family sized. An estimated of this number was made by assuming all commercial tenant operated farms with 2 or more regular hired workers would have been classified by Nikolitch as larger than family sized. These numbers for 1959 and 1964 were available from the Census of Agriculture. This number plus the already established number of hired manager farms equalized the number of nonowner operated larger than family sized farms in 1959 and 1964. Since all the marginal numbers were known, once the number was known for this one cell, all the other cell numbers were easily determined by subtraction. The sales accounted for by each cell in the table were determined by first assuming the tenant operated larger than family sized farms had the same average sales per farm as the larger than family sized farms remaining after subtracting the hired manager farm number and their sales from the total of all larger than family sized farms. Multiplying the estimated number of tenant operated larger than family sized farms by the average sales per farm for larger than family sized farms minus hired manager farms equalled the total sales of tenant operated larger than family sized farms for 1959 and 1964. These totals for 1959 and 1964 plus the already determined totals for hired manager farms equalled the total sales of nonowner operated larger than family sized farms for 1959 and 1964. Since the marginals for sales were already determined, the amount of sales for the remaining 3 cells were easily determined through a residualization process.

"Since no such information or determination has been provided or accomplished previously, a description of the procedure followed appears as a footnote to Table 4. What does Table 4 show? First, as might have been expected owner operated: family sized farms (family) predominated in farm numbers in both 1959 and 1964, accounting for 76 and 79 percent of all farm numbers in these respective years. Numerically, in both years nonowner operated: family sized farms (tenant) ranked next in importance accounting for 19 and 16 percent of all farms in these respective years. Owner operated: larger than family sized farms (larger than family) and nonowner operated: larger than family sized farms (industrial type) accounted for only 4.5 and 4.9 percent of all farm numbers in 1959 and 1964 respectively. In conclusion, previous assertions about family farm numeric predominance have been well founded.

"In terms of numeric changes from 1959 to 1964, the total number of farms declined by about 15 percent. The greatest losses were experienced by tenant farms while family and larger than family farm declined at lower rates with little difference between them in their rates. Industrial type farms, however, increased by about 23 percent; the only one of the four farm types experiencing an increase in numbers.

"Family farms while accounting for almost 80 percent of all farm numbers, accounted for only 50 percent of the sales in 1959 and less than 50 percent (49) in 1964. It is based on this evidence that I argue family farms have not been predominant in sales since as early as 1959. Given the continuing increases in proportion of sales by larger than family size farms and the largest (sales exceeding $100,000) farms, it appears quite likely the proportion of sales presently accounted for by family farms is less than their 1964 level. Furthermore, the percentage of all sales accounted for by family farms is considerably less than what "owner-operated" farms accounted for in 1964 (75) and what "family sized" farms accounted for in 1964 (65).

"Tenant farms also account for a lower proportion of the total sales than what one would expect on the basis of their proportion of farm numbers. This difference is not as discrepant as that for family farms, however. Larger than family farms while accounting for only 4 percent of a farms, accounted for a quarter of all farm sales in 1964. Industrial type farms accounted for 10 percent of all farm sales in 1964, while accounting for only 1 percent of the farms.

"It should be pointed out that the number and sales of industrial farms are extremely conservative estimates. Specifically, the number of tenant operated: larger than family sized farms is underestimated because no estimate was possible of the tenant operated farms classified by Nikolitch as larger than family sized because of the use of seasonal workers. Furthermore, if plantations were enumerated instead of individual sharecropper operations, tenant farm numbers and sales would be decreased and larger than family and industrial type farm numbers and sales would correspondingly be increased. It also should be pointed out that if these computations had been made for commercial farms which in 1964 accounted for 69 percent of all farm numbers and 97.4 percent of all farm sales, then the percentage of family farms would be reduced considerably (since 91 percent of all noncommercial farms are owner operated and undoubtedly family sized), and the percentage of all commercial farm sales by family farms would also be lower than the 49 percent of all farm sales.

"The total amount of sales by all farms increased about 15 percent from 1959 to 1964. Tenant farms were the only farm type experiencing an absolute reduction in sales over this period. Family farms increased, but at a rate lower than the average for all farms. Larger than family farms, and especially industrial type farms, experienced substantial increases, the former farm type by 24 percent and industrial type farms by 73 percent.

"In 1964 family farms accounted for 95 percent of all "owner operated" farms but only 66 percent of the sales by "owner operated" farms. Family farms also accounted for 83 percent of all "family-sized" farms in 1964 and 76 percent of their sales. Larger than family farms accounted for 79 percent of all "larger than family sized" farms in 1964 and 72 percent of their sales. Tenant farms in 1964 accounted for 94 percent of all "nonowner operated" farms, but only 60 percent of their sales.

"The percentage of "owner operated" sales accounted for by family farms decreased from 1959 to 1964 (68–66), while family farms increased their percentage of "family sized" farm sales (72–76) in the same period. Larger than family farms accounted for 78 percent of all "larger than family sized" farm sales in 1959 and 72 percent in 1964. Tenant farms while accounting for 75 percent of all "nonowner operated" farm sales of 1959 experienced a substantial drop to 60 percent by 1964. Average sales per farms by type of farm for 1964 were: family=6,980; tenant=10,304; larger than family=73,041 and industrial type=109,569. In 1959 larger than family farms had average sales of 51,981 and industrial type farms averaged 77,057.

"CONCLUSIONS

"Since the mid to late 1960's, numerous farm organizations, (especially the Farmers Union and NFO) rural people, legislators and other interested parties have argued that family farms were declining and were being replaced by non-family farms, especially "corporate" and/or industrial type farms.

"The USDA explicitly, and the land grant college system by acquiescence, have consistently maintained quite to the contrary that: family farms continue to predominate in farm numbers and sales; "corporate" farms are presently an insignificant force in American agriculture; there has been no change over the last 30 years in the proportion of all farm numbers and farm sales accounted for by family farms, i.e., there has been no decline in family farms and no increase in nonfamily farms over the last 30 years; and there has been no trend toward corporate farms.

"I think I have proven in this paper that those who have maintained that "family" farms are declining and "corporate" or "industrial type" farms are increasing are a good deal closer to the truth than the USDA and others who have supported its position. If a family farm is defined as an owner operated; family sized farm, then this type of farm has not predominated in farm sales since at least 1959. If one wanted to be a little dramatic, one could use the fact that such family farms account for less than 50 percent of all farm sales to assert that U.S. rural society can no longer be correctly characterized as one dominated by family farms and farmers. Rather, it is now dominated by "nonfamily" farms and farmers. "Nonfamily" farms can be viewed as insignificant in U.S. society only if one is willing not to attach very much import to farm types which account for more than 50 percent of all sales, even though they only accounted for 21 percent of the farms and farm operators in 1964. "Corporate" and "industrial type" farms can be viewed as insignificant only if 10 percent of all farm sales in 1964, and undoubtedly more 9 years later, is also viewed as insignificant.

"There has, in fact, been a systematic, uninterrupted 20-year decline in the proportion of all farm sales accounted for by family sized farms and a corresponding systematic increase in the sales accounted for by larger than family sized farms over the same 20-year period. The USDA's own data is evidence for this statement when errors in the reporting, inconsistencies in the definitions of the farm types, and the interpretations of that data are accounted for or corrected. From 1959 to 1964 there was, in fact, a trend toward "corporate" or "industrial type" farms. This type of farm was the only farm type of the four analyzed that experienced an absolute increase in farm numbers from 1959 to 1964, a 23 percent increase over a 5-year period. Family farms for the same period decreased in number by 12 percent. "Corporate" or "industrial type" farms also experienced the greatest increase in sales from 1959 to 1964, a 73 percent increase. Family farm sales for the same time period registered only a 12 percent increase.

"The pattern of family farm decline and "nonfamily", "corporate" and/or industrial type farm ascendancy established in this paper takes on added credibility when viewed in conjunction with the existent high levels of land concentration by farms exceeding 1,000 acres; the proportion of all sales accounted for by farms with sales exceeding $100,000; the concentration of hired workers on these largest farms; and the existent high levels of production concentration in some areas pointed out by the USDA in its testimony against the Family Farm Act of 1972.

"The USDA-LGC system has been vested with the responsibility by society of providing it with the information it needs to make policy decisions about the farm and rural sectors. The society expects and assumes that this information will be accurate, adequate and correctly interpreted. The greater the extent to which this is not true, the greater the probability is that society will not make policy decisions maximizing its own best interests.

"I do not think society has been receiving accurate, adequate and correctly interpreted information on the present and changing status of family farms and farmers. Society has not received the information it seeks because of the reasons outlined previously in this paper. Furthermore, policy recommendations which have been made to society by the USDA and others based on this inaccurate, etc., information are questionable. They may, in fact, have made the same recommendations even after taking into account the points raised in this paper. I would venture the prediction, however, that if these recommendations were the same they would be justified or defended for considerably different reasons.

"The past positions of the USDA (and others who have agreed with them) on "family" and "corporate" farms has already had a number of detrimental effects. For instance, their pronouncements on the continuing health of the family farm has lulled the nonfarm population, and some segments of the farm population into a false sense of security about the well-being of family farms and

farmers. An acceptance of the USDA position has had the effect, and will continue to have the effect in the future, of seriously undermining and diminishing the nonfarm-urban support which family farmers must of necessity have in their attempts to preserve the family farm or anything remotely resembling it in the future. Another effect of the USDA position on "family" and "corporate" farms is that it has effectively to date hindered both research in the area and legislation addressed to the "family farm" problem. Significant, large scale expensive research tends not to be formulated, funded or carried out on nonexistent problems or problems expected only in the far and distant future. The same situation would seem to hold for new legislation or major modifications to existing legislation.

"RECOMMENDATIONS

"1. The Census Bureau, USDA or land grant college personnel should, at the earliest possible date, carry out a reanalysis of Census of Agriculture data for at least the last two decades. Farm types in this reanalysis should be conceptualized and classified at a level of specificity minimally equal to that employed in the last table of this paper.

"2. In light of the evidence presented in this paper, the USDA should at its earliest convenience begin a detailed and systematic review of its definitions of farm types and data which it has used in making past assessments of proposed legislation and public pronouncements concerning "family" farm characteristics and trends.

"3. Any person or organization which has based its evaluation of trends in "family" and "corporate" farms on past USDA generated data and pronouncements should undertake a reevaluation of their positions in light of the data and arguments presented here today.

"4. Research should begin immediately addressed to the question of what effects have and will be associated at all levels of society with a change from family farms to either larger than family farms or industrial type farms since at this point in time this seems to be the direction we are heading.

"5. If any of the Census data analysis or other research suggested here is not initiated soon (within a year), farm organizations should consider joining together in the creation of a research foundation to contract with individual researchers for the information society needs.

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AGRIBUSINESS: THE JOLLY GRAIN GIANTS—TESTIMONY BEFORE THE SUBCOMMITTEE ON ANTITRUST MATTERS OF THE HOUSE COMMITTEE ON JUDICIARY BY REPRESENTATIVE BROCK ADAMS

Mr. Chairman. I thank you for allowing me the opportunity to discuss before your Subcommittee on Antitrust Matters some of the serious problems involved with our food industry and the most adverse effects of these problems on American farmers and consumers.

Dissatisfaction and anger have spread through every sector of our economy over food supplies distribution and prices. Almost every sector has borne the brunt of the Nixon Administration's agricultural and economic policies. However, some sectors have suffered more than others. Much of the blame for high food prices and shortages has been foisted on the farmers. I submit, after serious investigation, that it is not the family farmer but the corporate farmer and the agribusiness middleman who control much of the supply and the price levels and reap the benefits thereof.

Agriculture—food and fiber—is big business, involving hundreds of billions of dollars annually. There are about 2.8 million farmers; about 56.5% are small, independent farmers but they only average 7.8% of all farm sales. On the other side of the fence, only .9% of the farms representing the giant producers averaging $272,000 a year, reap about 30% of farm sales.[1]

And thus giant agribusiness, as opposed to the smaller farmers, grows larger and larger and are diversified into the areas of food processing, marketing and retailing. While the price a farmer gets for his produce has gone up only 6%, the retail price of food has gone up 43% in the last 10 years. One specific example is wheat: in 1970, every 19¢ received by farmers produced an additional 81¢ further up the line. In fact, the middlemen have managed to pocket ⅔ of every food dollar. According to the Agribusiness Accountability Project, the Federal Trade Commission found that consumers were overcharged more than $2 billion for food in one year alone, because of monopolies within just 13 of the food industries.[2]

II

"* * * it is the giant conglomerates that threaten both family farmers and consumers with their raw economic power. The conglomerate can be an inept farmer but its capacity to merge, to vertically integrate, and to invest and even lose large sums of money is enough to overwhelm real farmers. Conglomerates are a real and immediate threat—the Sunday dinner table today can be laden with turkey from Greyhound, ham from ITT, vegetable salad from Tenneco, potatoes from Boeing, pork chops from LTV, apple sauce from American brands, lettuce from Dow Chemical, roast from John Hancock, strawberries from Purex, and after dinner almonds from Getty oil." [3]

There are many agribusiness conglomerates and middlemen—Tenneco, Del Monte, General Mills, Minute Maid, Kraft, Dole, Safeway, Cargill and Continental Grain—to name a few. Diversification and vertical integration are the keys to these companies' power. For example, Tenneco, Inc., the nation's 34th largest corporation, has branched out from gas pipelines, into farming, production of herbicides and pesticides, processing, packaging and marketing. Del Monte farms, processes, cans, transports and markets its produce.

All sectors of the agricultural system have been hurt somewhat by the Administration's economic policies of the last few years. Upon announcement of the new Phase IV program, a Del Monte spokesman complained; "The fact that we aren't going to be able to get any profit margin increases is a disappointment".[4] I find it difficult to sympathize with Del Monte; from its fiscal year 1972 to 1973, its net income rose from $24.6 million to $26.01 million, a profit of $2.41 million; their total sales and revenue rose from $836.3 million to $946.5 million, a gain of $110.2

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[1] "Corporate Power in Rural America" statement of the Agri-Business Accountability Project, Jim Hightower, Director, at New Democratic Coalition Hearing, October 12, 1971, Washington, D.C., p. 2.

[2] "Farmers—Corporate Middlemen-Consumers" by Jim Hightower, AAP.

[3] *Ibid.*

[4] "Businessmen greet Phase 4 with mixed reactions, Auto Industry Likes It, but Food Concerns Complaints," *Wall Street Journal*, July 20, 1973.

million.[5] Meanwhile other large middlemen food processors reaped profits from 1971 thru 1972 at these rates:[6]

	Increase (percent)
Allied Mills	302
Iowa Beef Processors	166
Missouri Beef Processors	147
United Brands	111
Kraftco	101

[6] Senate Debate on "Economic Stabilization Act of 1973, *Congressional Record*, March 20, 1973, S5312.

I would like to turn from this general overview to a more specific discussion of two agricultural conglomerates which have done extremely well, through diversification, in the area of wheat, and, to a somewhat lesser degree, soybean production. These giants are Cargill, Incorporated, and Continental Grain. As multi-product, multi-national and multi-billion dollar operations, they handle together about 50% of the world's grain shipments[7] and thus have a pretty strong grip on the domestic grain market.

Cargill's sales in FY 1972 were almost $3 billion and have been over $2 billion for the last four years. Only 26 U.S. corporations have larger sales.[8] Over the years, Cargill has diversified and is now a grain producer, processor, handler, merchandiser and trader. It also "runs a restaurant, owns ships, mines rock salt, catches fish, manufactures chemicals, raises turkeys, processes chickens, runs barges, towboats, trucks and trains, and sells insurance.[9] Therefore, Cargill controls from field to dinner table a tremendous quantity of grain—in research and production, through processing and transport, to merchandising and trading.

Continental Grain boasts similar power. Its annual sales are about $2.5 billion. It is controlled by one man, Michel Fribourg, who owns 90% of the company's stock.[10] Continental has diversified from a grain producer, into a baker, a producer of chicken and frozen dinners, a real estate holder, and a cattle owner. In 1966, Continental Grain gained control of Allied Mills—the company, you will recall, that increased its profits 302% from 1971 to 1972.

These two companies, and the other giant agricultural conglomerates like them, are powerful—with huge market muscle—for several reasons. They are concentrated industries, with fewer than 500 stockholders who do not pressure for more even distribution of earnings. They are required to report to the U.S. Securities and Exchange Commission only basic corporate financial data and information on types of diversification and areas of growth.[11] Thus, they can be tight-lipped about their power and control, and they prefer it that way. With only a few knowing the real details of the grain situation, those few can wield great control. Economist William Shepherd describes this power well:

"Firms diversify for many reasons. Tax laws favor mergers, including conglomerate ones. Diversity may enhance a firm's total financial stability as fluctuations of its parts tend to even out . . . Vertical integration's effect on market power may also go either way, much as with diversification. Its net effect depends on both its magnitude and its incidence. If it focuses on dominant firms at both levels, it is almost certain to raise power at both levels . . . Finally, integration may raise entry barriers by increasing the total capital which a new entrant (now necessarily at two levels) will need."[12]

Corporate integration occurs among the personnel of these agricultural conglomerates as well. The trade associations to which they belong promote their mutual interests—associations such as the Terminal Elevator Grain Merchants Association, the National Grain and Feed Association, the North American Export Grain Association, the U.S. Feed Grain Council and its International Trade Committee, the National Grain Trade Council, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the Kansas

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[5] Agribusiness Accountability Project, Washington, D.C.

[7] "The Incredible Empire of Mich Fribourg," *Business Week* (March 11, 1972) p. 84.

[8] *Fortune 500*, May 1971, p. 171.

[9] Martha M. Hamilton, *The Great American Grain Robbery and Other Stories*, Agribusiness Accountability Project, 1972, pp. 18–19.

[10] *Op. Cit.*, The Incredible Empire of Michel Fribourg," p. 84.

[11] *Op. Cit.*, *The Great American Grain Robbery*, pp. 42–43.

[12] William G. Shepherd, Market Power and Economic Welfare (New York: Random House, 1970) p. 43.

City Board of Trade.[13] Many of these corporate elite also have very close connections with banks and insurance interests.

We begin to see a very definite pattern emerging. It is their concentrated market power, the lack of information outside the industry about what is going on within, corporate diversification, interlocking directorates and easy access to capital which has led to the control of the grain trade by a few large agricultural corporations.

IV

How does this control manifest itself in the actual trading of grain? First, in export trade, two of the agricultural conglomerates—Cargill and Continental—control together about 50% of U.S. grain exports. A brief discussion of the infamous Soviet wheat deal will demonstrate, I think, how a few large grain companies can control a market.

In July of last year, the Russian wheat trade was formally announced. I say "formally" because Cargill, Continental and several other grain companies had been secretly negotiating the deal with the Russians for some time. Under the terms of the formal trade, the U.S. was to give the Soviet Union three-year credit at 6% interest in amounts up to $500 million. In return, the Soviets promised to buy a minimum of $750 million of grain, beginning with a $200 million purchase the first year.[14] Instead, however, by September over $1 billion worth of U.S. grain representing almost one quarter of the nation's wheat crop had been sold to Russia.[15]

What happened was that Russia's and the world's wheat shortage turned out to be much more serious than had been expected. By June and July, it was evident to the grain trade experts that only the United States could export the amount of grain the Soviets desired. However, the bulk of the grain interests—most particularly the grain farmers—were not privy to such world wide grain market information and were going about their business as usual. When the crop was ripe, it had to be harvested and sold, and the prevailing price was in the range of $1.24 to $1.35 a bushel. So Cargill, Continental and the other large grain companies, with big plans for Russian export trade, bought up that crop cheaply and stored the bulk in their massive grain elevators for future sale. Cargill's storage capacity is about 180 million bushels; Continental's is around 150 million bushels.[16]

On July 5, three days before the Soviet wheat deal was made public by the USDA, the Russians bought an estimated 147 million bushels of wheat from Continental at an agreed price of $1.63 a bushel (probably about 30¢ a bushel more than the company bought it for), free on board gulf ports. That sale amounted to about $240 million—which was above the total dollar amount and double the quantity of wheat the USDA announced on July 8 that the Russians would buy in the coming year.[17]

During July, the Russians continued to buy large quantities of grain from large U.S. companies. All in all, Continental sold 5 million tons, Cargill sold 2 million tons, and the total sales of four other large grain companies came to 4.3 million tons.[18]

The Commodity Exchange Authority, the USDA's regulatory arm, has been investigating the Soviet grain deal. CEA Administrator Alex Caldwell has stated that he now has evidence that Continental deliberately filed misleading reports, required weekly by the CEA, to keep its part in the $1 billion Soviet grain deal a secret from competitors. The CEA has brought administrative proceedings against Continental. The Authority has also turned its evidence over to the Justice Department, which has declined to prosecute. This new information lends credence to the theory that the big grain companies kept their transactions with the Russian traders secret so that they could corner the market and buy huge amounts of grain at low prices.[19]

On top of the profits made by these grain giants through their sales to Russia, were the tremendous export subsidy payments the companies were hauling in from the U.S. Treasury. The USDA makes payments to wheat exporters as a

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[13] *Op. Cit., The Great American Grain Robbery*, p. 47.
[14] *Ibid.*
[15] "Of the Grain Trade, By the Grain Trade, and for the Grain Trade," A. V. Krebs, *Congressional Record*, October 6, 1972.
[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*
[19] "Hill told Grain Firm Misled U.S. on Sale," *The Washington Post*, July 25, 1973, p. 42.

means of keeping U.S. wheat export prices competitive in world markets. Furthermore, the USDA did not at the time require information on how much grain companies were committed to export and how much they actually paid for their wheat purchases before they applied for an export subsidy. Of course, with U.S. grain exports increasing, the domestic supply gradually diminished and grain prices were soaring. Therefore, while the price of grain went from about $1.69 a bushel on July 5, 1972 to $2.25 a bushel on September 13, 1972, the USDA export subsidy increased from 6¢ to 26¢.[20] The grain deal resulted in U.S. export subsidy payments of over $300 million.[21]

The Commodity Exchange Authority's investigation has also uncovered evidence of manipulation on the Kansas City Board of Trade to augment the export subsidies that the government was paying to support the Soviet wheat sales. There are indications, SEA Chief Caldwell reported, that some companies had bunched their buying at the end of several days' trading to drive up closing prices and that they would then register their export sales for the subsidies.[22]

Agriculture Secretary Earl Butz, in discussing the loss some growers suffered, stated: "Farmers didn't lose money (because of early sales), they just weren't smart enough to take advantage of the situation." [23] He later added that the farmers who sold during the early harvest season "knew precisely as much as we knew. They knew as much as the grain companies. . . . Some money has been made in the deal. Some trading companies have made it. But it's the name of the game." [24] That is a callous interpretation of an almost dollar-a-bushel loss to smaller farmers across the country. Even shipping interests lost on the deal since a majority of the grain tonnage sent to Russia was shipped in foreign ships. In addition, as Cargill and Continental both have their own trucks and barges, independent shippers did not really prosper by this huge grain deal either. It is no wonder that the Soviet grain deal has been described as "Of the Grain Trade, By the Grain Trade, and For the Grain Trade." [25]

After delighting in the grain cornucopia of last year, the big agricultural corporations have jumped into soybean export this year. With shortages of protein feed developing in many countries of the world, the demand for American soybeans skyrocketed, with Continental, Cargill, Archer-Daniels-Midland (ADM), Central Soya and Stanley Manufacturing filling the orders and reaping the profits. As Harry Fortes, a former Commodities Exchange Official, testified before the Antitrust Subcommittee, the "manipulative practices" of these "few powerful grain companies" attributed to an artificial $5.00 or $6.00 increase in soybean prices, above the normal prices which had resulted from the high demand for that commodity.[26]

Incidentally, Fortes also testified that Continental, Cargill and ADM's involvement in the Russian wheat deal "definitely" entailed concentrated buying power in probable violation of antitrust laws.[27]

When the price of soybeans went as high as $12.90 a bushel from $3.31, the USDA apparently felt something should finally be done. Commodity traders knew soybean prices were high because there were in actuality few or no beans left to sell, but the Administration only learned the truth when it finally told traders to register their export commitments. The Administration's solution was to embargo further soybean export.[28] But by that time, ADM, the largest soybean exporter, had garnered profits of 45.5%, and the other giant soybean and grain producers were almost as fortunate.[29]

As size and diversification allow the grain conglomerates to throw their weight around in the export market, these advantages give them a firm handle on the domestic grain market. Companies like Cargill and Continental have their grain traders or "brokers" working every day in the pits of the commodity exchanges,

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[20] *Op. Cit.*, "Of the Grain Trade"

[21] "CIA Data Sought on Wheat Deal," John Fialka, *The Washington Star News*, July 24, 1973.

[22] "False Grain Data called 'Wilful'; William Robbins, *The New York Times*, July 25, 1973.

[23] *Op. Cit.*, "Of the Grain Trade, By the Grain Trade, and For the Grain Trade," as printed in *The Great American Grain Robbery*, p. 296.

[24] *Ibid.*

[25] *Ibid.*

[26] Testimony by Harry H. Fortes, III, before the Antitrust Subcommittee of the House Committee on the Judiciary, July 18, 1973.

[27] *Ibid.*

[28] "The Soybean Embargo," *The Washington Post*, editorial, July 2, 1973, p. A22.

[29] "Expert Blames Food Prices on Speculation," Morton Mintz, *The Washington Post*, July 18, 1973, p. A2.

buying and selling grain futures. For instance, brokers filling orders for huge grain corporations may buy or sell a million bushels of grain at a time. Depending on what the future estimate of grain prices will be, these brokers will hold their grain until the price rises. Or, they will sell at the prevailing price, if they think the price will fall, and then buy back the grain later at the cheaper rate.[20]

It is primarily the grain giants' ability to hold large quantities of grain which can control the market. Cargill hedges its transactions on the commodities futures markets. In fact, its actions as a commodity trader have resulted in several legal battles. In December, 1971, Cargill was found in violation of the Commodity Exchange Act in trading on the Chicago Board of Trade. Apparently, Cargill had manipulated the market price of wheat futures through a "squeeze" or dominant position in the futures market.[21]

Continental, on the other hand, formed its own brokerage in Chicago in 1970 called the Continental Commodity Services. A company spokesman boasted at the time, "The recent dynamic growth of total futures volume makes this an attractive area for diversification."[22] Most likely, Continental's expertise in futures trading helped secure their coup in the Soviet wheat deal.

Other ways in which the large agribusiness producers, traders and middlemen can exercise certain market muscle is through direct help from the Department of Agriculture. What these companies do not receive in outright farm subsidy payments or allotments to set aside land from cultivation, they make up for in bidding for and receiving large USDA contracts for commodities needed for federal food programs serving needy families, disaster victims, school lunch programs, hospitals, and others. These food programs amount to upwards of a billion dollars annually. Although the contracts do not represent large sales as compared to the other business done by the agribusiness firms, the USDA patronage can have a psychological effect on smaller producers who cannot compete for these contracts either because the producers are too small or because they are never even told of the availability of such government contracts.[23]

Finally, one other advantage which agribusiness firms have over smaller firms is their interlocking directorate. At this point I am referring to a very special directorate exchange, and that is between the large agricultural corporations and the Department of Agriculture. Earl Butz left Ralston Purina's Board to become Secretary of Agriculture. Clarence Palmby resigned as Assistant Secretary of Agriculture in June, 1972 to become corporate Vice-President for marketing and development for Continental Grain. Assistant Secretary of Agriculture Carroll Brunthaver used to serve as Associate Director of Research for Cook Industries, another large grain exporting company.[24] And the list goes on.

It is true, of course, that this kind of swapping goes on in many areas, notably within the "military-industrial-complex." Nevertheless, it is not unreasonable to expect that there can be, and probably are, exchanges of pertinent information on market conditions domestic and world wide, trading, price fluctuations, and government policies regarding the grain trade.

The effects of export and domestic market controls by a few powerful companies will ultimately be detrimental to every American consumer. If the price of feed grain soars, so eventually will the price of our meat, poultry, and dairy products. Furthermore, if agribusiness, through vertical integration, comes to control the entire line of production of a product, there is no natural market force protection for the consumer. We have got to concern ourselves with the task of making big agribusiness more responsive to their massive clientele.

V

I would like to commend my distinguished colleague Chairman Peter Rodino and his Antitrust Subcommittee for their investigation into possible antitrust violations by agricultural corporations. I am pleased that my colleague Neal Smith and his Subcommittee on Small Business are also holding hearings on the related subject of commodities futures trading. It is my sincere hope that these investigations will be pursued and that actions will be taken to correct the injustices created by the control of markets by agribusiness.

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[20] "Futures Sold Amid Chaos of Corn Pit," *The Washington Post*, July 15, 1973, p. A1, A2.
[21] *Op Cit.*, The Great American Grain Robbery, pp. 21–22.
[22] *The Southwestern Miller*, April 14, 1970.
[23] *Op. Cit., The Great American Grain Robbery*, p. 103.
[24] *Ibid.* pp. 59–61.

I would hope that the Justice Department, through its Antitrust Division, would begin the work at hand by investigating monopolistic practices by the food industries and by enforcing the related antitrust laws. Furthermore, corporate documents should be published, so that transactions will be open to public scrutiny similar to the publication of stock information as required by the Securities Exchange Commission. Perhaps shareholders should be subject to inspection and, conversely, should be allowed to inspect company books. This is particularly important with respect to corporations like Continental Grain which has one stockholder controlling 90% of the company's stock, with few other holders.

In addition, the Commodity Exchange Authority, which is already in existence to regulate the commodity futures trading on the Chicago Board of Trade and the Chicago Merchantile Exchange, should be given some additional authority to set additional limits in futures trading. Futures are a valuable trading mechanism which should be preserved. But they should operate smoothly and should be protected against manipulation which causes large upswings and falls in commodity prices. There should be strict daily trading limits established to prevent large scale hedging and the holding of produce so as to advance or depress the futures market dramatically. L. D. Carpenter, Vice President of a Midwest farm cooperative, has testified before the Small Business Subcommittee that both the Chicago Board of Trade and the CEA were at fault for allowing unchecked feed grain speculation in May and June of this year. Apparently, when Soybean futures trading was going out of control, the Board of Trade began raising the daily limits it sets on price increases or declines. Carpenter said, "If it was the intent of the Chicago Board of Trade to discourage or reduce the apparent heavy speculative trading, their action had just the opposite effect." [35]

The Federal Trade Commission should also be given greater investigatory and legal powers in this area. Among such powers should be the authority to enforce its own subpoenas and to issue injunctions. These powers would enable the FTC to administer more effectively the laws under its jurisdiction. FTC authority should be expanded to provide protection for small farmers and consumers from deceptive advertising and other unfair competitive practices in the food industry.

Moreover, the FTC and the Justice Department should engage experts in the field of agricultural economics to spearhead investigations of agribusiness firms and commodity trading practices. It is frequently the criticism, and indeed the excuse, of observers that there is not enough expertise around to combat effectively the antitrust violations in agribusiness. I think the time has come for us to take a good, hard look at our entire agricultural system.

Finally, I recommend that the House of Representatives consider the possibility of joint oversight by its Interstate and Foreign Commerce and Agriculture Committees of agriculture and related legislation. As a member of the Commerce Committee, which has jurisdiction over the FTC, I am constantly aware of inequities in domestic trade. I have also recently taken on the Agriculture and Consumer Protection Act on the House Floor, endeavoring to cut farm subsidy payments and to make the "Farm Bill" more responsive to the needs of the small farmers and the consumers.

In studying our agricultural program and some of its notorious components, such as agribusiness firms, I have become aware of the tremendous complexity of the subject. This is the most important area of consumer legislation we could possibly deal with, and it is about time we start taking that legislation seriously. In an era of spiraling food costs, we can no longer ignore monopolistic and other unjust practices in our agricultural sector. It is imperative that all Members of Congress should educate themselves about our agricultural system and the laws which perpetuate it. We must also insist that the regulatory agencies of our government recruit the agricultural economic expertise needed to investigate and control effectively the market practices in American agribusiness which affect our country and its people so profoundly.

Thank you.

STATEMENT OF GORDON F. BLOOM TO SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW OF THE HOUSE COMMITTEE ON THE JUDICIARY

My name is Gordon F. Bloom. I am a Senior Lecturer in the Sloan School of Management at the Massachusetts Institute of Technology in Cambridge, Massachusetts. I am pleased to have this opportunity to respond to the request of your Chairman that I submit a statement concerning the relationship of the

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[35] "Feed Costs Blamed on Wild Trading," *The Washington Post*, July 26, 1973.

antitrust laws to the food industry. I do not pretend to qualify as an expert on the legal aspects of the application of the antitrust laws but because of my unusual background I may perhaps be able to bring to the Committee a perspective which will be helpful to them in their deliberations.

From 1948 to 1953 I practiced law in Boston, Massachusetts. In 1953 I joined a regional food chain and remained with that company until 1967. From 1960 to 1967 I was General Manager and President of this retail food chain and after leaving the food business and coming to the Sloan School of Management I have continued a close relationship with and interest in the food industry. In 1971 I was requested by the National Commission on Productivity to make an investigation of the food industry to determine what might be done to accelerate the rate of improvement in manhour output in that industry. The report of my findings was embodied in a book subsequently published in 1972 by the M.I.T. Press, entitled *Productivity in the Food Industry, Problems and Potential.*

As Chairman Peter W. Rodino has pointed out in his opening statement, the sharp rise in food prices in recent months has raised concerns that monopolistic practices in the food industry may have contributed to the current inflation. The fact is, however, that the food industry is a highly competitive industry with the majority of grocery store sales being made by independent retailers. If we are to understand the causes of the current rise in food prices, we must look at some of the fundamental trends which are affecting cost-price relationships in the industry. One of the basic problems of the industry (exclusive of the farm sector) is that productivity gains have lagged behind the rest of the economy and increases in manhour output attributable to greater efficiency have been unable to cope with rapidly rising labor costs throughout the distribution system.

There is an urgent need today for action, both by government and business, which will have the effect of stimulating and accelerating the rate of productivity advance in this key industry. I would hope that the Committee, in exploring the need for more effective enforcement of the antitrust laws would also consider the impact of those laws on productivity in the food industry. It is to this problem that I wish to direct attention in this statement.

We have heard much discussion in recent years about the need to reorder our national priorities. Much careful thought has been given to this problem by Congress, by corporations, and by citizens of this nation. All legislation is adopted with some relationship to an order of priorities then existing. If we go back to the antitrust laws including the Robinson-Patman Act and study the environment in which they were enacted, it becomes clear that concern about inflation and the development of new and innovative methods of distribution to reduce cost were not then major factors in the priorities of the nation. Today, however, our needs and priorities have drastically altered. The need to combat inflationary tendencies in the economy and in the food industry in particular has become a major requirement of national policy. With this in mind it is certainly timely to review the effect of antitrust legislation upon the development of new and improved methods of distribution in the food industry.

The change which has occurred in national priorities is particularly significant when we review the history of the Robinson-Patman Act. The enactment of the Robinson-Patman Act represented the successful culmination of the struggle by the less efficient but more numerous and politically more potent small enterprises in our society against the innovations in distribution techniques introduced by large corporations. The judgment was made amid the staggering unemployment of the thirties that it was more important to maintain the livelihood of the small business man than to opt for greater cost reduction and price reduction for the ultimate benefit of consumers. In retrospect it is understandable why society made this judgment at this particular juncture in our history. The possible benefits of cost and price reduction flowing from improved efficiency could not have been accorded much importance in a period when government through the NRA was actually committed to stabilizing and raising prices. Today, however, we have quite a different set of facts and a growing recognition by many students of the problem that the Robinson-Patman Act can have a deterrent effect upon efficiency in industry. As a matter of fact, the Council of Economic Advisers in the Economic Report of the President to Congress dated January 16, 1969, observed that the Robinson-Patman Act:

"* * * may conflict with the development of more efficient methods of distribution, such as integrating wholesale and retail functions or dispensing with independent brokers. By requiring proportionally equal treatment in certain

promotional practices, the Act has discouraged experimentation with marketing techniques."[1]

The section of the Robinson-Patman Act most closely related to productivity and efficiency is, of course, the proviso to Section 2(a) relating to cost justification. That proviso states a price differential is not unlawful if it makes:

"* * * only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered * * *."

It seems evident from the clear language of the statute that the cost savings justification was intended to afford protection to business men who pioneered in the development of new distributive techniques but the action over the years taken by the Federal Trade Commission has in fact emasculated its effectiveness. The Commission has demanded certainty and exactitude where certainty and exactitude do not exist and business in general has found it simply too expensive to provide the documentation and to endure long hearings and trials to support price differentials which could be justified only under the terms of the proviso.

Today, the growing sophistication of business operation opens up many possibilities for cost saving between buyers and sellers, but the climate of the Robinson-Patman Act deters application of such innovative procedures. For example, a growing number of companies in the food industry and in industry at large are developing complex computer models of their business operation which can be utilized to indicate where additional volume should be allocated in a multi-plant enterprise to maximize profits. Such models are extremely costly to design but can pay off handsomely if volume can be properly distributed so as to maintain capacity production or near capacity production in the various plants of an operating entity. Suppose that a food retailer approaches a manufacturer of paper bags who has such an installation and makes the following suggestion:

"I would like to reduce my buying expense and you want to reduce your selling expense and furthermore you have the ability to distribute production over your various plants in the most economic way as long as you know in advance when that production will be available. From my point of view, I don't care when you deliver bags to me or in what amounts provided that at all times my inventory of bags does not fall below, let us say "X" number, nor exceed "Y" number. You can schedule production of my bags when convenient to you, in whatever plant you designate, and ship whenever convenient to you. You will be responsible for maintaining my inventory. Billing and notification will be handled automatically through your computer connected to my computer. I will concentrate all my purchases with you. Now what kind of discount can you give me?"

One does not have to be familiar either with the bag industry or the retail food industry to appreciate that there probably would be a substantial saving in cost involved in this kind of arrangement. And yet under the existing interpretation of the Robinson-Patman Act the manufacturer would probably have to answer: "No discount can be provided." In the first place he would have difficulty in proving cost savings to the satisfaction of the Federal Trade Commission. In the second place, the buyer is really looking for a discount reflecting the fact that his incremental orders can be filled during slack times from excess capacity, but under present construction of the law an incremental buyer can not be granted the full advantages of the benefits flowing from capacity operation since such benefits could not have accrued had not all other buyers added their purchases to the volume of the seller's business. And yet arrangements such as that outlined above ought to be encouraged because they do make possible improvements in productivity and in a competitive industry such as the food industry will ultimately be reflected in lower costs and prices to the consumer.

Another problem which has resulted from what seems to be an unrealistic and unnatural interpretation of the Robinson-Patman Act involves the backhaul problem in the food industry. The fastest growing part of the trucking industry is the private fleet. Most large chains and wholesalers in the food industry operate their own trucks to service their stores or accounts. In most cases these trucks deliver loads to stores from the warehouse and return empty, even though they may pass by supplier plants or warehouses which will at a different point in time deliver their merchandise to the warehouse of the retailer or wholesaler and then return empty to their own plant. This criss-crossing of empty trucks is so obviously inefficient that buyers and sellers have sought to reduce

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[1] Economic Report of the President, January 1969, p. 109.

such waste through arrangements for backhauls. Under this procedure the retailer's truck, for example, delivers its load to the stores and then on the way back to the warehouse, stops at the supplier's plant or warehouse and picks up a load which the supplier would otherwise have had to ship to the retailer's warehouse.

A major impediment to the broader use of the backhaul has been imposed by an opinion rendered under date of October 2, 1967 by the Federal Trade Commission in response to a request for an advisory opinion submitted by the General Foods Corporation.[2] The effect of this opinion has been to apparently render unlawful backhauls where the manufacturer sells on a delivered price basis and seeks to rebate an amount equal to shipping costs to the retailer who picks up at the manufacturer's dock. In the case of the backhaul, we again have to consider the ordering of our national prorities. Certainly with a gasoline shortage looming, with pollution caused by trucks a major problem, we ought, as a nation, to encourage methods of distribution which will maximize the usage of trucks already on the highway. Furthermore, increasing the amount of backhauls should reduce cost of incoming merchandise to retailers and therefore ultimately benefit consumers in the form of lower prices.

A more sensitive problem, and one which admittedly requires great care in the proposal of solutions, is that presented by the one big user. This kind of problem is well exemplified by the facts recited in the case brought by the Federal Trade Commission against United Fruit Company and Harbor Banana Distributors, Inc.[3] While that case involved other antitrust elements, the problem it presented of the big user is particularly pertinent in a discussion of the impact of the Robinson-Patman Act on efficiency. The basic question presented is: if a big buyer is the only one with unique facilities, is a seller barred from working out arrangements which make the most efficient use of those facilities? The rationale for an affirmative answer is that permitting such special arrangements for the benefit of the big buyer will make him more efficient and thus accentuate the tendency to monopoly in the market. The rationale for a negative answer is that we should not penalize efficiency. If permitting the large buyer to use his facilities so as to optimize efficiency creates monopoly and if the monopoly does in fact operate to the detriment of the public interest, then, and not until then, should the antitrust laws be applied.

Large buyers and sellers have the volume, the resources, the staff support, and the motivation to work out innovative arrangements which can result in substantial improvement of productivity in their respective enterprises. If the nation is interested in accelerating the pace of productivity improvement, it should encourage such arrangements. Large companies can afford to experiment and to fail. If such arrangements do in fact improve efficiency, smaller companies may be able to achieve similar objectives through joint ventures or cooperative enterprises. If the Robinson-Patman Act is used to stifle such plans even before they are born, then the whole economy will suffer; large companies, small companies, and the American consumer.

Obviously there are many other ways in which the Robinson-Patman Act infringes upon productivity efforts in the food industry. Many of the adverse effects are felt by small business men, such as rack jobbers and small retailers who find that the failure to recognize functional discounts puts them at a competitive disadvantage and, in the case of small retailers, either requires them to engage in costly stocking of shelf space themselves or to discontinue handling small items.

However, because of time constraints, I would like to pass on now to a consideration of the impact of the Sherman Act upon productivity in the food industry. In appraising the effect of the Sherman Act upon innovation and efficiency in the food industry, one needs to understand that many of the new distribution procedures which have been under consideration by firms in the industry and have been dropped may not technically be unlawful. It is sufficient that they are believed to be dangerous and on the borderline and too risky to undertake. The fact of the matter is that decisions as to improvement in productivity in many of our leading firms in the food industry are not being made by distribution experts or engineers or marketing executives, but by attorneys. And this is understandable; for there is hardly a large firm in the food industry which at some time in its recent history has not been subject to a re-

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[2] FTC Advisory Opinion No. 147 (1966)
[3] *United Fruit Company, et al.*, FTC Docket No. 8795.

straining order or some action brought by the Federal Trade Commission or the Department of Justice under the antitrust laws. Therefore there is a great sensitivity in the food industry to the application of such laws and a disinclination to get involved in litigation even though the advantages which would be forthcoming from some sort of joint effort with competitors might be very substantial.

The pressure to reduce costs upon retailers, wholesalers, and manufacturers in the food industry are now so great that many of these entities can now see the advantage that would be forthcoming from operating joint facilities. In the case of grocery manufacturers, there is considerable talk about the advantages of joint warehouse facilities. In the case of retailers, there has been talk, for example, about operation of jointly owned delicatessen commissaries which would then service the various markets of participating companies. There are many other ways in which costs could be reduced simply by eliminating the duplication of facilities which now exists and which can be so expensive in a service industry. Nevertheless, too many of the members of the industry are gun-shy and therefore this kind of action is not given the attention which it merits in an industry which is struggling to find new ways to reduce costs.

The same kind of deterrent operates to reduce the effectiveness of cooperatives. As a matter of fact, cooperatives find that they are denied some of the techniques which can be used by their major competitors, the integrated chains. Thus, for example, it is customary for the warehouse of an integrated food chain to bill out various products shipped to company stores from the warehouse at retail so as to enable the retail store to calculate efficiently the gross margin on various products and to maintain a retail inventory. On the other hand, there is now some doubt whether the same procedure can be used by cooperative warehouses where the warehouses are owned by a group of cooperating retailers.

When we come to mergers and acquisitions too often we find that decisions really look not at the impact upon competition but upon the impact upon individual competitors. Certainly this was true of the Von's[4] case on the West Coast and many others could be cited. It is time that our administrative agencies and courts took proper account of the economies in production and distribution that may flow from increased size of operation. The effects of a merger upon productive and distributive efficiency and the possible benefits to consumers in the form of lower costs and prices should be an important criterion of lawful merger activity.

The points that I have made thus far I am sure have been brought to the attention of the Committee by other spokesmen. I would like to turn therefore to consideration of an important new trend in the food industry which holds forth great promise for major breakthroughs is productivity improvement but which may require a change in the application of antitrust laws. This is the development of standard-setting groups involving cooperative efforts among competing firms in an effort to adopt a systems approach towards distribution efficiency. It is my belief that our economy has become so complex that even though individual companies may be operating at top efficiency, they nevertheless can be producing inefficiency in other parts of the distribution system and it is only through some sort of cooperative effort which attempts to view the entire system as an operating whole that major breakthroughs in productivity improvement can be achieved.

The food industry, in part as a result of the study reported in my volume, is now surveying a number of aspects of this inter-company type of inefficiency which has developed over time in the industry. Specifically, the industry does not have uniformity of pallet size, there is great inefficiency in the use of trucks and trains, and there is tremendous proliferation in size of shipping cartons which leads to inefficiencies in handling at every stage of distribution. No one of these problems can be solved by any one company. What is required is the development of uniform standards on an industry-wide basis, but the development of such standards by an ad hoc committee may run into difficulties under the antitrust laws. Needless to say I am well aware of the fact that standard-setting can be used by business men as a device to inhibit change and indirectly to regulate price. Nevertheless, I believe that with proper safeguards for the public interest the establishment of committees within an industry to achieve certain designated standards which will improve efficiency should be encouraged.

Unfortunately a standard normally cannot be set without compelling change by someone and the Department of Justice views with suspicion the setting of standards which may prejudice smaller competitors. As a matter of fact, the

[4] *U.S. v. Von's Grocery Co.*, 384 U.S. 270 (1966).

Department of Justice threatened to interfere with agreements reached under the Fair Packaging and Labeling Act and only a change in personnel and pressure from Congress brought forth a more conciliatory viewpoint. Even in the area of pollution abatement, where other government agencies have suggested that some degree of cooperation among competing firms within an industry is desirable, the Justice Department has warned that such cooperation could stray into anticompetitive arrangements.

Recently the food industry completed a successful example of industry standard-setting involving the designation of a Universal Code and symbol which will be uniformly used throughout the industry and will make possible the automation of the front end and the elimination of price marking on most grocery products. The savings to the food industry and ultimately to consumers can be in the millions of dollars per year. Having been very close to the deliberations of the committee involved in the selection of the symbol, I can report that grave concerns were voiced many times during committee deliberations as to possible antitrust liability, both through government action and private suit. As it turned out, the symbol that was adopted, after consultation with various scientists at Massachusetts Institute of Technology, was a symbol which was not owned or promoted by any one of the major equipment corporations. However, if the decision had been made to adopt a symbol which was in fact developed by one of the major equipment manufacturers—and such selection would undoubtedly have given such company a major advantage in the selling of its front end automated system—certainly there might have been a major possibility of suits against the committee and questions raised concerning its authority.

The status, authority, and liability of industry standard-setting committees calls out for clarification under the antitrust laws. Various groups and committees are now being set up within the food industry to deal with the problem of proliferation of carton size, differences in pallet size and other matters which impair the efficiency of the food industry as a whole. It may well be that decisions made by committees appointed by industry members will affect adversely the cost or operations of individual members. What authority do such committees have? What safeguards must they legally comply with? What protection is available to individual committee members acting in the industry interest against suits both by government and by individual companies? I strongly urge that this entire subject be given careful consideration by this Committee. I can think of no effort which could be made by this Committee which would be more helpful in the long run toward the improvement of productivity in the food industry than the clarification of the position, responsibilities, and liability, if any, of such ad hoc committees.

It now seems quite likely that the United States will decide to adopt the metric system in the foreseeable future. Such a Congressional decision may require further implementation of an industry standard-setting procedure. The rules of leading standards organizations in the United States generally provide that no standard shall be approved if consensus is still lacking after efforts to resolve conflicts have been made. Such license for continued debate will not work in a national metrication program. In such a program, the necessity for interindustry coordination would certainly require a mandated time schedule, however flexible specifying final deadlines for adoption of standards in certain industries or product categories. Some procedure will have to be provided by government, either through an arbitration board or other means to issue final rules on standards which can not be resolved fully by mutual agreement.

In closing I would like to leave this thought with the Committee. A nation, like a business, becomes great by using its assets to the best advantage. The Japanese have taken a monopolistic industrial structure, a paternalistic employer-employee relationship, and aggressive management to build an industrial complex which threatens our competitive position in world trade. It is time that America took stock of its assets. The structure of most American industries is oligopolistic. For years this has been viewed as a taint as if atomistic competition were really the ideal. But a thousand small companies can not sit down together and agree upon a standard pallet nor upon the size of retail packs, nor can they work out the intricate systems problems which were involved in the development and application of the Universal Code and automatic checkout.

The structure of the food industry provides an opportunity for progress which should be seized and utilized. Although the industry is not oligopolistic, it is characterized by a number of large companies whose chief executives have over the years exhibited a high degree of leadership and statesmanship. It is possible, therefore, to bring together in one room twenty or thirty large manufacturers,

wholesalers, and retailers, which through their size and influence can set the trends for the industry. Through such meetings, industry standard-setting groups could achieve major systems economies by the development of standards which will reduce costs. But some process has to be devised whereby such agreements can be made with due allowance for the protection of consumers and small companies without subjecting the participants in such proposals to suits by government or individual companies.

Because of developments which are occurring in international trade, on the farm and throughout the food distribution system, it seems likely that the era of low food prices has come to an end in America. Against this background it is essential that the impact of the antitrust laws upon productivity be carefully reviewed and that legislation be provided to encourage cooperative industry efforts which can improve efficiency and lower food costs to the American consumer.

M. J. HANKINS CATTLE CO., INC.,
Stanton, Nebr., June 4, 1973.

Mr. PETER W. RODINO,
Chairman, Special Investigating Committee,
Rayburn Building, Washington, D.C.

DEAR MR. RODINO: I have been informed that you plan to conduct hearings in the near future regarding monopolistic practices in the food industry.

I would like to testify regarding the retail food chains. Information used would be similar to that enclosed.

Please let me know as soon as possible when I can appear.

Sincerely,

M. J. HANKINS.

RETAIL PRICE SPREAD FOR BEEF—BIGGEST PROBLEM OF THE CATTLE INDUSTRY

Retail mark-up or price spread has been the biggest problem of the cattle industry since the early 1950's. The consumer should be equally concerned since excess price spread profits are derived from the price of live cattle and/or the retail price of beef.

The consumer has been such a good customer for our beef over the past twenty years that consumption increased over 250 percent. During this period the consumer ate all of the beef we could produce plus a generous portion of imported beef and paid a good price for it. We had no surplus. During much of this period, however, we were forced to sell our cattle at 'fire sale' prices due to retail price spread that sky rocketed out of all proportion to increases in labor, transportation, interest, taxes, and other operating expenses.

Retail price spread increased nearly $100 per head since 1954. This figures to about $400 million on an annual basis in Nebraska for 1972. The national figure would be about $2.6 billion.

The time has come for the producer and consumer to cooperate in insisting that retail price spread on beef be reduced to a reasonable level.

CHART NO. 1

This chart shows how the packer has been held to such a strict allowance on price spread that he has had to absorb all increases in operating expenses since 1954 and that his gross margin per head on cattle is actually some what lower now than during the early 1950's.

CHART NO. 2

In spite of the fact that beef retailers had the same opportunity to operate as efficiently as the packers their price margins show a sharp rise since 1954.

The arguments about the house wife demending more built-in maid service and fancy packaging does not apply to beef like certain other foods. Beef is cut and wrapped much more efficiently now than in the early 1950's. Modern labor saving

equipment is now used on a much larger volume basis while formerly the meat cutter personally waited on each customer individually. Increases in costs of wrapping material would amount to only a small fraction of a cent per pound for packaged beef.

CHART NO. 3

Retail price spread on beef has jumped as much as about $50 per head since price margins were frozen by the Price Commission August 15, 1971. This figures to nearly $200 million dollars on an annual basis for Nebraska, which is four times our state income tax and five times our portion of Federal Revenue funds. The national figure would be about $1.3 billion. Operating expenses did not increase that much in such a short time.

According to a recent reliable study the cost to the retailer for cutting and wrapping a carcass of beef figure to about $60.

LOCAL MERCHANTS

It is not uncommon for retailers in the mid-west to operate on about half national average price margins. Freight to either sea coast is only about 2 to 3 cents per pound.

PROPOSED SOLUTION TO PRICE SPREAD PROBLEM

Government agencies should do a much better job of enforcing anti-trust laws and serving as a referee at the market place to keep our markets free and openly competitive.

Beef is a product of the free enterprise system. When the cattle industry is saddled with price control the consumer will have to learn to get along without beef. Beef was in such short supply under OPA that the big labor leaders came on radio one night and threatened to strike unless they could have beef to eat. Controls came off the next day, cattle prices jumped $10 per hundred and we have had an increasing supply of beef ever since.

M. J. HANKINS.

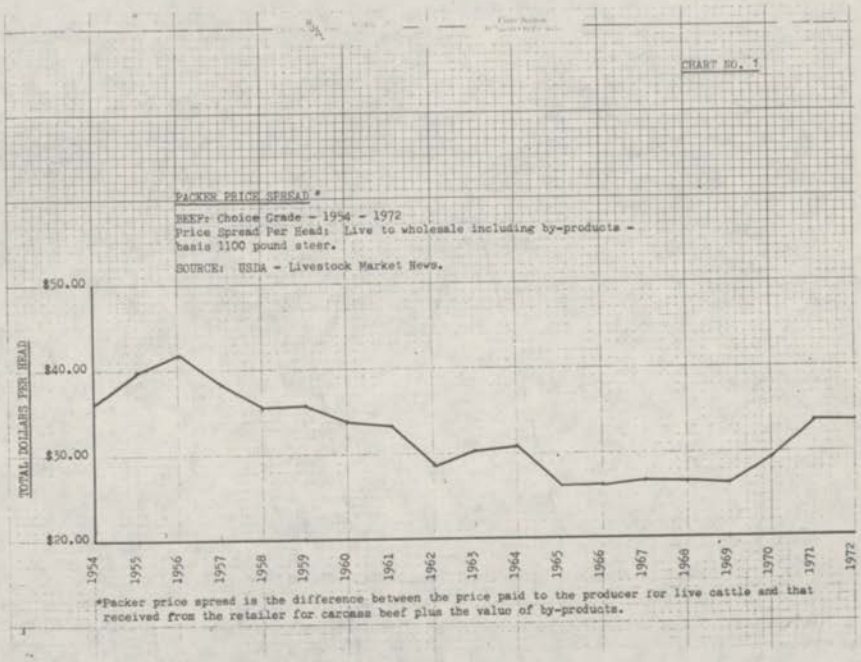

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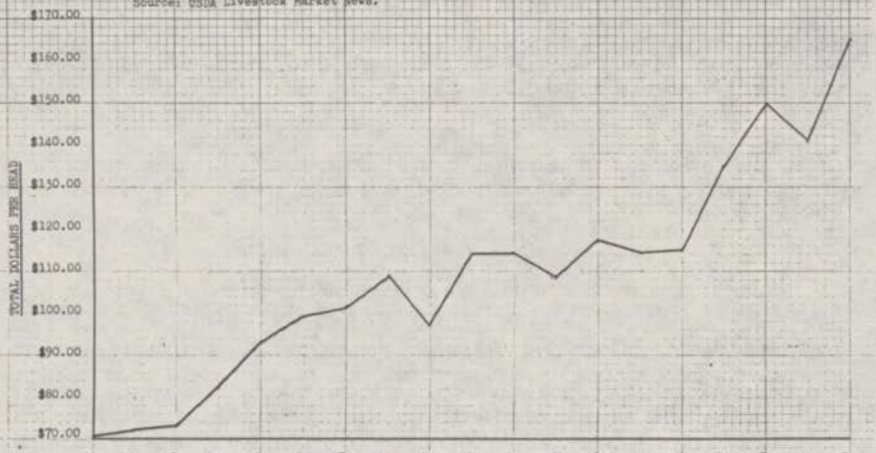
CHART NO. 2

RETAIL PRICE SPREAD*

Beef: Choice Grade 1954 -1972
Price spread per head: Wholesale to retail - basis 1100 pound steer-
63 percent dress - 693 pounds carcass weight.

Source: USDA Livestock Market News.



*Retail price spread is the difference between what the retailer pays the packer for carcass beef and that received from the consumer.

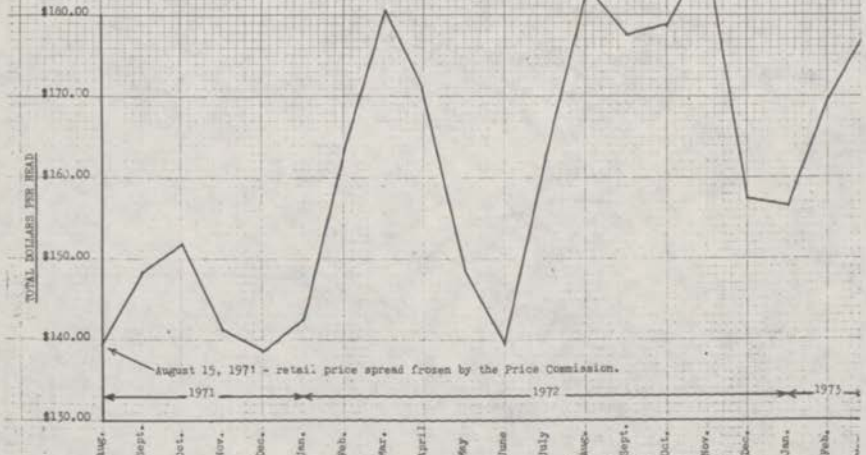
CHART NO. 3

RETAIL PRICE SPREAD*

BEEF: Choice Grade 1971 -1973.
Price spread per head: Wholesale to retail - basis 1100 pound steer -
63 percent dress - 693 pounds carcass weight.

$167.46 per head.
All time high.

Source: USDA Livestock Market News.



*Retail price spread is the difference between what the retailer pays the packer for carcass beef and that received from the consumer.

STATEMENT IN SUPPORT OF H.R. 7061, THE "FAMILY FARM ANTITRUST ACT OF 1973" BY MRS. GRACE MCDONALD, DIRECTOR, BOARD OF DIRECTORS, FARMER CONSUMER REPORTER ASSOCIATES, INC.

Mr. Chairman, vertical integration of the nation's agricultural industry by corporations engaged in processing, distributing and retailing food and food products tends to create a monopoly situation in violation of the Clayton anti-trust and related Federal statutes.

As part of a systematic take-over by multi-conglomerate corporations, this trend, if allowed to expand unchecked, will further destroy the nation's efficient, technically-equipped family-operated enterprises, their bargaining associations and cooperatives fostering anti-competitive trade practices.

The impact of such uncontrolled expansion will further force the rural economically-deprived into already overcrowded urban areas where unemployment is reaching alarming proportions.

The imbalance resulting from further depressing the agricultural, business and educational resources of our rural hinterland requires immediate and drastic action by the Congress. It requires adequate funding for the Farmers Home Administration, the Soil Conservation and Forestry Services so that those desiring to continue to engage in productive agricultural operations and in the processing and distribution of such goods and services may be assured financing at competitive rates. Not only farmers, but organized labor and consumer groups as well as rural electric and public power agencies need this legislation. We urge prompt hearings in California as well as in Washington, D.C. and a "DO PASS" vote by your Judiciary Committee.

APPENDIX 4

[From the Des Moines (Iowa) Register, Sunday, Feb. 18, 1973]

LAX COMMODITY REGULATION: FEW CONTROLS FOR PUBLIC IN FUTURES MART—RIGGED MARKET CAN HURT CONSUMER

This is the first story in a series of articles examining regulation of commodity trading. The series was prepared by the three members of The Register's Washington Bureau who conducted a two-month investigation in Washington, D.C., Chicago, Ill., and Kansas City, Mo.

(By Clark Mollenhoff, James Risser and George Anthan, of the Register's Washington Bureau)

WASHINGTON, D.C.—The $200-billion-a-year commodity futures market is booming along with virtually no controls to protect millions of small traders and the consuming public, which eventually buys the foodstuffs traded there.

The U.S. Commodity Exchange Authority (CEA)—the federal agency charged by law with responsibility for regulating the market—has, in part, turned this task over to the professional traders themselves, who operate in a club-like atmosphere at the various exchanges.

There are strong indications rigged markets in wheat, eggs and meats have cost the public, the small commodity-traders and farmers millions of dollars.

For example, commodities industry officials themselves agree that a recent suspected manipulation of the egg futures market artificially boosted the price of eggs on supermarket shelves.

At the same time, there is little evidence that those responsible for market manipulations and other serious abuses have received much more than a slap on the wrist.

Seven years ago, following a major commodities scandal, the General Accounting Office (GAO) conducted a thorough study of the CEA's regulatory activities and termed them "inadequate."

The prestigious congressional watchdog agency issued a set of strongly worded recommendations to the CEA—moves designed to insure that the public, from the casual trader trying to make a few dollars purchasing commodity futures to the housewife doing her weekly grocery shopping, is adequately protected.

REGISTER PROBE

Now, a Des Moines Register investigation shows that the CEA, a U.S. Department of Agriculture agency, has paid little or no attention to the recommendations of the GAO auditors.

In fact, the level of CEA regulation of the market has declined during the seven years, even as the volume of commodity trading has soared to record levels.

As a result, the operation of these markets is open to serious abuse, including price manipulations and other collusive and deceptive practices by those who specialize in buying and selling at the commodity exchanges.

The CEA itself acknowledges that "if trading on commodity exchanges is not conducted according to equitable rules constantly enforced, unfair practices may distort or depress farm prices, open the way to price manipulations and make it possible for avaricious dealers to 'corner' certain markets and exploit them to their profit."

The frantic excitement of the floor trading at the 20 commodity exchanges in Chicago, Ill., Kansas City, Mo., New York, N.Y., and other cities is a sharp contrast to the serene atmosphere in the office here of Alex C. Caldwell, the CEA administrator, who contends somewhat complacently that the small traders and the public are being adequately safeguarded.

On the one hand, Caldwell frankly admits a lack of manpower to police the rapidly expanding commodity markets that have become, in a sense, the biggest legal gambling game in the nation—and probably in the world.

NO REQUESTS

At the same time, the quiet administrator admits he has refused to ask Congress for more resources to meet the criticisms leveled in the GAO's indictment of his agency.

The 57-year-old Caldwell has held his job since 1960 and has, over the years, had the authority to act against frauds and to advise Congress of the inadequacies of his personnel and of the regulatory law itself.

TYPICAL REPORT

But his report to Congress last year was typical. While admitting to the House Agriculture Appropriations Subcommittee that the CEA workload, customer complaints and evidence of serious violations were rapidly increasing and were "a matter of concern," he asked Congress for no help. In fact, he noted that with 175 authorized employes scattered across the country he was operating with 22 fewer authorized employes than two years earlier.

While Caldwell speaks of his confidence that he and his CEA staff are doing the best they can to regulate the commodity futures market, some veterans of many years in active trading at commodity exchanges contend the CEA concentrates largely on minor offenders who lack influence and whose transgressions are relatively easy to detect.

And some honest-minded commodities insiders who have questioned the way the CEA and the government-sanctioned industry-policing system operate have found themselves subject to reprisals by their colleagues in "star chamber" proceedings. There they are barred from being represented by a lawyer or subpoenaing witnesses or documents they believe necessary to prove their case.

These are the major elements in a long-standing situation which has, for the most part, escaped public attention because of the close ties between the regulators and the regulated, and because of the exceedingly complicated nature of commodity futures.

Only recently have a few victims begun to strike back by filing lawsuits demanding repayment of money they have lost in alleged price-manipulation schemes.

Others have attempted to break the monopoly that exchange members hold over fees they receive from the public for buying and selling futures contracts.

The CEA dates back to 1936, when Congress passed the Commodity Exchange Act in an effort to strengthen government regulation over future trading on agricultural products.

FUTURES TRADING

Futures trading involves the sale and purchase of contracts to deliver farm products at some time in the future. Without such trading, prices for farm products could be expected to drop disastrously at harvest times when supplies are great, and rise to astronomical levels when harvest stocks are depleted and supplies are short.

Trading begins when a farmer offers his product for sale, with delivery to come at some future date. He wants to receive the highest price possible. At the other end is the consumer who wants to pay the lowest price possible.

TRADED OFTEN

Contracts to purchase the farmer's product are entered into not just once. They are traded back and forth many times at the commodity exchanges by speculators who constantly appraise the going prices for the farmer's goods and other market influences. When a speculator believes the price of, say, wheat will rise, he buys contracts to receive delivery of wheat in some future month. If the price does, in fact, rise, he can later sell his futures contract at a handsome profit.

On the other hand, if the speculator believes the price of wheat will fall, he will try to sell contracts to deliver future wheat at today's prices.

Ninety-nine times out of a 100, statistics show, the buyer of a futures contract does not receive, nor does the seller deliver, the actual commodity. Most of the transactions are paper ones in which much money—but little produce—is involved. Much of the buying and selling is the result of traders "speculating," or entering into "hedging" contracts to protect their positions on other contracts, or engaging in "spreading" or "straddling" contracts, or a variety of other transactions whose terminology bewilders those not initiated into the complex fraternity of the big commodity traders.

Despite the complex nature of the commodities markets, a rapidly increasing number of small investors are, as one industry analyst put it, "stumbling pell-mell into this thing."

In 1967, for example, there were 9 million "contracts" traded at the nation's 20 commodity exchanges. By 1972 this had nearly doubled to a total of 17.8 million trades. And the number is increasing at about 20 per cent a year.

Commodities traded on the exchanges include corn, wheat, soybeans, cotton, shell eggs, cattle, pork bellies (uncured bacon) and a host of other products.

Hundreds of millions of dollars in futures contracts are entered into each day in the noisy trading pits on the floors of the Chicago Board of Trade, the Chicago Mercantile Exchange, the Kansas City Board of Trade and elsewhere.

Floor traders and brokers shout back and forth in a frantic effort to execute buy and sell orders from their customers, or even to pick up a quick profit for themselves.

EXCHANGE PROBLEMS

Problems can arise at the exchanges when a big trader, or a group of traders, attempts to artificially affect the price of a commodity by buying large quantities in an attempt to drive prices up, or by large-scale selling to drive prices down. It is in such circumstances that an effort to achieve a "corner" or "squeeze" on the market may develop—practices which are illegal and which may or may not be detected by the CEA.

The close ties between the CEA, representing the public, and the commodity markets, representing the brokers and traders, was illustrated recently in Kansas City.

The CEA learned of allegations that a group of prominent grain traders on the Kansas City Board of Trade had rigged the wheat futures market there in an attempt to drive up the government's wheat export subsidy at the time of last year's huge and unprecedented wheat sales to the Soviet Union.

Such an action, if successful, could result in substantial benefits to large grain exporting firms which receive the subsidies.

Caldwell acknowledged the CEA turned the information on alleged rigging over to the Kansas City Board of Trade. It reported, after an inquiry, that there was "no basis for complaint."

The board and its investigating committees are made up of the commodity traders. Because the case could involve influential members of the board of trade, Caldwell agreed the CEA's action, in effect, may have amounted to a request that possible wrongdoers investigate themselves.

He emphasized, however, that the CEA is continuing its own investigation in the case.

MAJOR PROBLEM

CEA administrator Caldwell's first major problem in policing the burgeoning industry came in 1964 with the exposure of Tino Deangelis's spectacular scheme to corner the soybean oil and cottonseed oil markets.

Deangelis also had obtained millions of dollars in loans, using non-existent stocks of salad oils as collateral.

A Senate investigating committee that probed the case concluded the schemes had been made possible in part by a reluctance of the CEA to fully investigate the trade practices of Deangelis and others engaged in salad oil futures trading.

Even now, Caldwell contends the CEA could not have prevented the $150 million Deangelis swindle that affected more than 50 of the most respected banks, brokerage houses and trading companies in the U.S.

But The Register has learned the Agriculture Department's inspector general later issued a report criticizing CEA's handling of the case. The report has never been made public and Caldwell refused a request for a copy. Neither would he talk about its contents.

Inspector General Nathaniel Kossack said he would not produce a copy of the report because the Agriculture Department takes the position his reports are internal advisories to agency heads and exempt from mandatory disclosure under the Freedom of Information Act. But he said there is legally nothing to prevent Caldwell from releasing or discussing the report.

It was the Deangelis case that prompted the investigation by the GAO. In July, 1965, the investigators blasted the CEA for not doing an adequate job of ferreting out abuses in futures trading which then totaled $60 billion a year.

Today, the volume of trading is more than three times what it was in 1965.

But by any standard of relative measurement, the CEA actually has fallen behind in the seven years since the GAO recommended tougher enforcement. And while there have been some meager additions to the CEA staff in the intervening years, the agency has been virtually submerged by the growth of the industry it regulates and by the added responsibilities Congress has given it.

In 1971, for example, the CEA had to process some 676,000 reports filed by trading companies—nearly 3,000 each market day.

Because the CEA has done little to correct its faults since the GAO issued its report, the findings of the GAO study are important in assessing CEA activities today.

STILL NO PROBE

The GAO found that CEA was not making a sufficient number of over-all investigations of the major regulated commodities—a study of the sale of soybean oil futures, for example, to uncover abusive trading practices. At that time, the CEA had never investigated the soybean, soybean oil and soybean meal futures which then had a total annual traded volume of $26.5 billion.

There still has not been an overall investigation to see if soybean trading is being operated honestly, because, Caldwell says, "It would tie up our whole staff for a year."

The GAO reported, also, that in rare cases where the CEA did an over-all market investigation, it generally found abusive trading practices such as cheating of customers, filing of false reports and false transactions by traders.

In these cases, complaints usually were issued. However, the CEA then failed to perform follow-up investigations to determine whether the abuses had been corrected, the report said.

The GAO decided to conduct its own market investigation at one major exchange and during a three-month period turned up 47 cases of "questionable trading practices" in the sale of wheat and flaxseed futures.

Informed of these findings, the CEA investigated and found fictitious and noncompetitive sales to have occurred. A commission merchant firm was put on probation and two of its officials were denied trading privileges at the exchange for 20 and 30 days.

Caldwell then, as now, insisted his agency could not conduct comprehensive market probes with the manpower it had. But the GAO firmly rejected this argument, stating that the regulatory agency "can not limit its responsibility to properly police trade practices on contract markets merely because additional manpower and funds may have to be requested and obtained for this purpose."

Caldwell pleaded in 1965 that he could not do a useful trade-practice investigation unless he could take the time to study the thousands of trading transactions involving a particular commodity for an entire week.

Again the GAO disagreed, noting that a CEA study of only part of the transactions during a single day's trading in wheat futures had turned up violations that resulted in filing of complaints against 11 persons.

LIMITED STUDIES

Now, Caldwell says the CEA has decided to abandon the over-all trade-practice investigations in favor of some limited probes of trading by individual firms. Even one market-wide investigation, said Caldwell, would "overwhelm" his agency in the current era of high-volume commodity trading.

The GAO also reported in 1965 that the CEA did not review, on a periodic basis, the records of the commodity exchanges and thus had no way of knowing whether the exchanges were enforcing their own rules designed to prevent illegal and unethical practices by exchange members.

This "failure" by the CEA to inspect records and check on the adequacy of punishment of violators by the exchanges, said the GAO, "reduced the effectiveness of CEA's administration and enforcement of the provisions of the (Commodity Exchange) Act."

Caldwell, in two interviews, expressed little concern about the exchanges' handling of these matters, saying he is "all for self-policing" by the exchanges.

One of the most serious shortcomings of the CEA, according to the congressional agency, was its failure to evaluate the effect on futures prices of "floor trading," where a trader on a commodity exchange is permitted to buy and sell not only for his customers, but for himself.

"SPECIAL ADVANTAGES"

The GAO pointed out that professional floor traders, because of their special knowledge and constant presence in the exchange, "enjoy special advantages" over the rest of the trading public. The agency said this opens the door for such abuses as the floor trader obtaining more favorable deals for himself than for his customers.

Thus, said the GAO, the CEA should investigate floor trading to see whether the practice should be curtailed as the Securities and Exchange Commission has done with regard to brokers at the regulated stock exchanges.

CEA chief Caldwell admits "floor trading" could result in serious conflicts of interest, where the trader might substitute his own unprofitable trades for a customer's profitable ones. He also admits the CEA has done little to regulate this activity.

But Caldwell said he considers any such investigation "low priority." He has consistently refused to ask Congress for funds to carry out such studies.

DISPUTES CALDWELL

Caldwell's lack of concern about the problem was disputed by a Chicago lawyer who for 20 years was a trader on the floor of the Chicago Mercantile Exchange. He said of the floor traders:

"If a fellow handles a customer's orders—say you wanted me to buy some (hog) bellies for you—I should not be allowed to trade for myself. All sorts of things can happen. You lay yourself open to all sorts of hanky-panky."

And William Phelan, who heads the Mercantile Exchange's 15-member investigations staff, acknowledged: "There's an unbelievable temptation, if the trader sees that his own account shows a loss and the customer's account shows a profit."

THE JOB THEY PERFORM

(From the Register's Washington bureau)

WASHINGTON, D.C.—The nation's commodity exchanges—where future crops of grain are traded, where young cattle and hogs still on the farm are bought and sold, and where fortunes can be won or lost in an instant—are a complex outgrowth of the need to provide a place for the orderly marketing of agricultural products.

Until the development of the commodities markets in the mid-1800s, trading in grains, particularly, was chaotic, as corn, wheat and oats would pour into Chicago, Ill., at harvest time. This created a glut, resulting in low prices for farmers and the dumping of bargeloads of grain into Lake Michigan.

At other times of year, the situation was the opposite. Grain stocks were depleted, and demand drove prices skyhigh.

Today, the main business at the 20 commodity exchanges in the U.S. is the trading of "commodity futures"—contracts for the sale and purchase of future farm products. Selling crops and livestock in advance, at definite prices, helps stabilize prices and provides a more even flow of products to market.

Commodity exchanges often by by the name of "Board of Trade" or "Mercantile Exchange." They are located in Chicago, Kansas City, Mo., New York, N.Y., Minneapolis, Minn., and a number of other key shipping and port cities.

The futures trading is conducted in trading "pits" on the floors of the exchanges, by commodity brokers and floor traders who have purchased a membership at the exchange. They buy and sell commodity futures contracts for their customers, ranging from giant grain companies down to the ordinary smalltime investor, or for themselves. When acting for customers, they are paid commissions for their services.

The exchanges operate under a two-part system of regulation—the federal Commodity Exchange Act passed by Congress in 1936, nad the exchanges' own rules and regulations.

The Commodity Exchange Act, an outgrowth of the earlier Grain Futures Act of 1922, is administered by the Commodity Exchange Authority, an agency of the U.S. Department of Agriculture. The CEA has headquarters in Washington, D.C., and regional offices at major exchange cities. Alex C. Caldwell has been administrator of CEA for the past 13 years.

Purpose of the Commodity Exchange Act, said Congress at the time of its passage, "is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralizes the markets to the injury of producers and consumers and the exchanges themselves."

A prime responsibility of the CEA is to enforce the act and to guard against price manipulation and other illegal market activities in which a trader or group of traders tries to unlawfully "corner" or "squeeze" the market in a particular commodity and thereby influence the price in their favor.

The line between such lawful trading practices as "hedging," "spreading," and "straddling" and unlawful manipulation is not always a distinct one. It poses problems for government regulators and the courts.

The CEA also has the responsibility under the act for designating exchanges as lawful contract markets where futures trading may be carried on, for registering commodity brokerage firms and floor traders, for setting minimum financial requirements for the trading houses, for protecting customers' funds through surprise audits and other means, and for dealing with violators through negotiations, administrative complaint or criminal prosecution. Penalties may include cease-and-desist orders, temporary or permanent loss of trading privileges, fines or prison sentences.

The volume of futures trading regulated by the CEA has grown steadily. Fifteen million or more with a total value of $200 billion—triple the figure of just seven years ago.

In the same period of time, the size of the CEA staff has remained essentially the same, with the exception of the addition of a few employes when Congress gave the agency more responsibilities in 1968.

The General Accounting Office, which found in 1965 that the CEA was doing an inadequate job of regulation, recommended that Caldwell seek more funds and personnel—an unusual recommendation from the cost-conscious congressional watchdog agency.

The CEA operates on an annual budget of $2.9 million, and has about 170 employes. It must audit the activities of some 275 registered brokerage firms and about 1,300 brokers.

[From the Des Moines Register, Feb. 19, 1973]

10-Cent Rise in Eggs Tied to "Rigging"—Futures Market Incident Told

This is the second in a series of articles examining regulations of commodity rading.

(By George Anthan and James Risser of the Register's Washington Bureau)

Chicago, Ill.—An alleged price rigging of the egg futures market in Chicago in 1970 continued undetected for nearly a year and boosted the supermarket price of eggs by as much as 10 cents a dozen, The Register has learned.

In another price manipulation case—this one involving a giant grain company's unlawful control of the wheat market in 1963—the firm got off without any penalty other than a meanings probation period.

MANIPULATION POTENTIAL

The two incidents illustrate the enormous potential for manipulation and other frauds in the nation's commodity markets, and the fact that the U.S. Commodity Exchange Authority (CEA) often moves slowly and timidly against violators.

The federal law governing the commodity markets, as well as the publications of the CEA, stress that future trading is particularly "susceptible to speculation, manipulation and control."

Attempts by individuals or a group of conspirators to artificially raise or depress the price of foodstuffs traded on the exchanges will, if allowed to go unchecked, be "detrimental to the producer (farmer) or the consumer and the persons handling commodities," the law warns.

Yet a former high official of the Chicago Mercantile Exchange estimates privately that for every price manipulation case prosecuted by the CEA, eight or nine other price riggings go undiscovered.

When the CEA does move in, it does so slowly. A Chicago lawyer familiar with the inside workings of the commodity markets said, "A regulatory agency

like the CEA should be able to move with lighting speed. But they drag the cases out and then impose relatively meaningless punishment."

DEFEND REGULATION

CEA and trading industry officials defended the level of government regulation in interviews with The Register, but they could provide no firm assurance that most price manipulations are detected.

The General Accounting Office (GAO) more than seven years ago sharply criticized the CEA for lack of adequate regulation, saying in a 1965 report that the number of investigations conducted by the agency was "not sufficient to disclose and discourage abusive trading practices." The GAO, noting the growing size of the commodity markets, recommended a major step-up in regulatory activity, not necessarily to detect and stop every attempted manipulation but to provide at least a higher level of deterrence.

Ironically, the number of market manipulations alleged by the CEA has declined during a period of time in which commodity-futures trading has quadrupled in volume.

In the 1950's the CEA filed 14 complaints charging traders with price-rigging. But in the 1960's under the new leadership of CEA Administrator Alex C. Caldwell, only six such cases were filed.

The former mercantile exchange official who contends price-riggings are not caught said the CEA office in Chicago "has only two or three people who really understand what's going on and what's involved in commodity trading. The CEA staff is good on bookkeeping things, like the proper segregation of customers funds from the funds of the brokerage houses, but they are deficient on stopping manipulation."

CRUCIAL OPERATION

The Chicago operation of the CEA is particularly crucial because 80 per cent of all commodity futures trading takes place at the Chicago Board of Trade and the Chicago Mercantile Exchange.

It was in Chicago that the egg and wheat manipulation cases arose.

In May 1970, a group of people who had invested in the commodity market filed suit in U.S. District Court in Chicago against the mercantile exchange, charging they had lost money because of a manipulation of the March, 1970, egg futures market.

They alleged that a group of unknown conspirators had forced them to sell, at artificially depressed prices, contracts they held for the purchase of eggs. The exchange officials, in an effort to stop the suspected manipulation, actually contributed to the plaintiffs' losses by giving advance notice to officials of big brokerage houses who served on the exchange's business conduct committee, the complaint alleged.

The lawsuit asks for damages of $2 million, claiming that is the actual loss suffered by the plaintiffs and others who were hurt by the scheme.

In October, 1970 another civil suit was filed by a different group of egg producers and commodity traders, alleging a price manipulation of the September, 1970, egg futures market.

The second case charged the plaintiffs had lost $835,000 because Tyson Foods, Inc., of Springdale, Ark., and other defendents—including some major brokerage houses—took part in an illegal plan to maintain "a false, fraudulent and inflated price in egg futures."

BOUGHT CONTRACTS

The defendents bought up hundreds of contracts in eggs futures (a contract equals 22,500 dozen) and drove the wholesale price of eggs up to a season's high of 48 cents a dozen, forcing the plaintiffs to pay artificially high prices in order to fulfill their own contracts to sell eggs, the suit charged.

Despite the warning signals raised by the two private lawsuits, it was two years later—October, 1972—before the CEA filed a complaint against Tyson Foods and others, charging them with manipulation of the 1970 egg futures market.

The allegations of that government complaint are substantially the same as in the second civil suit filed two years before.

Private lawyers involved in the cases said CEA investigators did not find out about the case on their own, but got most of their information from the filing of the private suits.

CEA administrator Caldwell says, however, that his Chicago staff was into the case as early as September, 1970, checking on complaints of an egg market "squeeze," through its "regular surveillance process." But CEA referred the situation to officials of the Chicago Mercantile Exchange and took no further action for two years.

This was fruitless, according to the allegations of the first civil suit, because exchange officials charged with intentions [sic] were connected with firms trading in egg futures.

"COMPLEX FIELD

As for the two-year delay in the filing of the CEA complaint, Caldwell said "This is a complex field. It takes a long time to get the evidence for prosecution." The case is still pending.

Veterans observers of the commodities markets acknowledge the alleged egg price manipulations may have cost consumers and farmers millions of dollars.

Harry Fortes, the lawyer who filed the civil suit against Tyson Foods, says the manipulation had an impact on the retail price of eggs because it lasted for some time. It also hurt egg farmers, he says: "The guy in the country with eggs says, 'Heck, futures are up to 47 cents. I'm not going to sell for less.' Then later, the price collapses, eggs are dumped, and the producer gets hurt."

William Phelan, who leads the Department of Audits and Investigations at the 500-member Chicago Mercantile Exchange, said in an interview at his Chicago office that the alleged egg manipulation was hard to detect because "there was a consort of interests involved, and it's a very difficult thing to police.

It is tricky to keep track of the trading positions of all traders and to discover if a group of related traders is putting together a manipulation effort, he said.

"SIGNIFICANT EFFECT"

"These people did it for a year running," said Phelan. "It definitely had an effect on the price of eggs—a significant effect."

The impact on the retail cost of eggs was to raise the price by as much as 10 cents a dozen, he estimated.

A former exchange official said the CEA could guard against such manipulations better by hiring more people and by keeping a more direct day-to-day watch on trading.

"It's partly a matter of just being there and observing what's going on," he said. "The CEA should have a man on the floor to watch the trading, to listen to rumors. There are always people that are hurt and will spill their guts."

[From the Des Moines Register, Feb. 20, 1973]

"A SLAP ON WRIST" FOR CARGILL, INC.

This is the third in a series of articles examining regulation of commodity trading.

(By Clark Mollenhoff and George Anthan, of the Register's Washington bureau)

WASHINGTON, D.C.—Cargill, Inc., one of the nation's largest grain companies, has emerged from a major wheat-price manipulation case with what federal officials themselves concede was "only a slap on the wrist."

A U.S. Circuit Court of Appeals has ruled that Cargill was guilty of an illegal "squeeze" of the 1963 wheat-futures market in Chicago, Ill., causing prices to rise to artificial levels.

But the U.S. Commodity Exchange Authority (CEA), after a delay of 7½ years, finally imposed its penalty—a two-year probation for the company and some top officers.

Cargill thus continued to enjoy trading privileges at the nation's commodities exchanges.

CEA Director Alex C. Caldwell admitted to The Register that the probation given to Cargill was, "in effect, no sanction."

Caldwell said he recommended the company be barred for 90 days from trading in commodities, but he said the former CEA judicial officer who levied the penalty against Cargill "wasn't a tough sanctions man."

Caldwell's judgment is disputed. However, by the now-retired judicial officer, Thomas Flavin, who hinted that the U.S. Agriculture Department has an unofficial policy of going easy on large grain traders who violate the commodities law.

Flavin said he was not overtly pressured, and added. "I made the decision on the Cargill case by myself."

But he said he imposed the light penalty "with the knowledge that no secretary of agriculture has ever penalized a big trader by barring him from trading."

ALTERNATIVE TO FINE

Flavin continued, "To do otherwise would have put them (Cargill) out of business because if they had been barred from trading, it would have been worse than a $5-million fine."

Caldwell describes the Cargill situation as one of the most important market manipulation cases brought by his agency.

But the case, which began in 1963, also is cited by CEA critics as an example of slow regulatory action, as well as weak punishment.

It started when the CEA filed a formal complaint in June, 1964, charging the big grain firm with a massive manipulation of the May, 1963, wheat-futures market on the Chicago Board of Trade.

CEA records show that hearing on the agency's complaint were concluded in November, 1966, and that it was almost four years later before the CEA judicial officer's ruling was handed down. Then, there was delay after delay as the company appealed to the courts.

It was December, 1971, before the U.S. Court of Appeals finally ruled that Cargill's control of wheat-futures contracts representing two million bushels, only 15 minutes before trading in May, 1963 wheat futures closed, constituted a market manipulation.

This was because, the court said, Cargill at this point controlled just about all the available grain. Therefore, traders and speculators who earlier had agreed to deliver grain at a certain time were faced with having to pay artifically high prices in order to meet their obligations.

ARTIFICIAL PRICE

The court held that Cargill "exacted an artificially high price" from those who had agreed to fulfill the firm's futures contracts.

Also, the court ruled that the "squeeze was intentionally brought by and exploited by" Cargill.

Such manipulation interferes with "basic supply and demand factors" which should govern the grain markets, said the court.

Such an action, the court continued, "prevents the futures market from performing its basic economic function and hence diminishes its utility to those members of the trade and general public who rely on its basic purposes."

When a buyer of futures contracts succeeds in manipulating the market, he can force holders of sale contracts to fulfill their obligations "at a price which he dictates, which of course is as high as he can prudently make it," said the decision.

Cargill's plea that it was simply exercising good business judgment was rejected by the court which said. "Cargill was no novice in futures trading and knew of market conditions which could cause a squeeze."

CLAIMS CARGILL HAD INFORMATION

The company, said the court, "possessed a very valuable piece of information unknown to the trade at large, namely that it owned practically all the wheat available for delivery . . . Cargill knew exactly what was going on."

Despite the court's judgment of the severity of the situation, Cargill was given no punishment by the CEA other than the two-year probation.

This light penalty was levied by former CEA judicial officer Flavin and affirmed by the court, "because of the undue protraction of the proceedings, not due to any fault of" Cargill.

Flavin had found that the offense deserved punishment of Cargill and four of its top officers by denying the firm and the officers trading privileges on all federally-regulated commodity exchanges for three months.

But Flavin then suspended the punishment and put the firm and the officers on probation for two years, saying that if the law was violated again during that time, the punishment might be re-imposed.

"I'm not sure we had a legal right to suspend the penalty," Flavin has told The Register.

However, referring to the CEA's traditional stance on sanctions, Flavin added, "We did it (suspended penalties) all the time." He said it was the only practical way for the CEA to find a violator guilty and still not "virtually put him out of business."

NO CHALLENGE

Flavin explained that although there may be no legal right to suspend the penalties for big traders. "It is apparent that these companies won't come into court and challenge it by saying. 'You've been too soft on me. You should have put me out of business.' "

Caldwell says Flavin's successor, Donald Campbell, is expected to take a tougher stand on penalties for violators in the future.

Caldwell also took issue with the court's statement about delays in the Cargill case not being the company's fault.

"There was every legal maneuver possible by Cargill to drag it out," he said.

Flavin said some of the delay in the Cargill case was because the Department of Agriculture did not appeal a precedent-setting "bad decision" in the 5th U.S. Circuit Court of Appeals involving Volkart Brothers, a big cotton trader.

Flavin said there were two ways the Agriculture Department could have dealt with the adverse ruling in the Volkart case—appeal it to the U.S. Supreme Court where he said it most likely would have been reversed, or issue a statement deploring the circuit court decision and announcing that the department would not be bound by it. But the department did neither.

"Everyone agreed it was a bad decision, but the cotton industry didn't want it appealed, and they managed to put together the political power to keep the solicitor general from appealing it and to keep the secretary of agriculture from making a statement that it was bad law and that we shouldn't be bound by it," Flavin said.

WANTED TO APPEAL COTTON RULING

He continued, "I wanted it appealed, but as long as it wasn't appealed. Cargill had some basis for contending that what they had done was not a violation of the law because it wasn't anything that the Volkart Brothers hadn't done. That was also one of the mitigating circumstances in the Cargill case."

Flavin emphasized. "There wasn't any hanky-panky on the Cargill case. I was just buried under work with this and several other big cases, and in the middle of it they took my executive assistant away from me and made him a hearing examiner, and it was a year before I got him replaced."

The U.S. Supreme Court, in refusing last spring to review the circuit court's ruling in the Cargill case, in effect overturned the Volkart Brothers ruling and imposed a more strict standard against price manipulation attempts.

One of the Cargill officers put on probation was Walter B. Saunders, a vice-president, who testified before a congressional committee last September that he did not know if he was still on probation.

Saunders was before Congress in connection with Cargill's role in the spectacular sale of U.S. wheat to Russia last year.

Cargill sold some two million bushels of wheat to the Russians, under conditions which permitted Cargill. Continental Grain Co. and others to collect relatively high U.S. government subsidies on the sale.

Representative John Melcher (Dem., Mont.) pointed out to Saunders that his two-year probation period from the wheat futures manipulation case had ended a month earlier, in August, 1972.

"I was amazed," Melcher told Saunders, "that you did not seem to know when the probationary period ended . . .

LITTLE STIGMA

"There does not seem to be much of a stigma attached to this ruling on the part of Mr. Flavin. Indeed, there is very little penalty involved since you are not aware when the probationary period ended," said Melcher.

The congressman, who was concerned over evidence that the Agriculture Department gave advance tips to Cargill and some other big grain firms about pending changes in the government wheat-export subsidy, also noted that at the time Cargill was on probation, the White House hired the firm's vice-president for public affairs, William R. Pearce, to be a special foreign trade adviser to President Nixon.

Melcher also pointed out that Cargill has used the New York City law firm of Mudge, Rose, Guthrie and Alexander as its attorneys in various legal matters. Former U.S. Atty. Gen. John Mitchell is a member of the firm, and Mr. Nixon was a partner there before he was elected president in 1968.

The wheat manipulation case, in which Cargill drove the price of wheat futures up to $2.28 a bushel, marked the fourth time the Minneapolis, Minn.-based firm has been in formal trouble with the CEA since the Commodity Exchange Act was passed in 1936.

Three of the cases involved alleged market manipulations, and one was a charge that Cargill and its Canadian subsidiary engaged in a series of bookkeeping maneuvers which permitted Cargill to illegally hold large amounts of oats futures contracts.

In one of the earlier cases, Cargill was prohibited from trading on any regulated commodity market for several years.

UNUSUALLY LENIENT

Examination of past CEA manipulation charges indicates that Cargill's recent two-year probation was unusually lenient.

In the past, firms and their officers have been barred from trading for three months, six months, often for an entire year, as the result of pricefixing schemes. Criminal penalties rarely are used although in one 1946 case a firm was fined $25,000 and each of its officers $1,000.

The stiffest penalties, such as the six-month or one-year suspensions, came in the 1940s and 1950s. Since Caldwell's reign began in 1960, the toughest penalty for price-rigging has been a 90-day suspension, but the more frequent penalty has been a 20- or 30-day suspension, or simply probation—as in the Cargill case.

CEA director Caldwell concedes that penalties imposed in recent years have not been tough enough, but he declines to commit himself to a crackdown other than to say, "We may have to toughen them."

But any crackdown on penalties first involves finding the market manipulators. And, as the court stated in the Cargill case:

"The methods and techniques of manipulation are limited only by the ingenuity of man."

[From the Des Moines Register, Feb. 21, 1973]

DOES THE JOB WELL: IT'S SCRAPPED

This is the fourth in a series of articles examining regulation of commodity trading.

(By George Anthan and James Risser, of the Register's Washington Bureau)

CHICAGO, ILL.—An Agriculture Department computer program to spot possible commodity market violations has been judged a failure by the U.S. Commodity Exchange Authority (CEA) because it was spotting too many cases.

CEA chief Alex Caldwell, who has the responsibility for policing the $200-billion-a-year commodity market, told The Register the computer kicked out so many cards indicating deceptive or manipulative practices or other violations that it was impossible for his small staff to process them adequately.

Rather than seek staff increases or have his present staff flounder in "the mountain of paper the computer kicked out," Caldwell simply abandoned that computer as "unneeded" and "unworkable."

CLAIMS HE'S NOT BUILDER

"I'm no empire builder," Caldwell said in explaining his rejection of General Accounting Office (GAO) recommendations that he increase his staff to conduct enough investigations to properly police the market.

The GAO recommendations were made in 1955 and 1966 when the commodity market was only a $60-billion-a-year business. Although the trading has tripled, the CEA staff is essentially the same size.

Caldwell admits more investigators would probably turn up more violators. But he contends the investigations of the CEA are adequate as a deterrent in the self-policing system he favors. That is where Caldwell is at odds with the GAO and some of the smaller commodity traders who have the courage to speak out about a system that the big traders admire.

Actually, in its 37 years of operation, the CEA has issued fewer than 225 formal complaints against alleged violators of the Commodities Exchange Act.

And the CEA, especially in recent years, has allowed most offenders to continue in business, perhaps after a short suspension of trading privileges for a few.

This is despite the CEA's legal authority to permanently deny trading rights to offenders, to impose fines, and even to send violators to jail.

DEFENDS DECISION

Caldwell, who has been critical of a minor penalty imposed in a major wheat futures manipulation case, defends his agency's recent decision to impose a light sanction in the case of one of the nation's leading brokerage houses charged with violations involving its customers' funds.

The CEA charged in August, 1972, that Dean Witter & Co. had failed to properly allocate up to $414,000 in customer funds, a breach of the law. The violations, according to the agency's complaint, had occurred a year earlier, between July and October, 1971.

The CEA reported that Dean Witter & Co. "admitted the facts" and waived a hearing. The agency announced that, as a penalty, it had suspended the brokerage firm's privileges as a floor trading merchant for 10 days, in effect prohibiting the company from doing business on the commodity markets for that time.

WITTER RECEIVES SUSPENDED SENTENCE

But at the same time, the CEA announced that this penalty would be suspended, and that Dean Witter would be placed on probation for three years.

(The consent order suspending Dean Witter's license, and the order which suspended the sentence, was issued by Donald Campbell, the CEA's judicial officer in Chicago. Campbell has been described by Caldwell as a man expected to take tougher stands on violators.)

In defending this action, Caldwell said the violation by Dean Witter & Co. "was not willful. The problem was a poor set of records. It just happened. We thought the best way to work it out was for them to agree to fix up their bookkeeping."

Caldwell agreed, however, that as a leading brokerage firm, Dean Witter & Co. should have been aware of provisions of the commodities law.

But Caldwell did not mention that exactly one year before the most recent complaint was filed, in August, 1971, the CEA had issued another complaint against Dean Witter & Co., this time charging the firm had improperly handled up to $260,000 in customer funds.

In that case, too, Dean Witter & Co. is listed in CEA records as having filed a stipulation in which "it admits the facts . . ."

No penalty was levied in the 1971 case. Dean Witter & Co. was directed to "cease and desist" from "failing to treat and deal with customers' funds as belonging to such customers . . ." Under the law, the CEA could have later imposed fines and jail terms for failure to comply with a cease and desist order.

1966–67 DISCREPANCIES

CEA records also show that examination of the company's records in 1966 and in 1967 disclosed the firm "had not satisfactorily complied with the requirements" of the federal law. In this case, according to CEA records, "These matters were called to the attention of the corporation". . . and the firm "promptly" complied with the law.

There is little question but that Caldwell's position that Dean Witter's later violations were simply a result of "bad bookkeeping practices" would be challenged by some veteran federal regulatory officials in Washington since the company was found to have been involved in earlier violations.

JUSTIFY EXISTENCE OF AGENCY

A former high official of the Chicago Mercantile Exchange, now practicing law here, contends the CEA is more concerned with impressing Congress with its modest budget requests than with adequately regulating a $200-billion-a-year industry that is growing at the rate of 20 per cent annually.

"They just want to justify their existence," said the lawyer, a former commodities trader and considered a market expert.

When CEA chief Caldwell asked Congress for money to be used on the computer investigations of illegal price manipulations, he said he would reduce the size of his staff to offset the $35,000 cost of the computer programming.

So when the computer investigations failed to work out, the agency was without its planned new program and had fewer employes than when it started the project. In fact, as the volume of commodity trading has swelled, the CEA staff has been steadily shrinking.

At congressional appropriations hearings a year ago, Caldwell, anticipating that the computer program would work, boasted that "despite an increase of 1.5 million in transactions supervised and a corresponding increase in workload, the agency is currently operating at 22 positions below the level authorized in the fiscal 1970 budget."

With fewer employees, Caldwell now acknowledges that one major investigation of trading a single commodity—soybeans, for example—"would tie up our staff for a year."

"NOT MY THEORY"

Then, he adds quickly, "That doesn't mean we need more staff. You could build up an empire here, but that's never been my theory of regulation."

While Caldwell insists CEA's policy of allowing the commodities exchanges to police themselves is working, the U.S. General Accounting Office (GAO) has urged strongly that the CEA beef up its staff, and do more of this work itself.

SEEN AS UNUSUAL STAND

This is a highly unusual stand for the GAO, the congressional watchdog agency that rarely advocates increased government spending or staff expansions.

The CEA's 1973 budget request to Congress is indicative of its long-standing approach to its regulatory task.

The agency reported that it expects to conduct 107 investigations this year, compared to 106 last year. It expects to file two criminal proceedings this year, the same as in 1972.

The CEA said, also, that it had conducted 188 audits last year to determine if brokerage firms were honestly handling their customers' money. In 1973, the CEA expects to conduct 195 such audits.

In another area, the agency said it examined 645 financial statements last year, and expects this to drop to 450 in 1973.

In 1972, the CEA spent $2,943,000. The agency is requesting a $52,000 decrease this year, and a drop to $2,848,000 for 1974.

As the size of the market has grown, CEA employes have been swamped in paperwork—they expect this year to process more than 700,000 reports which the law requires the bigger commodity traders to file daily and weekly.

This has left less time for investigations of possible market abuses. The CEA has reduced the scope of so-called "trade practice" investigations, changing them from marketwide investigations of a particular commodity to investigations of a single firm's trading activities. It did only 15 of the new-style investigations last year.

BUDGET REQUEST

The CEA's budget requests for the next fiscal year estimate there will be no increase in the number of employes. A steady decrease in the number of administrative proceedings it initiates in cases of suspected law violations is also foreseen.

Longtime Washington observers agree it isn't clear how a federal regulatory agency can determine in advance how many actions it will undertake, unless the agency has determined in advance to hold its activities to an arbitrary level.

Caldwell has reported his agency in recent years has doubled the number of customers' accounts covered in CEA audit programs, and he said the unit increasingly is taking steps to prevent market abuses by issuing warnings to traders suspected of engaging in price manipulation.

In order to guard against traders manipulating market prices, or "cornering" the market in any one commodity, the CEA has established limits on the amount of the commodity any one trader can hold.

For example, a trader is limited to buying or selling three million bushels of corn in one day. Also, he is not allowed to hold for any length of time contracts representing more than three million bushels. And anyone who buys or sells contracts representing more than 200,000 bushels of soybeans must report this to the CEA.

RECENT SCHEMES

But, according to one commodities exchange official, some recent price-manipulation schemes have gone undetected for months because many persons working together have kept their purchases just below the reporting limits. He agreed that a major CEA trade-practice investigation is the only way to insure against such activities. But it is this type of investigation the CEA has dropped because of staff shortages.

Donald L. Tendick, the CEA's deputy regional director here, said that although "we can't ever catch everything, I'm pretty comfortable with the system we have."

Tendick, who has been employed by CEA since 1964, said he doubts the Chicago office with its 87 employes misses many price manipulations or other attempted illegal practices at the Board of Trade and Mercantile Exchange.

To a large extent, he said, the CEA relies on records required to be filed by large traders showing their holdings in various commodities.

NO PROBE OF WHEAT SALES

According to Tendick, the CEA did not trade-practice investigation of wheat sales at the time of the recent huge export deal with the Soviet Union. This was despite reports that some persons or companies had advance tips about the sale and had used the commodities markets to make large profits.

Said one observer here with longtime commodities trading experience: "With the market going like it was, you know somebody had to know."

Tendick concluded that "given the resources we have, we're doing an adequate job." But he acknowledged that the agency could use more investigators and then would "perhaps find more violations."

Tendick and other CEA officials confirmed that most CEA investigations are a result of complaints from traders and from public investors in commodities.

Tendick said that before starting an investigation, the 87-member Chicago office, largest in the CEA, clears such an action with officials in Washington.

Herbert Sheidy, a vice-president of the Chicago Board of Trade, said "The regulation of commodities is real primitive compared to the securities industry."

Sheidy, the board's director of compliance, was a securities dealer before joining the Board of Trade.

He said of the CEA: "They're not as pervasive as is the Securities and Exchange Commission (SEC)," which regulates the country's stock exchanges.

"SUPER AGENCY"

The Board of Trade's Sheidy said there have been proposals to take the CEA out of the Agriculture Department, turn it "into a super agency, like the SEC, and give it authority to regulate all commodities."

Currently, the CEA does not regulate trading in the so-called "world" commodities, including coffee, silver, cocoa, platinum, plywood and sugar.

There have been mounting reports of abuses in trading of those commodities, and dealers don't have to follow disclosure procedures or observe capital reserve requirements.

Caldwell met last week with some 100 industry leaders to discuss the growing practice of selling options enabling customers to minimize the risks of buying and selling in the "world" commodities. The customers pay a premium for the option, and the dealer who sells it assumes part of the risk.

But there have been reports of unscrupulous dealers refusing eventually to honor the options they have sold, and of dealers with so little financial backing that they are unable to pay their customers who may have profited in a futures trade.

ASK REGULATION OF OPTIONS TRADING

Caldwell said most of the industry leaders called for federal regulation of options trading, but were unable to agree on how it should be done.

Sheidy said industry officials believe the commodities exchanges, rather than the CEA, should be given authority to police trading in the "world" commodities.

"The industry believes we'd rather do it ourselves," he said, "because the industry would not be as impractical and rigid as a legal standard might be."

There is little question that most commodities-trading professionals would like the CEA's regulatory activities to continue at the present level.

Similarly, among the CEA's strongest defenders are persons connected with trading commodities.

Richard Teweles, a Los Angeles, Calif., commodities-market analyst, agreed that the CEA is "obviously understaffed," but he added. "I'm also very impressed with them. They go at just about the rate a government bureau should go. They're not like the SEC, or the ICC (Interstate Commerce Commission). The railroads hate the ICC, and the securities industry hate the SEC. I don't know of anybody in our business that dislikes the CEA."

Teweles believes government agencies, as they get bigger, "go from a necessary evil, which I regard all government bureaus, to the point of being like a Russian commissar."

He continued, "But the CEA is one of the few I think is in just about the right position."

[From the Des Moines Register, Feb. 23, 1973]

LOOSE REGULATION OF COMMODITY MARTS

This is the fifth in a series of articles examining regulation of commodity trading.

(By Clark Mollenhoff and James Risser, of the Register's Washington Bureau)

WASHINGTON, D.C.—There are few clubs that could provide a better, more congenial atmosphere for big commodity traders to operate in than the one which exists under the approving eye of the U.S. Agriculture Department.

The department's Commodity Exchange Commission (CEC) and its operations arm, the Commodity Exchange Authority (CEA), run a loose regulatory structure that permits the big traders in the grain and livestock markets to pretty much regulate themselves.

The "club" members at Chicago, Ill., Kansas City, Mo., and other commodity futures exchanges are permitted to sit as jurors and judges in cases where one of their colleagues has been accused of illegal or improper conduct under rules which exchange members themselves have set.

They also set minimum commission fees to be charged for handling the buy and sell orders of their investing customers, although the fees admittedly are not directly related to the cost of the service. A member who steps out of line and tries to charge his customers a smaller commission may find himself disciplined by his fellow club-members.

COURT DECISION CAUSES TURMOIL

A recent U.S. Supreme Court decision, ordering an exchange member who allegedly was defrauded of his exchange membership to seek relief from the Commodity Exchange Commission, has thrown things into somewhat of a turmoil.

Justice William O. Douglas, dissenting in the 5-to-4 high court decision Jan. 9, objected that it was a "futile gesture" to direct plaintiff Thomas Ricci to the CEC "when the agency has, by its inaction, already shown every indication of sanctioning the alleged violation . . . We are requiring the petitioner to seek from the regulator an admission of their failure to regulate."

The CEC, made up of the secretary of agriculture, the secretary of commerce, and the attorney general, has no staff and, according to an Agriculture Department official, "meets no more than once a year."

The commisssion has generally left most of the regulatory work in the hands of the related agency—the CEA—which is headed by administrator Alex C. Caldwell. Under Caldwell the CEA refers many complaints over to the exchanges themselves for action.

Since the exchange committees handling such complaints are made up of important traders who sit as members of the exchange, the regulatory system breaks down, according to some critics, because it results in the regulators and regulated being one and the same.

The CEA's feeling toward regulation of what has grown into a $200-billion-a-year business is, "If each exchange polices itself, that's fine," a former exchange official said.

CEA chief Caldwell contends "the exchanges do a good job," but admits "they don't have large enough investigative staffs to police themselves as well as they should."

Rather than solve the problem by beefing up the CEA staff, Caldwell prefers to seek more self-regulation by the exchanges.

CALDWELL: "I'M FOR SELF-POLICING"

"I'm all for self-policing as far as it can go," he explained. "I'm not a great one to spend public funds."

William Phelan, vice-president in charge of audits and investigations at the Chicago Merchantile Exchange, like most commodities market officials, agrees with the approach taken by Caldwell.

Phelan is happy the CEA "in effect has relinquished its power to govern the minimum financial requirements" of commodity-futures brokerage houses.

Herbert Sheidy, vice-president of the Chicago Board of Trade, noted that "Regulation of commodities is real primitive compared to regulation of the securities industry."

Sheidy, a former securities broker, is director of compliance for the Board of Trade.

He noted that "John Q. Public is getting out of the stock markets and into our commodities market more and more. It means our entire industry is changing, and we (the exchanges) must change, too."

But Sheidy agrees with most commodity industry officials that these changes should not be dictated by the government. "The industry should be allowed to make the changes," he said.

"INDICATES GREED OF INVESTORS"

Commodities analysts Charles Harlow and Richard Teweles of Los Angeles, Calif., said of the rush of small-time investors into buying such things as soybean and pork belly futures:

"It indicates a greediness on the part of people to make money fast; it indicates they have more money to spend, and it indicates that many people are dissatisfied with the relatively poor stock market results in recent years. If you win in commodities, you can win big."

This was illustrated last week at the Chicago Board of Trade. If a speculator had, for example, put up the $500 margin required to buy a single contract for 60,000 pounds of soy-bean oil on Feb. 12, he could have sold it at noon the following day and turned a profit of $1,200.

TAKES DIVES

But commodity futures prices also have a way of taking sickening dives, and analysts Harlow and Teweles contend their research indicates the "ordinary little guy" who speculates loses "about 98 percent of the time."

Harlow and Teweles believe that if the CEA gained strength, it could stifle the commodities industry.

But seven years ago the General Accounting Office (GAO), which is the congressional investigating and auditing agency, called the CEA's regulation of the then $60-billion-a-year commodity markets "inadequate." The CEA was not making enough investigations to curb price manipulations and other abuses, was not policing the exchanges to insure that they were enforcing their own rules, and was not doing anything about possible abuses and conflicts-of-interest by traders who are permitted to gamble in commodities themselves as well as for customers' accounts, GAO complained.

The size of the CEA staff and the extent of its regulatory effort has changed little since the time of the GAO report.

The set-up at the Chicago Board of Trade, where much of the nation's corn, wheat and soybeans is bought and sold through commodity futures contracts, provides an illustration of the exclusivity of the commodity-trading fraternity.

The 1,400 members of the Board of Trade, which has a 45-story building in Chicago's loop, hold membership seats which are currently valued at about

$30,000. (At the Merchantile Exchange, which has 500 members, a seat costs about $100,000.) No one can buy a membership unless he first proves his financial responsibility, is sponsored by two current members, and is okayed by a secret vote of the Board of Trade directors.

SUBSTANTIAL BENEFITS

Once he is admitted to the "club," the benefits are substantial. He gains admission to the exchange floor, where he can take advantage quickly of subtle indications of price changes.

As a floor broker, he may work for customers who want to buy and sell commodities, or he can trade in commodities himself.

One veteran floor broker estimated that "if a guy just handles customers accounts, he can make $45,000, $50,000, $60,000, a year. If he trades for himself, too, there's no limit."

REFER 111 CASES TO EXCHANGES

The extent to which the CEA relies on the commodities exchanges to police themselves is indicated by the fact that the agency last year referred 111 possible violations to the exchanges for action.

CEA deputy regional director Donald L. Tendick said exchanges must report back to CEA as to what action they have taken on referrals. CEA can object if it thinks the exchange has been too lenient, but such objections are "unusual," he admitted.

The 1965 GAO report scolded the CEA in this area, saying the agency's infrequent review of exchange records leaves the CEA "unable to satisfy itself independently as to the adequacy of investigations by the contract markets (exchanges)."

This "failure," as the GAO termed it, has "reduced the effectiveness of CEA's administration and enforcement of the provisions of the act."

RECORD KEEPING

With the huge jump in the size of the commodity markets since the 1965 GAO report, the CEA seems no better off now as far as keeping track of exchange actions.

However, Mercantile Exchange official Phelan insists his 15-member staff is able to keep tabs on the dealings of the 500 exchange members.

ATTENTION FOCUSED ON COMMISSION

The recent Supreme Court decision directing Mercantile Exchange member Thomas Ricci to take his fraud complaint to the Commodity Exchange Commission focused some unaccustomed attention on that moribund body.

According to law, the three-member, cabinet-level CEC is required to set speculative limits on the amount of trading that may be done by any person in commodity-futures contracts.

It also is to hold hearings on appeals from any board of trade which has been denied status as a legal exchange, and is authorized to suspend exchanges for failure to enforce their rules. In addition, the secretary of agriculture, who is a member of the commission, is given broad individual powers to prescribe trading practices and prevent manipulation and other abuses.

In practice, most of these activities have been delegated to the CEA headed by Caldwell.

The Supreme Court majority in the Ricci case said the petitioner would have to go to the commission for a ruling as to whether the deprivation of his exchange membership involved a violation of exchange rules.

Ricci contends he bought a membership on the Chicago Mercantile Exchange in 1967, using funds he borrowed from Siegel Trading Co. He also routinely signed a blank form authorizing transfer of his membership to someone else in the event he did not repay his loan.

Ricci alleges Siegel and the Chicago Mercantile Exchange conspired in violation of federal antitrust laws to defraud him of his seat by signing the transfer of his membership over to Siegel. He said the $18,000 which Siegel owed him for brokerage fees exceeded the amount he owed on the loan, and that Siegel had no lien against his membership.

The high court said the complaint should be dealt with by the commission because it is "especially familiar with the customs and practices of the industry and of the unique marketplace involved in this case."

DISSENTERS HIT POWER OF EXCHANGE

But the four dissenters, in addition to Douglas' comments that the CEC is not likely to declare itself a lax regulator, argued that the unit does not have the legal power to rule on Ricci's complaint of an antitrust conspiracy. That could be done only by the courts, they pointed out.

The dissent also noted that "although the commission and the secretary (of agriculture) have some general policing duties, day-to-day regulation has been largely left to the industry itself. Where, as here, the industry is given the power to control its own affairs, it is particularly important to make certain that this power is not abused for the purpose of eliminating competition."

Caldwell expressed no concern that the Ricci case will foul up the regulatory process. But those who have undertaken new legal efforts to stop anti-competitive practices at commodity exchanges and stock exchanges are worried that it is a setback for them.

One such effort to break up the "club" atmosphere and restore competition to the commodity exchanges deals with the commodity brokers' power to set minimum commission fees they charge the investing public.

In December, 1971, the U.S. Justice Department's antitrust division filed suit against the Chicago Board of Trade, whose minimum rate structure now requires commodity brokers to charge $25 to $30 for executing a customer's purchase or sale of a grain futures contract.

At about the same time, a firm of Philadelphia, Pa. lawyers filed a antitrust action on behalf of all people in the U.S. who buy and sell commodity futures.

Named as defendants were all the commodity exchanges in the country, which, according to the petition, have entered into "an unlawful combination and conspiracy" to set brokerage commission fees at "a non-competitive and inflated level."

In the Justice Department case, federal district Judge Richard B. Austin asked CEA administrator Caldwell to do a study for him on the impact of abolishing minimum fees and restoring competition among brokers.

AGREED TO STUDY

Caldwell agreed to do so, but said he would not be able to say whether the fixed commission rates are reasonable, because "the commodity futures business has not had to report on its cost of doing business and justify the reasonableness of levels of commissions in the past."

Like the traders themselves, Caldwell and the CEA had assumed there was nothing wrong with the brokers being allowed to set their fees and punish those who tried to charge less.

In fact, the attorney for the Board of Trade told the court that Caldwell "requires us to enforce our minimum commission rules. He fires off a letter to us and says, 'Say, I understand so-and-so out in Kansas City is violating your rules, and I want you to investigate that and insure that it is complied with.'"

EXCHANGES ADOPT, ENFORCE RULES

The testimony illustrates the cozy atmosphere that has grown up between the big traders and their regulators at the CEA. The exchanges can adopt nearly any rule they please, as long as it is not in direct conflict with the Commodity Exchange Act. Then, once the rule is adopted, the CEA requires that the exchange enforce the rule, without regard to whether the rule is really in the public interest.

"The CEA," said the Board of Trade's Sheidy, "insists that an exchange observe its own rules, and it isn't too interested in what those rules are, just so long as they are consistent with federal regulations."

Caldwell completed his report to the court last August, and was forced to conclude that the public would be better off if minimum commission fees were outlawed.

Allowing commodity brokers to compete in the services they offer and the commissions they charge would result in "a net reduction in commission charges paid by customers," he told the court.

"The trading public would benefit generally because charges would be more closely related to the costs involved in servicing an account," he said.

Caldwell also said minimum fees "are not now necessary, nor will they in the foreseeable future be necessary, to achieve the objectives of the Commodity Exchange Act." The administrator added that the minimum fee arrangement, on the other hand, has not hindered CEA's work, and urged that if the minimum fees are banned the industry be given "a reasonable period of time in which to develop their marketing strategy, pricing schedules and operating procedures before any change is made."

The Board of Trade is opposing any change and has argued that the minimum commission schedules it has used since 1919 have been "essential" to the development of "effective and efficient markets for futures trading."

Elimination of minimum fees, the Board argues, "would entail the risk of serious adverse repercussions on the industry."

[From the Des Moines Register, Feb. 23, 1973]

CEA, Judge Fail To Agree

This is the sixth and final installment in a series of articles examining regulation of commodity trading.

(By Clark Mollenhoff and George Anthan of the Register's Washington Bureau)

Kansas City, Mo.—Samuel Gordon has moved steadily upward in the U.S. Commodity Exchange Authority (CEA) despite his involvement in the agency's failure to protect one small trader from being victimized by some commodities-market professionals.

Gordon is the CEA's $27,000-a-year area director here, but a decade ago he was an employe in the agency's office in Chicago, Ill. There, an elderly Austrian immigrant had been telling just about anybody who would listen that he had been illegally deprived of his livelihood.

Bernard Rosee, now 74, had been a member of the Chicago Board of Trade, and a floor trader in commodities there.

But Rosee was different from the vast majority of insiders who operate the nation's commodities markets, a $200-billion industry that is growing by 20 per cent a year.

TOLD CONGRESS OF MANIPULATIONS

Since the middle 1940s, Rosee had been telling Congress of deceptive practices by certain officials of the U.S. Agriculture Department, and of efforts by big traders to manipulate commodities markets at the Chicago Board of Trade.

As a result, Rosee had few friends in the Agriculture Department and in the commodities trading establishment.

"There isn't any question but that a lot of people could hardly wait to get rid of him," said one market insider of Rosee.

By the early 1960s, Rosee had been defrauded of thousands of dollars and he had lost his seat on the Chicago Board of Trade. He thus lost his means of making a living.

Through all this, the Agriculture Department's CEA maintained consistently that there was no evidence Rosee was the victim of any illegal activities.

This conclusion was reached by Gordon, and affirmed by his superiors, including CEA administrator Alex Caldwell in Washington.

AWARDED $700,000

It was left to an Illinois State Court to vindicate Rosee, and to award him $700,000 in damages, with the judge branding his opponents as "thoroughly dishonest."

The Rosee case, which has dragged on for more than a dozen years, is perhaps the most glaring example of the CEA's reluctance to tackle influential members of the industry it is supposed to regulate.

It also shows how the commodity exchanges' disciplinary committees, made up entirely of exchange members, conduct "Star-Chamber" proceedings in which an accused like Rosee is denied the basic rights of due process which he would receive in a court of law.

CLAIMS ROSEE'S CHARGES INVALID

Gordon, during an interview in his office here, refused to discuss the Rosee case, except to say that he investigated Rosee's charges and decided they weren't valid.

He would not discuss his reasons for the decision, nor would he explain why the CEA failed to use information in its possession that may have proved that a Chicago brokerage firm was defrauding Rosee.

Rosee has charged that Gordon, Albert Kibby, a former Chicago CEA employee and now of Waukon, Ia., and other agency officials took part in the conspiracy to drive him out of business.

But CEA chief Caldwell maintains in Washington that "our actions in this case have been proper all along." Caldwell defends his promotion of Gordon, saying the Kansas City area director and Kibby "did a professional job" in the Rosee case.

An examination of the case leaves serious doubts.

The case against Rosee came to light in 1961, when the Chicago Board of Trade took away his membership, depriving him of his commodities trading-floor privileges, and reducing him to accepting welfare payments.

TRADING ACCOUNT

Rosee's commodities trading account—the records of what he bought and sold and his profits and losses on these trades—was being handled by the brokerage firm of Baggot and Morrison. The two partners—James E. Baggott, Jr., and Donald W. Morrison were, like Rosee, members of the Chicago Board of Trade.

Baggot and Morrison contended that Rosee owed them substantial amounts of money, saying Rosee had been taking losses in his commodities trading, and that the firm was using its own money to make up these losses.

ALLEGATIONS A SURPRISE

Rosee said these allegations took him by surprise, that he had, in fact, been making profitable trades in the commodities market. Rosee said an examination of his account, the record of which was maintained at the Baggot and Morrison offices, would clearly show this was true. He said CEA records required by law to prevent the kind of abuse he was facing would back up his position.

But Baggot and Morrison presented to the Chicago Board of Trade a set of records that showed Rosee owing them money. Rosee charged the records were not of his account. He said they were, in fact, records of the firm's own money-losing dealings.

Since the "Star Chamber" proceedings in which Rosee lost his seat, these facts have emerged and are today unchallenged:

1. In November, 1963, Rosee and his attorney, Melvin Brandt, caught the office manager for Baggot and Morrison cutting onion-skin pages from commodity trading books that are required by law to be kept and retained. These records that office manager Harris Haywood now admits he destroyed are required to be retained for a five-year minimum period by Commodity Exchange Authority rules and by rules of the Board of Trade for use by authorities in connection with investigations.

2. Within a few days of finding Haywood removing pages from the trading book in the crucial period, Rosee and his lawyer told CEA investigators Gordon and Kibby of the incident. A short time later they also informed CEA boss Caldwell in Washington.

3. Gordon and Kibby investigated the incident and reported to Caldwell that there was nothing to Rosee's complaint on this or on his general charge of a Board of Trade conspiracy to frame him. Rosee retorted that CEA officials were involved in the conspiracy because examination of trading records would further corroborate his allegations that he had been defrauded. He also charged that a report Gordon and Kibby had submitted to the federal court was "fraudulent" and misled the court.

4. CEA boss Caldwell continues to defend the Gordon-Kibby investigations and the subsequent promotion of Gordon, in the face of Haywood's admissions in court that he did destroy the records. Despite the Illinois State Court ruling by Judge Nathan Cohen awarding a $700,000 verdict to Rosee against the Baggot

and Morrison firm, Caldwell says he is still not certain that Rosee was defrauded, and has not ordered a reinvestigation. He says that Baggot and Morrison may appeal the verdict, and with regard to Haywood's admissions that he destroyed the onion-skin pages explains: "The statute of limitation has probably run out on any criminal charges."

5. Caldwell continues to refuse to make commodity trading records available to Rosee that Rosee and his lawyer contend will prove beyond doubt the full extent that he was defrauded and the role played by CEA and the Board of Trade in covering it up.

Generally, Caldwell denies direct responsibility for the Rosee matter on grounds that the CEA policy is to permit the various boards of trade to police themselves, and to limit CEA investigations to cases of direct frauds upon the public.

Rosee contended his money had been used by the Baggot and Morrison firm to make up its own losses, but the Chicago Board of Trade's Arbitration Committee, made up of leading exchange members, ruled against him. The committee took away his seat in order to sell it and pay Baggot and Morrison the money they claimed Rosee owed them.

Rosee appealed repeatedly to Gordon and other CEA officials in Chicago, and to CEA chief Caldwell in Washington, to make available for his defense its own records that would indicate whether he was telling the truth.

The CEA consistently refused, saying the records were private, and that the law forbids the agency from revealing the details of a person's trading in commodities.

Rosee asked the CEA itself to investigate, and to determine if Baggot and Morrison had, indeed, substituted their own losing accounts for Rosee's profitable ones.

BARRED FROM TRADING

Rosee and his attorney, as they pursued their case over the years, pointed out numerous times that at about the same time Baggot and Morrison allegedly defrauded Rosee the firm was being disciplined by the CEA in another case. After admitting in May, 1960, that it had improperly handled customers' funds and had used them to margin and guarantee the trades of other customers, the firm was barred from commodity trading for three months and Baggot's individual registration as a floor broker was suspended for 30 days.

The CEA assigned Gordon and Kibby to the Rosee case, and, Gordon recalls, they concluded that Baggot and Morrison "had not violated any federal laws."

The CEA remained steadfast in this position, even after Rosee and his lawyers informed the federal officials of the incident involving the removal of pages from the record books.

"UTTERLY ABSURD," JUDGE REMARKS

Haywood admitted to Judge Cohen that he had removed the onion-skin pages—on which were recorded details of commodities transactions. But he did so, said Haywood, in order to save space in the Baggot and Morrison office.

Judge Cohen said of Haywood's explanation: "The man sat for hours cutting pages out of a book to save three inches of space in a room that has some, oh 350 cubic feet of space or more. Utterly absurd."

Cohen also was highly critical of the Board of Trade's proceeding against Rosee, in which Rosee was not permitted to have his lawyer present, or call witnesses, or examine the records that are supposed to prevent the very abuses he contends he suffered.

Cohen called the Board of Trade's hearing in the Rosee case "a travesty," and said the session was run by the lawyer for Baggot and Morrison.

In fact, Cohen told the lawyer later, "The gentlemen you represent were thoroughly dishonest. They secreted records. They suppressed records. They altered records."

The CEA's Gordon said Rosee's allegation that the CEA aided Baggot and Morrison and the Chicago Board of Trade in their attempts to deprive him of his membership was proved false because a U.S. District Court had dismissed another suit brought by Rosee against Gordon and Kibby.

CLAIMS FALSE DOCUMENTS

But Rosee claims that CEA officials submitted false documents to the federal court in that case, and that the CEA again refused to turn over records that would support Rosee's position.

In July 1972, Cohen ordered Baggot and Morrison to pay Rosee $25,000 for the loss of trading privileges, $275,000 in lost earnings and $99,000 representing the amount Rosee contends he was defrauded.

The judge also awarded punitive damages of $150,000 each against Morrison and against Haywood. The Baggot and Morrison firm now is defunct, but the Chicago Board of Trade continued to allow the partners to hold their memberships and to enjoy floor trading privileges.

The CEA, despite Cohen's findings, continues to refuse to take action in the case.

Caldwell admits his agency has done nothing to follow up the court's decision, even though there is little question but that Cohen's findings point to criminal activities in regard to the case.

"We haven't lagged," says Caldwell. "We have done what we think is right."

Caldwell admits he has no way of knowing if reports filed by Gordon and Kibby with the federal court early in the Rosee case were accurate, but he contends that reports sent to him by his two employees were accurate.

Gordon has held his job in Kansas City since 1970, and he oversees trading at the Kansas City Board of Trade, the Minneapolis, Minn., Grain Exchange, and at a federally regulated commodities market in California.

APPENDIX 5

FAIRMONT FOODS CO.,
Omaha, Nebr., August 7, 1973.

HON. PETER W. RODINO,
Chairman, Antitrust and Monopoly Subcommittee, Committee on the Judiciary, Rayburn Office Building, Washington, D.C.

DEAR CONGRESSMAN RODINO: Fairmont Foods Company appreciates greatly this opportunity to make the following comments in respect of the activities of milk marketing cooperatives currently under examination by the subcommittee.

Fairmont Foods Company is a national processor of food and dairy items. It also operates approximately 700 convenience food stores, principally in the south and west, under the name U-Tote'M. The food products manufactured are mainly of the snack food type such as potato chips, cheese peanut butter sandwiches, pizza, pies and brownies and meat snacks. The dairy operations of Fairmont are conducted in three general areas. The plains states from Oklahoma north to Wisconsin, the Ohio and West Virginia areas and the eastern seaboard in the vicinity of Philadelphia. Total revenues from dairy operations for the fiscal year ending February 28, 1973 were in excess of 188 million dollars.

Fairmont operates seventeen dairy product processing plants and must obtain milk for processing from outside sources as it owns no milk cows. The principal sources of milk in many areas are milk cooperatives. These associations function to market raw milk for their producer members and also in many instances operate processing plants which may produce finished products in competition with proprietary handlers such as Fairmont.

The growth in size of the cooperatives over the last seven to ten years has been great. As an example Associated Milk Producers, Inc. (AMPI) was organized in 1969 by combining sixteen cooperatives operating in an area extending from southern Texas to Wisconsin. Some of the constituent cooperatives that joined together in forming AMPI were themselves amalgamations of several smaller cooperatives which had been formed in earlier years. Such combinations have resulted in individual organizations having annual revenues in the billions of dollars and possessing the capability of exercising great impact in the cost of food. The cooperatives have developed their power to the point where they have been able to gain prices for the milk sold above those established pursuant to applicable Milk Market Orders. Using such orders as a base, cooperatives have induced negotiations with handlers leading to premium prices over and above the order prices. Such premium pricing arrangements are aptly enough called superpools. Such superpools frequently are composed of cooperatives possessing control of a large proportion of the available milk supply in a market. Obviously in negotiations with handlers for payment of premium prices beyond that required of the particular market order, control of the available supply is a vital advantage. This has resulted in many cases, and with increasing frequency, in the unilateral imposition by the cooperatives of such superpool premiums, or in some cases over order charges denominated as service charges.

The growing monopoly control of the dairy cooperatives can lead to serious inequities to handlers in areas where the coops presently maintain and operate their own processing facilities and distribution systems and actively compete with handlers in the sale of processed dairy products. The threat alone of a substantial diversion of surplus milk by a large regional cooperative from handlers in the market to either adjacent markets controlled by the regional cooperative or to producer processing plants can quickly break any deadlock in pricing negotiations with a handler who before may have been unwilling to accept an arbitrary premium increase or any other bargaining term interposed by the cooperative. In addition, the sale of processed products by the cooperative at prices lower than prevailing market prices can squeeze a private handler between premium raw milk costs on one hand and low selling prices on the other with serious effect. We illustrate these competitive situations with regional

cooperatives operating their own processing facilities not as speculation but as results based on documented experience by this Company.

Recently in the midwest two cooperatives supplying Fairmont, AMPI and Mid-America Dairymen, announced substantial increases in over order premium and/or service charge rates to be effective July 1, 1973 (Exhibit I). These increases were not the result of negotiations but were unilaterally imposed indicating the trend which has now become custom. Between the time of announcement of these increases and July 1, 1973 the second price freeze intervened and the prospect of not being able to pass the substantial cost increases along to customers threatened substantial economic loss to Fairmont. However, just before July 1, 1973 the cooperatives announced suspension of the increases for the duration of the freeze. Following the inauguration of Stage A of Phase IV on July 18, 1973 both AMPI and Mid-America have reinstituted the increases which are now in effect. As this is written AMPI has announced another increase of $.75 per cwt. to become effective August 13, 1973. The two announcements by AMPI represent an increase in our raw milk cost of 18.6% over the last 45 days.

One capability of cooperatives in the performance of the marketing function should be noted because of the particular advantage it affords the large association. In normal operation cooperatives return to their members monies representing the selling price of the members milk. Not all milk sold is put to the same use and not all uses command the same price. Therefore, the cooperative payout to producers is computed using a blend price representing the proportionate share of the particular producer's contribution of milk to the total milk marketed for all utilizations. The super-cooperatives have the capacity to reblend the proceeds from the sale of milk received over broad geographical areas. Thus large cooperatives have the opportunity to make distribution of proceeds in some areas in greater amounts than would be possible if the monies were derived only from the particular local area. In addition, the cooperatives may at will reblend prices paid to their producer members in a local area, or apply deductions to such prices, to support various and often arbitrary administrative expenses of the cooperatives. The advantages available to the cooperative in such reblending procedures present antitrust overtones of great concern to the dairy processors.

Certainly Fairmont has no animosity toward cooperatives or any particular cooperative or against farmers or any supplier of milk. In fact Fairmont recognizes the necessity for producers to receive a fair return for their efforts and that long run stability of supply, and even its adequacy, requires this. However, it is of great concern to Fairmont that the aggregated power of the cooperatives over the supply of milk has led to what it believes to be an unreasonable and even anti-competitive exercise of monopoly power.

Various attempts have been made by certain handlers (dairy processing and packaging operations) or smaller cooperatives competing with the super-cooperatives to obtain relief through various administrative and judicial proceedings from the situation imposed on them by the super-cooperatives. One prominent example of this is the petition filed before the Secretary of Agriculture on behalf of Schepps Dairy, Inc. and Marketing Assistance Plan, Inc. in January of 1972 seeking review by that office of certain alleged predatory practices of AMPI pursuant to statutory authority vested in the Secretary, including Section 2 of the Capper-Volstead Act 7 U.S.C. § 292. That statute provides, inter alia,

"If the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade."

The petition to the Secretary of Agriculture in the Schepps matter is appended (Exhibit II). A review of that petition indicates numerous allegations which if true, or if in part true, would seem to furnish a reasonable basis for the Secretary to proceed to hearing as provided in Section 2 of Capper-Volstead. However, the Schepps petition was rejected by the Secretary through a letter dated June 1, 1972 (Exhibit III). It is submitted that the rejection, which was at least succinct if not terse, was made on two grounds. The first, ". . . it does not appear that there is reason to believe that the price of milk has been unduly

enhanced". Secondly, the Department of Justice has brought an antitrust action against AMPI and these issues can be brought up there. With all due respect this seems to be, in contemporary parlance, a "cop out" on the part of the Secretary. This would seem to be consistent however with the history of administration of Capper-Volstead by the Department of Agriculture. We understand that in the intervening fifty years since the statute was enacted the Secretary has never held a hearing under Section 2, nor have rules under which such a hearing would be held been promulgated. This would indicate to us that dual responsibilities placed on the Secretary of both fostering greater milk producer income and protecting the general public interest in guarding against "unduly enhanced" prices create an irreconcilable conflict of interest.

We are aware that the broad inquiry of the Committee includes the anti-competitive effect of the cooperative movement on food pricing and consideration of necessary legislative action to strengthen antitrust enforcement in the food industry. I submit that the serious concern being expressed by dairy processors throughout the country over the alarming expansion of cooperative control in the dairy industry dictates a thorough review and revamping of the exemptions and immunity status enjoyed by such cooperatives under the federal antitrust laws today.

Again we appreciate the opportunity to make the preceding brief comments and thank you for giving them consideration.

Very truly yours,

FAIRMONT FOODS COMPANY,
C. D. SOLOMONSON,
President.

EXHIBIT I

ASSOCIATED MILK PRODUCERS, INC.,
SOUTHERN REGION OFFICE,
San Antonio, Tex., May 23, 1973.

Dear Sir: The cost of producing milk continues to sky-rocket. Feed prices are approximately twice what they were eight months ago. Some feed, such as soybean protein, is three times the price it was eight months ago. All other costs have gone up more than the price the dairy farmer has received in increased milk price. Dairy farmers are dispersing their herds and going to more favorable alternatives. They are telling us that unless they get increases in pricing that many more are anticipating disperals in the near future. We feel that the housewife, as well as the dairy industry, will benefit by a modest increase in price at this time rather than to wait until the local supply of milk is no longer here and being faced with a tremendous increase in the price of milk.

We brought a tremendous amount of outside milk into the Southern Region this past winter. In order to get a promise of commitment of milk from the same producers through the processors, stores and to the consumer. We are asking all of our customers to sign a contract of commitment with us so that we will be able to supply you with the necessary milk in the following year.

Enclosed is an announcement of our new service charge to be put into effect July 1. Along with this new service charge will be an over-order price for July which will be $.70 above the Class I June Market Order price in your respective order. This price will remain in effect until further notice. We will honor any existing military and school contracts which you now have. Any future contracts will have to take the over-order and service charges into effect. We will be mailing you the commitment contract in the near future.

Feel free to call us on any questions that you have relating to our new pricing policy or contact the division manager with which you deal on a daily basis. We appreciate the relationship we have had with you in the past. We feel that this change of pricing policy is to the benefit of all the dairy industry, from the producers through the processors, stores and to the consumer. We are looking forward to your favorable acceptance and hope that we can continue to serve you in the future.

Yours truly,

S. F. HOWE,
Regional Manager.

ASSOCIATED MILK PRODUCERS, INC.,
SOUTHERN REGION OFFICE,
San Antonio, Tex.

To: All Buyers Regulated Under Order 104

Until further notice to you in writing, effective July 1, 1973, the enclosed SERVICE CHARGE ANNOUNCEMENT shall be applicable to all milk supplied to you by any of our member-producers or any source for which AMPI is marketing agent, whether received directly from farms or supplied through plants or other facilities. During the effective term of the enclosed SERVICE CHARGE ANNOUNCEMENT, AMPI will supply milk to BUYER upon the following terms and conditions:

1. BUYER agrees that it will pay to AMPI, the applicable SERVICE CHARGES in the enclosed ANNOUNCEMENT.

2. AMPI represents that the applicable SERVICE CHARGES paid by BUYER to AMPI and the other terms of sale during the effective term of the enclosed ANNOUNCEMENT are uniformly applicable to all buyers with whom BUYER competes who receive milk on a similar service basis from AMPI producers or any source for which AMPI is the marketing agent.

3. The receipt of milk by BUYER from AMPI producers or from any source for which AMPI is the marketing agent shall be deemed as acceptance by BUYER of the terms and applicable schedule of charges set forth in the enclosed SERVICE CHARGE ANNOUNCEMENT.

4. In the event that supplies of milk available to AMPI are insufficient, on any day, to fulfill the total requirements of all buyers, priority will be given to buyers with whom AMPI has executed "committed supply" agreements. Remaining supplies, if any, will be allocated to other buyers on the basis of their purchases from AMPI during June, 1973.

ASSOCIATED MILK PRODUCERS, INC.,
By S. F. HOWE.

SERVICE CHARGE ANNOUNCEMENT, EFFECTIVE JULY 1, 1973 UNTIL FURTHER NOTICE

To: All handlers regulated under the following orders:

Order no:	*Market area*
64	Greater Kansas City.
71	Neosho Valley.
73	Wichita.
97	Memphis.
102	Ft. Smith.
103	Mississippi.
104	Red River.
106	Okla. Metro.
108	Central Arkansas.
120	Lubbock-Plainview.
121	South Texas.
126	North Texas.
127	San Antonio.
128	Cen.-West Texas.
129	Austin/Waco.
130	Corpus Christi.
132	Texas Panhandle.
138	Rio Grande Valley.

For all milk delivered by AMPI, commencing with the delivery period July 1, 1973, the respective class prices, adjusted by applicable butterfat differentials and appropriate M.A. fee, shall be further adjusted by adding thereto the following applicable service charge.

The following terms of sale options are available to any handler at the rate per cwt. indicated:

	Rate (cents per cwt.)
1. For milk to supply a handler with all or a specified committed portion of its total requirements which handler receives 5 days a week.[1]	20
2. For "supplemental milk" which a handler receives during any month in excess of its "committed supply" [2]	45
3. For milk to supply a handler on a "spot load", as available basis	([3])
4. The rates specified above shall be subject to the following credits where applicable:	
(a) For delivery of a committed supply on a 7-day a week basis, for the two lowest delivery days in each week	(−5)
(b) For milk received directly from producers and handler accounts for such milk on the basis of farm weights and tests	(−3)

[1] A handler's "committed supply" shall be established by contract specifying, at handler's option, a fixed number of pounds or percent of total requirements that handler is committed to receive monthly during the term of the contract.
[2] The "supplemental milk" rate is applicable to all milk in excess of handler's "committed supply" received in any month.
[3] The "spot load" rate will be announced monthly.

To: All handlers regulated under the following orders:

Order no:	Market area
64	Greater Kansas City.
71	Neosho Valley.
73	Wichita.
97	Memphis.
102	Ft. Smith.
103	Mississippi.
104	Red River.
106	Okla. Metro.
108	Central Arkansas.
120	Lubbock-Plainview.
121	South Texas.
126	North Texas.
127	San Antonio.
128	Cen.-West Texas.
129	Austin/Waco.
130	Corpus Christi.
132	Texas Panhandle.
138	Rio Grande Valley.

Supplies of milk available from local sources will be insufficient to fulfill buyers' requirements in the Southern Region during the marketing year commencing July 1, 1973. To balance supplies with buyers' requirements, it is necessary for AMPI to allocate such local supplies as may be available from its primary sources and to arrange for supplemental supplies of reserve milk from secondary sources.

In order to fairly apportion the supplies of milk available from its primary sources and determine the extent of its requirements of reserve milk, AMPI must now determine the amount of milk it will be called on to supply during the marketing year commencing July 1, 1973.

Prior to June 1: AMPI will request all buyers to indicate the amount of "committed" milk which they desire to receive monthly during the next marketing year at a fixed basic service charge rate. The "committed supply" may represent all or any part of a buyer's total requirements. "Supplemental milk" in excess of a buyer's "committed supply" will be supplied at a higher fixed rate, reflecting the costs of maintaining reserve supplies.

Available supplies of primary source and reserve milk will be allocated first to "committed supply" buyers. AMPI will not guarantee delivery to any buyer who does not contract for a "committed supply". Milk will be delivered to a non-contracting buyer, only if and to the extent available, at the same schedule of charges applicable to contracting buyers at volumes based upon June 1973 purchases. Additional purchases, when available, will be delivered at a "spot load" rate in excess of the "supplemental supply" rate. The "spot load" rate will vary, monthly, to reflect all current costs associated with supplying such milk.

A milk supply contract, offering alternative service options, will be forwarded for your consideration in the near future.

Dated: May 23, 1973.

ASSOCIATED MILK PRODUCERS, INC.
S. F. HOWE

SERVICE CHARGE ANNOUNCEMENT, JUNE 1, 1973, EFFECTIVE UNTIL FURTHER NOTICE

To: All handlers regulated under the following orders:

Order No:	*Market area*
64	Kansas City.
71	Neosho Valley.
73	Wichita.
97	Memphis.
102	Ft. Smith.
103	Mississippi.
104	Red River.
106	Okla. Metro.
108	Little Rock.
120	Lubbock.
121	South Texas.
126	North Texas.
127	San Antonio.
128	Cen.-West Tex.
129	Austin/Waco.
130	Corpus Christi.
132	Texas Panhandle.
138	Rio Grande.

For all milk delivered by AMPI, commencing with the delivery period June 1, 1973, the respective class prices as determined by the appropriate federal orders, adjusted by applicable butterfat differentials and appropriate M.A. fee, shall be further adjusted by adding thereto the following applicable service charge.

The following service options are available to any handler at the rate per cwt indicated:

	Services charges (cents per cwt)
1. For milk to supply a handler with all or a specified committed portion of its total requirements which handler receives 5 days a week and accounts for on the basis of delivery tank weights and tests	20
2. For milk to supply a handler (other than a full supply handler) with "supplemental milk" in excess of handlers committed supply or who does not contract with AMPI for a specified committed portion of handler's requirements [1]	45
3. The rates specified in (1) and (2) above shall be subject to the following credits where applicable:	
(a) For delivery of a committed supply on a 7 day a week annual basis, for the two lowest delivery days in each week	(−5)
(b) For milk received directly from producers, and handler accounts for such milk on the basis of farm weights and tests	(−3)

[1] A full supply handler shall be considered as purchasing a committed supply. The committed supply for a handler (other than a full supply handler) shall be established by contracts specifying the amount of such committed supply.

UNITED STATES DEPARTMENT OF AGRICULTURE—AGRICULTURAL MARKETING SERVICE, DAIRY DIVISION

OFFICIAL ANNOUNCEMENT OF CLASS PRICES (3.5 PERCENT) AND BUTTERFAT DIFFERENTIALS

[Oklahoma Metropolitan, Red River Valley, Texas Panhandle, Lubbock-Plainview, Tex., and Rio Grande Valley marketing areas]

	Red River Valley	Oklahoma Metropolitan	Lubbock-Plainview	Texas Panhandle	Rio Grande Valley
FOR APRIL 1973					
Class I price [1]	$7.65	$7.43	$7.87	$7.70	[3] $7.80
Class II price	[2] 5.40	[2] 5.40	[2] 5.47	[2] 5.48	5.470
Butterfat differential class I	.080	.080	.080	.077	.080
Butterfat differential class II	.071	.071	.071	.068	.071
FOR MAY 1973					
Class I price [1]	7.75	7.53	7.97	7.80	[3] 7.90
Butterfat differential class I	.077	.077	.077	.074	.077
FOR JUNE 1973					
Class I price [1]	7.83	7.61	8.05	7.88	[3] 7.98

PRICE QUOTATIONS AND FORMULA PRICES USED TO COMPUTE CLASS PRICES

	March 1973	April 1973
Minnesota-Wisconsin pay price (3.5 percent)	$5.55	$5.63
U.S. manufacturing plant price (3.5 percent)	5.37	5.40
Butter—Powder formula price (4 percent)	5.91	5.95
Average price 92-score butter, Chicago	.6417	.6158
Average price nonfat dry milk, spray process	.4199	.4398

[1] Class I prices subject to location differentials.
[2] Subject to $0.10 credit for milk used in the manufacture of American cheese, butter and nonfat dry milk.
[3] Class II butter-powder formula price is adjusted to 3.5 percent butterfat by subtracting 5 times the applicable class II butterfat differentials.
[4] Class I price for zone II and zone III $0.15 less.

ASSOCIATED MILK PRODUCERS, INC.,
SOUTHERN REGION OFFICE,
San Antonio, Tex., May 25, 1973.

DEAR SIR: In our letter of May 23, 1973 we told you that we would be mailing contracts in the near future. Please find enclosed for your inspection and signatures.

If you will fill in the blanks relative to your particular location, etc., and sign both copies, returning same to this office, we will complete them and return one copy to you immediately.

We are preparing a public relations program to prepare the consumer for a price increase in milk. This will be in the form of press conferences, releases to news media, radio, television, etc.

If you have any questions feel free to call our division office in your area or call this office.

We appreciate your cooperation.

Yours truly,

S. F. HOWE,
Regional Manager.

MILK SUPPLY CONTRACT

THIS AGREEMENT, made this_____day of_____,1973, by and between Associated Milk Producers, Inc. (hereinafter called "Seller"), and_____(hereinafter called "Buyer");

WITNESSETH:

WHEREAS, Seller is a cooperative marketing association duly incorporated for the purpose of acting as common marketing agent to market the milk of its members for their mutual benefit; and

WHEREAS, Buyer is the operator of a processing plant from which it distributes milk and milk products in an area described, generally, as the "_____Marketing Area"; and

WHEREAS, in the conduct of its business, Buyer requires daily an adequate and reliable supply of milk approved for sale in the_____ Marketing Area; and

WHEREAS, in order to assure the availability of milk supplies adequate to fulfill its requirements, Buyer desires to purchase and commit Seller to deliver all or a portion of Buyer's daily fluid milk requirements; and

WHEREAS, there is a monthly and seasonal variation in the volume of milk production which Seller must handle and market on behalf of its producers; and

WHEREAS, Seller has established and maintains receiving and manufacturing facilities to handle the reserve supplies of milk which are needed to supply the requirements of Seller's customers;

WHEREAS, Seller incurs certain costs in redirecting and handling milk which Buyer fails to receive on any day; and

WHEREAS, Buyer's agreement to purchase all or a specified committed portion of its daily requirements in the manner hereinafter provided will enable Seller to effect economies in the cost of providing Buyer with its fluid milk requirements.

NOW THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements of the parties hereto, the undersigned parties agree as follows:

ARTICLE I

1.1 The foregoing recitals describe the purposes of this Agreement and the objectives of the parties thereto, constitute a material part of its inducement, and are made a part of this Agreement.

1.2 Subject to the limitations hereinafter set forth, Seller, as agent for producers, will sell or direct the sale and delivery of the milk that Buyer shall require and purchase pursuant to this Agreement for use at its processing plant at —, —.

ARTICLE II. DEFINITIONS AND RATES

2.1 When used in this Agreement, the terms set forth hereunder shall have the meaning ascribed to them in this paragraph:

(a) "— Marketing Area", means: (1) the geographical area defined as such by 7 C.F.R. — U.S.D.A. Order No. — or,

(2) such other specific geographical area as may be designated herein by the parties."

(b) "Committed Supply" shall mean, at Buyer's option:

(A) the pounds of milk delivered by Seller to Buyer during the month of June, 1973 (hereinafter referred to as "Option A"); or

(B) a specified number of pounds of milk per month as determined by Buyer (hereinafter referred to as "Option B");

(C) a specified percent of Buyer's total fluid milk requirements; delivered on not less than 5 days in each week of each month during the term of this Agreement for processing in Buyer's plant.

(c) "Supplemental Supply" shall mean all milk supplied by or through Seller to Buyer in excess of Buyer's committed supply during any month.

(d) "Service Charge" shall mean the applicable schedule of charges (other than class prices applicable to milk) as hereinafter set forth which Buyer shall pay to Seller for all services and facilities maintained, operated or provided by or for Seller for the purpose of providing Buyer with its "Committed" or "supplemental" supply of milk.

2.2 *Service Charge Rates.* Seller's basic service charge rates shall be uniformly applicable to all buyers with whom Buyer competes who receive milk on a similar service basis. During the term of this Agreement, such charges shall be at the rates hereinafter set forth:

(a) For "committed supply", 20 cents per cwt.

(b) For "supplemental supply", 45 cents per cwt.

2.3 *Credits from Basic Rates.* The foregoing rates shall be subject to the following credits where applicable:

(a) For delivery of Buyer's "committed supply" on a 7-day a week basis, Buyer shall receive a credit in the amount of 5 cents per cwt. on the amount of milk delivered on the two lowest delivery days in each week during any month;

(b) For all milk received directly from producers for which handler accounts on the basis of farm weights and tests, Buyer shall receive a credit in the amounts of 3 cents per cwt.

ARTICLE III. COVENANTS AND RESERVATIONS

3.1 *Committed Supply.* Seller agrees to assemble and deliver, for processing at Buyer's plant, and Buyer agrees to purchase from Seller the following "Committed Supply" of Grade "A" raw milk during the term of this Agreement: (check 1)

( ) Option A. — pounds (to be inserted following June, 1973 deliveries)

( ) Option B. — pounds (to be inserted upon execution)

( ) Option C. — percent of Buyer's total requirements.

In the event of an increase or decrease in Buyer's total daily requirements of raw milk for processing at its plant, a proportionate adjustment may be made, by mutual agreement between Buyer and Seller, in the amount of Buyer's "committed supply", provided, that Buyer shall give Seller notice of such increase or decrease in Buyer's total requirements not less than one (1) week prior to the first delivery of such adjusted "committed supply".

3.2 *Release To Market Administrator.* Buyer agrees to execute a release to the appropriate federal milk administrator authorizing him to furnish Seller with verification of any increase or decrease in Buyer's total requirements and such other information as Seller shall require to compute Buyer's obligation to Seller under this Agreement.

3.3 *Supplemental Supply.* Seller further agrees to supply Buyer with such "supplemental milk" as Buyer shall require during the term of this Agreement in the operation of its fluid milk processing plant.

3.4 *Buyer Responsible For Committed Supply.* Buyer shall be obligated to receive its "committed supply" at least five (5) days in each week each month during the term of this Agreement. In the event that Buyer shall fail, be unable, or refuse to receive all or any part of its committed supply of milk, which it is scheduled to receive on any day, or the total of its committed supply during any month, Buyer shall, nonetheless, be obligated to Seller for the full amount of the service charges applicable to Buyer's committed supply, including that portion which Buyer failed or refused to receive on any such day or during such month.

3.5 *Price of Milk.* For all milk supplied pursuant to this Agreement, Buyer agrees to pay to Seller, in addition to the applicable service charge provided for herein, the following:

(a) The Class prices applicable to milk disposed of in the _____ _____ Marketing Area, as announced by Seller from time to time in Seller's Price and Service Charge Announcements;

(b) In the event that U.S.D.A. Order No. _____ shall be suspended or terminated so as to render inapplicable the minimum Federal order prices established therein, the price applicable to milk supplied pursuant to this Agreement shall be the price charged by or for Seller to other competing buyers in the _____ Marketing Area for like quality of milk for similar use or disposition;

(c) In the event that Seller and Buyer shall fail to agree as to the price for milk supplied or to be supplied pursuant to this Agreement, Seller shall have the right to suspend and Buyer to refuse delivery during any such period of disagreement.

3.6 *Delay or Default for Unavoidable Cause.* Neither party hereto shall be responsible for any delay or default in performance when occasioned by any cause beyond the control of such party, including, but not limited to, armed conflict or economic dislocation resulting therefrom, embargoes, shortages of labor or transportation, strikes, lockouts or other labor disputes, civil disorders, action of civil or military authorities (including allocations, priorites or condemnation), fires, floods, accidents and governmental rules or regulations.

3.7 *Allocation of Available Supplies.* In the event that supplies of milk available to Seller shall be insufficient, on any day, to fulfill the total committed supply requirements of Buyer in the _____ Marketing Area, Seller will equitably apportion such supplies among all buyers with whom Seller has executed similar Agreements.

3.8 *Quality of Milk, Tests.* All milk subject to this Agreement shall be handled and delivered by Seller to the Buyer in such manner as to assure that the quality of milk so delivered shall comply with applicable standards of quality for Grade "A" raw milk defined by the laws of the state of _____, City of _____, and the United States Public Health Service. Buyer shall retain a fair sample of each shipment of milk for a reasonable time after delivery. Any variation in butterfat tests or weights of Buyer when received, as compared to the tests and weights when shipped shall be adjusted between Buyer and Seller promptly after delivery in accordance with their usual customs and practices.

3.9 *Liability and Risk of Loss.* Seller shall be responsible for the loading and delivery of milk so as to insure that its quality conforms to the standards above set forth. All risks relative to the product prior to delivery shall be the Seller's. In the event that any load of milk shall not be acceptable quality upon arrival at Buyer's plant and such defect in quality shall be discoverable by Buyer's ordinary and usual method of examination for quality, any damages or loss resulting therefrom shall be limited to loss of raw milk and in no event shall Seller be liable for consequential damages resulting from the use of such milk in the Buyer's plant.

3.10 *Liability of Seller.* In the event that Seller shall fail to deliver Buyer's committed supply on any day, except for unavoidable cause beyond Seller's control, Seller's liability shall be limited to the extra cost, if any, incurred by Buyer in obtaining such raw milk supplies in like kind and quantity as Seller shall have failed to deliver.

3.11 *Payments by Buyer.* All payments for milk delivered to Buyer in any month shall be due and payable upon the due date specified in the applicable Federal Milk Marketing Order. Buyer agrees to remit payment upon said due

dates. In the event that Buyer shall fail to remit payment on said due date, interest shall accrue on any unpaid obligation at the rate of three-quarters of one percent on the first day of the calendar month next following the due date of such obligation and on the first day of each calendar month thereafter until such obligation is paid.

ARTICLE IV. GENERAL PROVISIONS

4.1 *Term and Provisions for Termination.*

(a) *Term and Effective Date.* This Agreement shall become effective as of July 1, 1973, and shall be effective thereafter for an initial term of twelve (12) months, and shall continue in effect, by its own terms for renewal terms of one (1) year, from year to year thereafter; unless notice of termination shall be given by either party at least sixty (60) days prior to the expiration of the initial term or any renewal term.

(b) *Termination for Breach.* Either party, at its option, may terminate this Agreement upon thirty (30) days' written notice stating its intention to terminate in the event that there is a material breach of the terms of this Agreement by the other party and such breach is not cured after notice of default as provided in paragraph (c) hereof, or in the event of its voluntary or involuntary bankruptcy or its insolvency, or in the event that it makes an assignment for the benefit of creditors.

(c) *Period for Curing Breach.* If Buyer or Seller commits any material default in the performance of any covenant or obligation to be kept or performed hereunder, which continues for a period of thirty (30) days, after receipt by the party committing such default, or a written notice from the other specifying such default, then the party sending notice of default may terminate this Agreement by giving the notice required in paragraph 4.1(b) hereof.

4.2 *Assignments, Change of Status, Succession.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns and shall not be assignable (except by operation of law) without the consent of the Seller.

4.3 *Notices.* All notices required or permitted to be given hereunder shall be in writing and shall be personally served or shall be sent by first class, registered or certified mail, postage prepaid, and deposited in the United States mail. If intended for Buyer, such notice shall be addressed to:

If intended for Seller, such notices shall be addressed to:

---, Associated Milk Producers, Inc., P.O. Box 32287, San Antonio, Texas 78216. Any party may, by written notice to the other party hereto, change the address for notices to be sent to such party. All notices shall be deemed to have been given as of a date two (2) days after deposit of notice or notices in the mail.

IN WITNESS WHEREOF, the parties hereto have executed the above Agreement in the manner appropriate to each, the day and date first above written.

For Associated Milk Producers, Inc.

For Buyer

[From the Omaha World Herald, June 6, 1973]

DAIRIES FORECAST SUBSTANTIAL HIKE IN PRICE OF MILK

(By Don Ringler)

Milk is about to follow the route of meat and potatoes, lettuce and onions and gasoline.

The price to the shopper in the Midlands is going to go up.

There also may be a milk crisis in the future because of declining production, dairy industry officials warn.

One Omaha dairy spokesman predicted the upcoming retail price increase within the next several weeks would be "substantial." But he wouldn't quote any figures.

Chief reason for the impending increase is a two-phased price increase on milk for bottling purposes announced by Mid-Atlantic Dairymen, Inc., a huge producers' marketing organization.

According to W. J. "Buck" Grant of Omaha, vice president and general manager of the Central States Division of Mid-America, the initial increase of 45 cents per hundredweight would become effective July 1, with the second phase placed at the minimum of an additional 45 cents no later than Sept. 1.

The move was taken, Grant said, in an attempt to obtain some relief from the cost-price squeeze faced by dairy farmers in recent months because of increased production costs.

The dairy farmer, he said, is in a "disastrous economic position."

Pointing out that milk production was dropping at an "alarming rate" nationally and within the Mid-America territory, which covers 13 midwest states, Grant said that if the situation is not reversed "it will no longer be a question of price; it will be a question of whether milk is available to consumers in future months."

Richard Robinson, executive vice president of Roberts Dairy Co., at Omaha said the Mid-America increase came as a "heavy jolt" and said price increases to consumers "would be substantial in comparisons to increases in the past couple of years. It has to go up or we won't be able to stay in business."

Paul Wagner, sales manager for Goodrich Dairy in Omaha, called the increase "severe," adding it was obvious it would have to be "reflected in the price to the consumer."

Both Wagner and Robinson said the Mid-America increase was in addition to regular increases of the cost of milk to them through federal milk marketing orders.

Both said their firms had absorbed most of these increased costs during the last year, but would no longer be able to do so.

COMPETITION

Both dairies get all their milk from Mid-America.

Roberts paid $7.15 per hundredweight for its milk during May, Robinson said, compared to $6.64 in May 1972.

"During the period," he added, "the price of milk at the supermarket has remained fairly constant at $1.01 per gallon."

Quoting U.S. Department of Agriculture figures, Robinson said the average retail price for a one-half gallon of milk in Omaha ranged from 48 to 55 cents in March 1973.

This compares, he said, with 48 to 55 cents in March 1972 and 46 to 53 cents in March 1971.

Milk prices in Omaha have traditionally been low when compared with other cities, Robinson said. He cited keen competition as among the reasons.

'TOO LOW'

Again citing USDA figures, Robinson gave the average price range for a half-gallon in March 1973 in the following cities: Kansas City, 51–61 cents; Baltimore, 66–76; Washington, 63–71; Denver, 61–63; Jacksonville, Fla., 61–63; Dallas, 59–68; Louisville, Ky., 64–67; and Minneapolis, 52 cents with no range listed.

"The price here has been too low for too long," said Robinson, "and prices will have to rise, and in a hurry."

Besides increases in their cost of milk, Robinson said increased fuel costs, labor costs and interest rates have put dairies in a bind.

Robinson agreed with Grant that a milk shortage might be in their future.

Grant said costs have increased for dairy farmers in Mid-America's production territory, which includes Nebraska, Iowa, Kansas, Missouri, Oklahoma, Wisconsin, Minnesota, Illinois, Texas, Arkansas, South Dakota, Tennessee and Wyoming.

For example, Grant said, the cost of ingredients for dairy rations has increased 212 per cent. Protein purchased by farmers has increased by nearly 300 per cent while the price of milk to farmers has increased approximately 10 per cent.

Grant also made reference to Secretary of Agriculture Earl Butz's refusal in February to increase the support level for milk above the minimum 75 per cent required by law and Butz's announcement that milk supplies would be sufficient to guarantee consumers an adequate supply of milk and dairy products.

FREEZE 'NOT ANSWER'

"Since that time, on three separate occasions, the Nixon administration has lifted import quotas on dairy products and allowed the importation of powdered milk and cheese," Grant said. "These imports have prevented the normal forces

of supply and demand from continuing to increase milk prices and thus have placed the dairy farmer in a disastrous economic position."

Grant said a price freeze would not be the answer, pointing out dairymen do not have to produce milk and won't unless they can make a profit.

"They're only asking for a fair and reasonable price for their milk and an opportunity to meet their inflationary costs along with labor and industry," he said.

EXHIBIT II

LAW OFFICES OF KALER, WORSLEY, DANIEL AND HOLLMAN,
Washington, D.C., January 13, 1972.

Hon. EARL L. BUTZ,
Secretary of Agriculture,
Washington, D.C.

DEAR SECRETARY BUTZ: Enclosed for filing is a Petition by Marketing Assistance Plan, Inc., an independent cooperative in Texas, and Schepps Dairy, Inc., an independent handler located in Dallas, Texas, requesting an investigation of predatory and unfair practices of Associated Milk Producers, Inc. (AMPI).

Under the Capper-Volstead Act, 7 U.S.C. § 291–92, the Agricultural Fair Practices Act, 7 U.S.C. § 2301 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. § 601 *et seq.*, Congress has charged your office with the active duty to protect the public interest including to safeguard consumers, independent farmers and dairies. Congress has provided broad hearing and investigatory powers to accomplish this duty. We note that under acts imposing similar investigatory responsibility, the courts have charged your office with the obligation to hold public hearings absent convincing reasons for not doing so. *Environmental Defense Fund, et al.* v. *Ruckelshaus*, 430 F.2d 548 (D.C. Cir. 1971). We would hope, and so request, that public hearings be held on the enclosed Petition.

If any further information would be helpful, please advise us. In our view, prompt attention to the enclosed Petition is essential as a result of the increasing monopoloid power of AMPI and the impact of its practices on independents such as Marketing Assistance Plan, Inc. and Schepps Dairy, Inc.

Sincerely yours,

CARLYLE C. RING, JR.

BEFORE THE SECRETARY OF AGRICULTURE

JANUARY 13, 1972.

In the Matter of
ASSOCIATED MILK PRODUCERS, INCORPORATED
Docket No. --------
To: Honorable Earl L. Butz, Secretary of Agriculture of the United States.

PETITION BY SCHEPPS DAIRY, INC., AND MARKETING ASSISTANCE PLAN, INC. FOR INVESTIGATION AND PROHIBITION OF MONOPOLIZATION AND UNFAIR TRADE PRACTICES BY ASSOCIATED MILK PRODUCERS, INC., UNDER 7 U.S.C. §§ 292, 2305(b), AND 608c

CARLYLE C. RING, JR.,
LAWRENCE D. HOLLMAN,
Attorneys for Petitioners.

BEFORE THE SECRETARY OF AGRICULTURE

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INTRODUCTION

Schepps Dairy, Inc. ("Schepps"), an independent handler, and Marketing Assistance Plan, Inc. ("MAP"),[1] an independent dairy cooperative, hereby peti-

[1]Additional information on the Petitioners, Schepps and MAP, and about AMPI, is given in Exhibit A, attached hereto.

tion the Secretary of Agriculture to investigate, and to take appropriate action to end monopolistic and predatory practices, including abuse of Federal milk order provisions for anticompetitive purposes, carried on by Associated Milk Producers, Inc. ("AMPI"). This petition is premised on the authority and duty of the Secretary under the Capper-Volstead Act, 7 U.S.C. § 291–92, the Agricultural Fair Practices Act, 7 U.S.C. § 2301 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. §§ 601 *et seq.*

The Petitioners have cataloged below with supporting facts monopolistic and predatory practices employed by AMPI. With the benefit of public hearings and discovery, the facts elicited by an investigation by the Secretary will establish beyond a cavil, Petitioners believe, that these unfair and predatory practices have been employed repeatedly by AMPI and such practices threaten to suppress all competition to the monopoloid power of AMPI.

I. AMPI AND ITS PREDECESSOR ORGANIZATIONS HAVE A HISTORY OF PROVEN PREDATORY PRACTICES

A series of mergers beginning in the mid-1960's and culminating in the 1969 creation of AMPI brought a total of 111 cooperatives together into one giant[2] with pervasive marketing power throughout the midwest from the Canadian to the Mexican border. Possession and abuse of monopoly power in Texas antedates this supermerger. In 1965, Federal courts held that the North Texas Producers Association (now part of AMPI) had violated the antitrust laws; by instigating a boycott by retailers of an independent handler who refused to stop purchasing milk from the Association's independent competitors, refusing to transport the milk of nonmembers, refusing to sell to an independent handler unless it stopped purchasing from nonmembers, attempting covertly to buy out the same independent handler, and, in general, attempting to gain a complete monopoly of the supply of milk in the relevant market by coercing, directly and indirectly, independent producers into joining the Association. See *North Texas Producers Association* v. *Metzger Dairies, Inc.*, 348 F.2d 189 (5th Cir. 1965); and also *North Texas Producers Ass'n* v. *Young*, 308 F.2d 235 (5th Cir. 1962), *cert denied*, 372 U.S. 929, 9 L. Ed. 2d 733 (1963).

By such methods the North Texas Producers Association was able to swallow up smaller, weaker cooperatives, independent producers, and to gain still greater monopoly power. But the Association was not content with its regional monopolization. In 1967, it merged with other cooperatives to form Milk Producers, Inc., with monopoly control over much of the Southwest. The predatory practices which had proven so successful in strengthening and extending the North Texas Producers Association's monopoly power were continued by MPI, as it gobbled up smaller cooperatives. Even after the formation of the giant AMPI, which as early as 1970 controlled, according to official USDA publications (FCS Rept. No. 19, p. 12) over 75 percent of the milk supply in its territory (extending over much of the Midwest), these vicious anticompetitive practices have continued, and AMPI continues to crush or absorb small (and even not-so-small) cooperatives at a rapid pace.

In June 1971, AMPI had 43,064 members, making it the largest dairy cooperative in the U.S. 15,280 of those members, roughly a third, were acquired through mergers with other cooperatives in the year ending June 30, 1971. Nine independent cooperatives were acquired and merged with AMPI in that year.

II. AMPI CONTINUES TO INCREASE ITS MONOPOLY POWER BY MONOPOLISTIC AND PREDATORY PRACTICES, DESIGNED TO COERCE INDEPENDENT PRODUCERS AND INDEPENDENT COOPERATIVES TO SUBMIT AND JOIN AMPI

A. AMPI has forced independent handlers to sell out to AMPI depriving independent producers and cooperatives of a market for their milk

AMPI has pressured or enticed (with exorbitant price offers) numerous independent handlers into selling out to AMPI. As a result, AMPI controls or owns numerous large volume plants that process and distribute fluid milk and surplus milk products. AMPI's acquisition of milk plants reduces the potential market outlets for milk of independent producers increasing AMPI's leverage to pressure independents to join AMPI in order to retain an outlet for their milk. Thus, AMPI's monopoly in raw milk is strengthened and reinforced.

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[2] FCS (Farmer Cooperative Service) Report No. 19, August 1971, p. 10.

Also, these acquired plants make possible more efficient manipulation and control of milk prices by AMPI in the various markets. These plants are an important captive market for AMPI raw milk, thereby increasing its power and leverage in fixing prices. If other processors refuse to pay the premium demanded by AMPI, AMPI is in a position to refuse to supply milk to them and instead to utilize the milk in its own plants.

Schepps Dairy, one of the larger independent handlers in Texas that provides a market for independent producers, was approached in June 1970 by an agent for an undisclosed principal, whom Mr. Schepps has reason to believe could only have been AMPI, and offered an extraordinarily high price to purchase Schepps Dairy. The Secretary by investigation could determine the principal involved in this offer. Acquisition of Schepps by AMPI would eliminate one of the major outlets for independent producers and cooperatives in Texas.

B. AMPI has coerced handlers to deal exclusively with AMPI depriving independent producers of outlets for their milk

Where AMPI is unable to control the market and restrain competition by buying out the handler, it endeavors to attain the same result by coercing or inducing the handler to agree not to buy milk from AMPI's competitors. Because of AMPI's monopoly of raw milk, the larger processors cannot buy sufficient milk elsewhere to meet their full needs. Processors are, therefore, forced to buy at least a significant portion of their milk from AMPI. Because the processors are at AMPI's mercy, AMPI is able to force processors to agree to cease dealing with independent producers. AMPI has induced such agreements by promising better prices if the processor agrees to buy all, rather than some, of its milk from AMPI and also by threatening to boycott the processor, thereby cutting off the raw milk necessary to the continuance of the processor's business. AMPI has induced major milk processors to enter exclusive dealing or full supply contract whereby the processors agree not to purchase milk from anyone except AMPI. In other instances the processors have agreed by contract to purchase only a specified, limited portion of their milk requirements from non-AMPI producers. AMPI has also pressured processors to influence independent producers to join AMPI.

In 1971, Carnation secured, as a new account, the Piggly Wiggly chain in Texas with 254 stores, which required substantial quantities of added milk supplies. Only AMPI could supply all the added milk needed. Subsequent events would indicate that AMPI extracted commitments from Carnation as the price for supplying the needed milk for the new account in Texas. Coincidental with the supply arrangements in Texas, Carnation (1) discontinued purchasing milk from independent producers at its Tulsa plant; (2) urged these nonmember producers to join AMPI; (3) discontinued using Roger Buckley to haul milk from the Tulsa plant to Houston; (4) discontinued buying MAP surplus milk at Carnation's plant at Sulphur Springs, Texas and (5) threatened to cancel the contract Carnation had made with Schepps on March 19, 1971, to bottle certain products for which their facility had no capacity, because Schepps obtained milk from an independent, MAP. Carnation in fact did refuse to abide by the Schepps contract for three weeks. The initiation of possible antitrust action against AMPI and Carnation caused Carnation to change its position and abide by the contract with Schepps.

In 1969, MAP supplied milk to the Borden plant at Beaumont, Texas and the Carnation plant at Houston. In October 1969, MAP received notice that Carnation would phase MAP out as a source of supply and no longer purchase milk from MAP at Houston after December 22, 1969. On January 9, 1970, Borden cut MAP off as a source of supply at Beaumont. Presumably, these actions were taken as a result of AMPI's insistence that MAP be eliminated as a supplier if Borden and Carnation were to receive necessary milk supplies from AMPI.

In 1969, MPI (AMPI's predecessor) offered Schepps the opportunity to acquire certain desirable wholesale accounts. Part of the bargain was for Schepps to discontinue purchasing part of his milk supply from Alamo Milk Producers Association, and limit purchases from Independent Dairymen's Cooperative. As recited below, AMPI was ultimately able by loading the San Antonio pool to squeeze Alamo out of business. Since Alamo was an uncertain source of continuing supply and the AMPI price was the same, Schepps accepted the offer to take over the wholesale accounts and to obtain milk from AMPI rather than Alamo.

Prior to April 1970, Borden was purchasing the majority of its milk for its Marshall and Tyler plants from independent producers. In April 1970, these independent producers were advised to join AMPI immediately or Borden would

discontinue purchasing their milk. Some joined AMPI under coercion. Some joined MAP and others began selling to Southland at its Cabell plants.

In the summer of 1970, AMPI threatened Southland that it would cut off supply to Southland plants served by AMPI because that company was obtaining milk supply for its Cabell plants in Tyler and Dallas, Texas, from independent producers. Southland at that time was able to obtain a temporary alternative supply and with its corporate strength was able to obtain an accommodation under which AMPI recommenced deliveries to Southland. Since shortly thereafter Southland discontinued purchasing milk from MAP, there is reason to believe that this was part of the AMPI price to recommence deliveries.

C. AMPI has attempted through acquisition and coercion to monopolize milk milk transportation thereby cutting off independents from means of transporting their milk to market

The farmer must have a means of transporting his milk to the processor. In order to eliminate independent producers, AMPI has engaged in a program to eliminate independent milk haulers who historically have performed this necessary service and on whom these same independent producers rely to transport their milk. AMPI requires that most of the milk of its members be transported only by vehicles owned or leased by AMPI, and AMPI trucks are not permitted to carry the milk of non-AMPI producers. Since independent handlers cannot operate profitably without a reasonable minimum volume of milk to transport and since AMPI controls the vast majority of all milk, many independent haulers have been eliminated. Having made it no longer economically feasible for most independent haulers to remain in business, AMPI has in such instances then offered to buy out the hauler by purchasing his equipment and offering him a job. The typical contract of purchase between AMPI and an independent hauler provides, however, that the contract is null and void unless a stated percentage of the independent producers then being served by the hauler become members of AMPI. Thus, independent producers are coerced into AMPI membership by the hauler and by the realization that they will have no means of transporting their milk to the markets unless they join AMPI.

Many independent haulers in Texas have been acquired by AMPI or have agreed to deal exclusively with AMPI as a result of these tactics including M. R. Flemens and Lesley Tesh. The complaint in the *Petty* case, see page 19, *infra*, indicates that AMPI attempted as well to force out of business or buy out Samuel M. Flemens, Robert Redding and T. B. Mays, independent haulers who have nonetheless continued to haul for independent producers desipte AMPI's unfair tactics.

D. AMPI has forced small cooperatives to merge with AMPI or go out of operation

By the predatory practices cataloged above, the manipulation of federal order provisions described below, and enticement of independent cooperative managers, AMPI has successfully forced independent cooperatives to merge with AMPI or to discontinue operations. A cooperative must have an outlet for its members' milk. By pressuring handlers to buy only AMPI milk, AMPI has closed out markets for independent cooperatives. Independent cooperatives generally sell in only one or a few federal order markets. By manipulating order provisions and "loading" federal order pools as described below, AMPI has depressed prices paid to independents and thereby has pressured independent cooperatives into submission. AMPI has enticed managers of independent cooperatives to take positions with them and has offered high prices for the cooperative to merge with AMPI. The simultaneous squeeze upon independent handlers and independent cooperatives works in tandem—both handlers and independent producers are mutually dependent on one another. Control by AMPI can be achieved by acquiring or threatening one or the other, or both.

The case of Alamo Milk Producers Association is illustrative of AMPI's tactics and unfair practices. The circumstances described below would indicate that in 1969 AMPI undertook to pressure Alamo Milk Producers Association to merge with AMPI. Alamo had been selling its members milk to Carnation and Foremost in San Antonio. In the spring of 1969, Carnation and Foremost cut off all purchases from Alamo. Why they cut off Alamo should be inquired into at an investigation. At the same time AMPI was loading the San Antonio pool to depress the blend price paid to Alamo for its members' milk. See pp. 12–14, *infra*, and Exhibit B. Schepps commenced to purchase milk from Alamo in the spring of 1969 when Alamo was looking for new outlets for its members' milk. In September 1969

AMPI made an offer to Schepps to sell milk to it at the same price as it was paying Alamo and to provide wholesale accounts to Schepps in Dallas if Schepps would discontinue purchasing from Alamo and buy instead from AMPI.

By loading the San Antonio pool under which Alamo sold most of its milk and enticing handlers not to purchase from Alamo, Alamo ultimately had to discontinue its operations. Gary Brown, the manager of Alamo, shortly after Alamo's demise, began to work for AMPI. The very month after Alamo ceased operations the San Antonio pool Class I utilization which had been 71% in December 1969 increased to 91% in February. The dramatic improvement in the Class I utilization has continued to date.

Another case in point is Independent Dairymen's Co-operative, Inc. (IDC). AMPI in like manner undertook to limit IDC's access to outlets for its members' milk and to depress the order prices by loading pools in which IDC sold its milk. Sam Lesley, manager of IDC, indicated at the time that AMPI made several offers to him to work for AMPI. Sam Lesley told Mr. Schepps in December 1969 that he didn't know whether IDC could hold out much longer. According to the complaint in the *Petty* case, see p. 19, *infra*, in February 1970 Lesley advised the IDC Board of Directors that IDC should merge with AMPI and in meetings with IDC members, Lesley and Gary Brown (former manager of Alamo and now working for AMPI) advised the IDC members that unless IDC merged with AMPI, IDC would be forced out of business. Unfair pressure was exerted upon IDC members to join AMPI by insisting that they sign AMPI marketing agreements before April 1, 1970, in order to acquire an AMPI base. After April 1, 1970, IDC members would lose the opportunity to participate in AMPI's base plan. AMPI also attempted to coerce IDC members to join AMPI by threatening haulers who previously had transported IDC members' milk if they continued to haul IDC members' milk. As a consequence of these predatory actions, IDC was destroyed and a majority of its former members were coerced into joining AMPI.

In 1971, after AMPI had commenced to load the South Texas pool under which a large part of MAP's milk is sold, AMPI approached Roger Buckley, manager of MAP, and on two separate occassions offered a high price for MAP to merge with AMPI. The offer was declined. An offer then was made to Schepps from an undisclosed principal to purchase Schepps at an extraordinarily high price. The offer was declined. Since these tactics of buy out employed against Alamo and IDC had failed to bring prompt submission, AMPI took the extraordinary step of requesting termination of the South Texas Order which would have placed Schepps at a severe competitive disadvantage with other handlers and thus indirectly exert pressure upon MAP by potential loss of an outlet. The U.S. District Court for the District of Columbia has temporarily enjoined termination, thus frustrating for a time at least that attack upon not only Schepps and MAP but the inegrity of the whole federal order program.

E. AMPI has loaded market order pools with surpluses, depressing the uniform price artificially to suppress competition

AMPI, by virtue of its multistate milk monopoly and its unfettered right to dispose of the milk of each of its members as it plans, is able to manipulate milk prices by controlling the flow of milk among those marketing areas in which its position is dominant. Paradoxically, this abuse is fostered by the Federal milk orders extant in such areas. AMPI has repeatedly "loaded" markets with surplus milk, driving the uniform and blend prices significantly downward. As a result of "loading," independent producers regularly and historically associated with the indigenous market receive less for their milk and suffer serious losses. During these periods AMPI farmers are subsidized by AMPI from revenues received in other markets so that they are not adversely affected. AMPI "loads pools" with the specific intent of forcing independent producers either to withdraw from business or to join AMPI.

Specific examples of AMPI's loading of federal milk order pools is evidenced by statistics drawn from the Secretary's official publications, including those relating to the San Antonio, Red River Valley, and South Texas marketing areas:

1. *San Antonio.* AMPI's anticompetitive intent was clearly demonstrated by its loading of the San Antonio pool. Its major competition in that market was Alamo Milk Producers, a small independent cooperative. The loading of the pool and other unfair tactics by AMPI forced Alamo to call it quits in January 1970 and merge with AMPI. Its only competition thus disposed of, AMPI thereupon immediately and dramatically stopped loading the San Antonio pool so that

Class I utilization in that market rose from in the 70% range into the 90% range. The statistics relative to the San Antonio marketing area (Order No. 127) published by the Secretary of Agriculture, as set out in Exhibit B, are demonstrative of AMPI's misuse of its monopoly powers.

2. *Red River Valley.* Beginning at a time not presently known to Petitioners but probably in early 1970 and thereafter, AMPI has controlled and manipulated downward the uniform price of milk in the Red River Valley marketing area. The pricing structure deteriorated most drastically when, in October 1970, AMPI's plants in Arlington, Texas; Oklahoma City, Oklahoma; and Wichita, Kansas were first included as handlers under the Red River Valley order. The resultant disruption of the Red River market is demonstrated by the following statistics taken from the Market Administrator's Bulletin:

	Number of producers	Total producer receipts (pounds)	Producer receipts in class I (pounds)	Class I utilization (percent)	Class I price (per hundredweight)	Blend price (per hundredweight)
September:						
1970	499	23,706,438	11,715,009	49.42	6.81	5.71
1969	374	16,856,289	10,397,482	61.68	6.62	5.78
October:						
1970	740	34,305,293	11,494,873	33.51	6.86	5.42
1969	389	17,222,579	12,092,772	70.21	6.69	5.94
November:						
1970	770	33,122,765	11,329,186	34.20	6.97	5.52
1969	381	17,610,779	11,185,159	63.51	6.78	6.03

These dramatic changes were caused by AMPI's "loading" of the market by classifying under the Red River Marketing Order Class II milk that was produced, sold, and utilized outside the Red River marketing area, thereby lowering the blend price paid to independent producers.

3. *South Texas.* Shortly after the monopolization of the San Antonio market upon the demise of Alamo Milk Producers, AMPI turned its attention to the South Texas marketing area, among others, and in a series of moves calculated to destroy its competition to that market, AMPI began loading the pool in South Texas.

Beginning in May 1970, and thereafter, AMPI controlled and manipulated downward the uniform price of milk in the South Texas marketing area. The pricing structure deteriorated most drastically when, in May 1970, various distant AMPI plants were included as handlers under the South Texas Marketing Order. The resultant disruption of the South Texas marketing area depressed the Class I utilization from 80% and 90% range to 50% and 60% range. See Exhibit C hereto. For example, the Class I utilization fell from 80% in April 1971 to 59% the next month, May 1971.

The loading of the South Texas pool to depress uniform prices to independent competition is contrary to normal economic patterns. South Texas is a production deficit area. See Exhibit D. Inasmuch as transportation of milk is a major cost, surplus milk in distant areas would not usually be associated with the market. Under normal market economics the higher utilization in the South Texas market prevailing prior to the loading of the pool by AMPI would be expected. The artificial association of milk with South Texas and an unwarranted economic windfall to AMPI has already come under scrutiny by the Secretary (p. 15, *infra*).

F. AMPI has arbitrarily attempted to terminate the South Texas Order in order to coerce independents

Having failed thus far to destroy MAP, its principal competition in South Texas, and having failed to eliminate Schepps as an outlet for MAP's milk, AMPI on or about July 15, 1971 demanded that the Secretary terminate the South Texas Order effective August 1, 1971, in the middle of the marketing season. AMPI intended thus to destroy with one swift blow a regulatory framework which required 10 months and several hearings to construct, which had originally been requested by AMPI's predecessor, MPI, and the continuance of which the Secretary is to this day on record as determining would best serve the public interest and the purposes of the Act. Apparently, having failed in its attempt to use the South Texas order as a weapon against its independent

small competitors, AMPI would now destroy the order, eliminating federal inspection and controls. Prior to federal regulation, unfair competitive practices such as "recombining" were characteristic of the South Texas market. A price list circulated by a large handler in anticipation of the termination cutting retail prices substantially indicates that the cutthroat competition at the expense of milk quality and other unfair practices would be resumed. The price list was withdrawn when the U.S. District Court for the District of Columbia enjoined the termination. Schepps, if the Order should be terminated, would become regulated under the North Texas Order, thus competing at a substantial economic disadvantage in South Texas. The principal outlet for non-AMPI milk in South Texas thus would be compromised and AMPI's opportunity to increase its stranglehold on the market would be enhanced.

G. AMPI has manipulated order provisions to depress prices to independents and enhance prices to it unfairly

In many markets, AMPI was qualifying outside surplus milk from a lower-price region for the recipient market's pool, without shipping any but a small fraction of the outside milk into the market.

By so doing, AMPI had sharply depressed the blend price in the recipient pool to a figure substantially below what it would otherwise have been but still above the blend price in the area in which the outside milk was produced. The independent producers in the recipient market thus received less for their milk, the difference being siphoned off to AMPI for its unshipped (but technically qualified and "pooled") outside milk.

The Secretary explained the invidious effect of this manipulation in his decision suspending the order provisions which AMPI had abused in the Chattanooga, Nashville, Mississippi, Red River and Oklahoma Orders as follows:

"The situation in March 1971 is an example of how this is accomplished. Some of the distant milk supplies thus pooled in the Oklahoma market were produced and normally utilized for manufacture in central Wisconsin. The Oklahoma f.o.b. market blend price of $5.62 per hundredweight is the price for that milk at which the cooperative is given credit in the Oklahoma pool. The Chicago blend price in the central Wisconsin area for milk being delivered to Chicago, and which can be considered a competitive price in that area, was $5.07 per hundredweight. If this milk had actually been shipped to Oklahoma the cost of shipment would have more than offset this difference of 55 cents. But the milk was not actually shipped; therefore, the cooperative did not have this cost. The cooperative, under the terms of the Act, is not required to pay the minimum price to its members and needed to pay only approximately the competitive price in the central Wisconsin area. Therefore, it had the advantage of approximately all of the 55 cents difference in price. The pooling of this milk and other distant milk reduced the Oklahoma blend price in March 1971 about 45 cents per hundredweight. The producer who was not a member of the cooperative received this announced price ($5.62 per hundredweight) exclusive of any premium which his handler might have paid him. The cooperative, on the other hand, paid its member producers delivering directly to Oklahoma more than $5.62, and this was accomplished without additional cost to the cooperative. The exact amount is difficult to determine because the cooperative pays on a base and excess plan." 36 Fed. Reg. 10775, 10776 (June 3, 1971).

The full order is attached as Exhibit E. Significantly, this abuse employed in other markets including South Texas has not been remedied by Secretarial action.

H. AMPI has employed a standby pool to enhance prices

AMPI and its producers by agreement and conspiracy with the Associated Dairymen, Inc. ("ADI") have established a "standby pool." AMPI and its producers contribute funds to ADI that are used to pay milk plants in Minnesota, Wisconsin, and perhaps elsewhere to keep their milk off the market and under the control of ADI and AMPI. This withheld milk constitutes the "standby pool." The purpose and effect of the standby pool is to raise milk prices by limiting the total supply of available milk, to insulate AMPI and ADI milk from competition from this milk, and to protect superpool premium prices.

I. AMPI has restrained its members from free choice of association by unreasonable rules on transfer of base earned or acquired by members

AMPI utilizes a "base payment" plan in order to prevent AMPI member producers from leaving AMPI to become independents. Each AMPI producer is assigned a specified volume of "base supported" milk. AMPI pays its members

approximately twice as much money for "base supported" milk as for "surplus supported" milk. AMPI bases are a marketable intangible commodity with considerable value. AMPI has adopted a regulation providing that AMPI will not recognize a transfer of base made by a member producer withdrawing from AMPI unless the producer completely ceases to engage in the dairy business. Because the base is a valuable asset that becomes worthless whenever the member-producer becomes a nonmember producer, members are held within the AMPI organization even though they would prefer to become independents and, as a result, make more money.

J. Predatory practices by AMPI affecting other independent producers in many markets have been attacked in private actions

There are currently pending five antitrust actions against AMPI alleging predatory and anticompetitive practices by AMPI. Three independent producer associations and 248 individual independent producers have brought these actions. They are as follows:

a. *Sun Tex Dairy, et al.* [18 independent dairy producers located in South Texas] *v. AMPI and Clifford M. Hardin*, filed in 1971 in the United States District Court for the Southern District of Texas. Attorneys of record: Atlas, Hall, Schwarz, Mills, Gurwitz & Bland, Professional Arts Building, McAllen, Texas.

b. *South Texas Independent Milk Producers Association* [27 members] *v. AMPI and Clifford M. Hardin*, filed in 1971 in the United States District Court for the Southern District of Texas. Attorneys of record: Atlas, Hall, Schwarz, Mills, Gurwitz & Bland, Professional Arts Building, McAllen, Texas.

c. *Marketing Assistance Plan, Inc. v. AMPI*, filed in August 1971 in the United States District Court for the Southern District of Texas. Attorneys of record: Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas 77002.

d. *Robert B. Alexander, et al. v. The National Farmers' Organization, et al.*, counterclaim filed on June 25, 1971 in the United States District Court, Western District of Missouri. Attorneys of record: Worth Rowley, Rowley & Scott, 1730 Rhode Is'and Avenue, N.W., Washington, D.C. 20036.

e. *Dane O. Petty, et al.* [230 independent producers in Texas] *v. AMPI*, filed in the United States District Court in Southern District of Texas in 1970. Attorneys of record: Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas 77002.

The Secretary of Agriculture charged to protect the public interest has the responsibility and duty to investigate the widespread assertion of unfair and predatory practices of AMPI, which are in part evidenced by the foregoing actions.

III. AMPI'S MONOPOLY POWER HAS UNDULY ENHANCED PRICES

The above described predatory practices alone require that the Secretary investigate. Such practices are a basis for Secretarial action under the Agricultural Fair Practices Act. The manipulation of order provisions, contrary to public policy, should prompt a hearing as well under the Agricultural Marketing Agreement Act.

While the gravamen of the Capper-Volstead Act is monopolization and trade restraints, the singular indicia of substantive impact against public interest under the Act is undue price enhancement.[3]

The public interest is adversely affected by undue price enhancement to consumers. Lack of uniformity in the price for producers is also contrary to public policy and a major reflection of undue price enhancement.[4]

Coincidental with the establishment of a monopoly power by AMPI, superpool premiums were imposed by AMPI and its predecessor. In September 1967, a superpool premium of approximately 50 cents per hundredweight was permanently

[3] The congressional intent as illumined by Committee Reports and floor debate is discussed at p. 27, *infra*.

[4] The legislative history of the Agricultural Marketing Agreement Act demonstrates that Congress was concerned with both price uniformity and equal competitive opportunity in the market for producers whether as members of a cooperative or not. The congressional reports note with respect to the pooling provisions:

"Uniform prices are required to be paid to all producers and association of producers for all milk delivered by them . . ." and with respect to the 90-day period for a new producer to enter the market:

"This is the only limitation upon entry of new producers—wherever located—into a market, and it could remain effective only for the specified 90 day period." (H. Rep. No. 1241, 74th Cong., 1st Sess. (1935) at pp. 10, 11).

exacted in the Texas markets. See Exhibit E hereto. MPI, the predecessor to AMPI, was established in August 1967 with dominant marketing power in Texas. This 50 cent premium had an immediate impact on prices to consumers.

For example, in Abilene, Texas, the price for fluid milk in gallons rose from 99 cents in August 1967 to $1.15 in October 1967. See Exhibit F.

The Nourse Committee Report notes that such superpool premiums may be a manifestation of monopoloid power, rather than a reflection of the real economics of the marketplace, through the ability to exclude alternative sources of supply. The Report states:

"Negotiated marketwide premiums are attacked by some people on the ground that they are prima facie evidence that producers are exercising monopoloid power under the aegis of the order. This would be true if the order as administered becomes an instrument for the exclusion of milk from other producers qualified to compete for sales in the premium market. Any such situation should not be allowed to persist. . . ." (*Report to the Secretary of Agriculture by the Federal Milk Order Study Committee*, December 1962, p. 31).

The Committee recommended an investigation by the Secretary of such superpool premiums which existed then, in 1962, at a much more modest scale than now, stating:

"3. We believe that it was the clear intent of the Congress that Secretary's orders should provide public assistance to the private enterprise system rather than superseding it. But when free collective bargaining by strong cooperative associations results in negotiated marketwide premiums substantially and persistently above the uniform prices established in the order, an ambiguous and dangerous situation confronts the order system. Either the Class I price in the order is too low or the premium price too high by an 'open market' standard.

"It may be argued under a mechanistic theory of market behavior, that, if free collective bargaining results in over-pricing, the process will be self-correcting. But, experience shows that, with the less-than-completely-free market conditions provided by the Secretary's order and with dairy price supports, monopoloid distortion of the market and intermarket price structure may persist indefinitely. This would defeat the basic purpose of the order system to achieve as fully and promptly as possible a national milk price structure that would be internally consistent, serve consumers' needs, and promote optimum allocation of the nation's productive resources. We, therefore, recommend that, in markets where negotiated marketwide premiums (or higher-than-order prices imposed by state agencies) exist, the Department institute hearings to review the level of Class I Prices and any limitations on free access to the market. . . . "(*Report to the Secretary of Agriculture by the Federal Milk Order Study Committee*, December 1962, at pp. 98–99).

While it might be contended that uniform prices in milk orders are only minimum prices, such an argument cannot cloak undue price enhancements. The Agricultural Marketing Agreement Act requires the Secretary, in the public interest, to establish the highest uniform prices permissible. Such pricing must include consideration of the burden on the public treasury from surplus purchases and the interrelationship of overstimulated production, the reasonableness of the prices to consumers, and the effects of the pricing upon independent family farmers and small business handlers. The Act, specific reference to milk prices (7 U.S.C.A. § 608c(18)), requires the Secretary to consider parity prices when prescribing any term in an order relating to pricing. He is instructed to disregard parity prices if ". . . evidence adduced at the hearing . . ." causes him to find ". . . party prices of such commodities are not reasonable in viewof the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk. . . ." The Secretary is directed to weigh all factors. if the parity price is not reasonable, and in turn fix such prices as will reflect all factors ". . . insuring a sufficient supply of pure and wholesome milk and be in the public interest."

The pervasive power of AMPI, extending over many markets, enables it arbitrarily to impose the burden of surpluses upon those markets in which independent producers are strongest to coerce them into submission while extracting superpool premiums to finance the destruction of the independent family farmers.

The statutory scheme, as noted by the Nourse Committee Report quoted above, was intended to support free marketing by curbing unfair practices and destructive competition and by assuring uniform treatment to "producers and association of producers"[5] alike. In *Zuver* v. *Allen*, 396 U.S. 168, 179, 24 L.Ed. 345, 352 (1969),

[5] See fn. 4, p. 20, *supra*.

the most recent Supreme Court pronouncement on the federal milk order program, the Court stated:

"The foundation of the statutory scheme is to provide uniform prices to all producers in the marketing area. . . ." (396 U.S. at 179).

Only adjustments for real costs and economic service to the handler were contemplated by Congress as justifying any deviation from the standard of uniformity. The Court said:

". . . The permissible adjustments are limited to compensation for rendering an economic service." (396 U.S. at 188).

And elsewhere in its decision stated:

". . . the congressional purpose is further illumined by the character of other differentials . . . all of which compensate or reward the producer for providing an economic service of benefit to the handler." (396 U.S. at 183–4).

The fact that superpool premiums have been imposed upon order prices, eroding the congressional mandate of uniformity for all producers in the marketing area, in itself establishes ample grounds for investigation by the Secretary. The need for such an investigation is even more pronounced when the superpool premiums are closely examined. These premiums are price differentials which are effectuated by loading pools and artifically increasing the milk prices paid to a monopoloid cooperative power. These same price differentials are totally unrelated to any added economic service to handlers who pay the increased prices.

Interestingly, the prices paid to farmers for milk have in recent years advanced much more rapidly than those for other farm commodities. For example, milk prices have gone up an estimated 16% since 1967 alone, whereas the prices for other farm products have increased during the same period by only 11%.[6] Nor can this disparity be attributed to increased costs. The cost of feed as compared to the price of milk has substantially decreased and recent figures show that returns to dairy farmers have generally increased.[7] These average returns, however, are disparate and not enjoyed by individual family farmers who have not submitted to the monopoloid power of AMPI. AMPI's exercise of its monopoly power to effectuate artificial and discriminatory price increases is not without severe public cost. The cost of purchasing surplus under the price support program are on the rise to the federal taxpayer.[8]

The duty of the Secretary under the various Acts is not discharged by studying the demise of independent family producers, independent cooperatives and small business handlers after their subjugation by the predatory practices of AMPI. The full impact upon milk prices, and the costs of surplus purchases to the public treasury, will be fully manifested only after the trade restraints and the monopoly power have suppressed competition. The deceased independents cannot then be resuscitated nor the wrong undone to those who either were forced out of business or compelled to submit on the terms imposed by the monopoloid power.

IV. THE SECRETARY HAS THE AUTHORITY AND THE DUTY TO INVESTIGATE THE PREDATORY PRACTICES OF AMPI

The Secretary has a mandate under the Agricultural Marketing Agreement Act *to hold hearings* when he has reason to believe that an order, or an amendment to an order, may be required to effectuate the declared policy of the Act.

The Agricultural Fair Practices Act includes a congressional finding that agricultural products are produced "by many individual farmers" and states as a congressional policy that individual farmers should be "free to join together *voluntarily*." Prohibited practices include coercion "in the exercise of his right to join and belong to or refrain from joining or belonging to an association of producers," discrimination against any producer with respect to price, intimidation to enter into, maintain or terminate a membership agreement, among other prohibited activities. Congress specifically charged the Secretary with the responsibility of initiating action when the Secretary has "reasonable cause to believe

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[6] *Dairy Situation* (USDA November 1971), Table 1.

[7] See *Agricultural Statistics 1970*, Table 538, and page 4, *Milk Production* (USDA November 11, 1971), for milk-feed price ratio trends, and *Dairy Situation* (USDA September 1971), page 10, for tables of representative dairy farming costs and returns, 1964–1970.

[8] USDA dairy price support purchases have increased in physical amount over the last year, due in part to increased production (*Dairy Situation*, November 1971, page 4); and of course support prices have recently been increased through application of AMPI's political muscle. See also "*Dairy Outlook and Management Implications*," Truman F. Graf, Staff Paper Series, Dept. of Agricultural Economics, Univ. of Wisconsin (September 1971).

that any handler or group of handlers has engaged in a prohibited act or practice." A handler is defined to include a cooperative.

The Capper-Volstead Act, while on the one hand conferring a limited exemption for cooperatives under the antitrust laws, balances that exemption with a mandate to the Secretary to investigate and act to end monopolization or restraint of trade contrary to the public interest. The Secretary is charged with responsibility if the Secretary "shall have reason to believe that any such association monopolizes or restrains trade in the interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof. . . ." (7 U.S.C.A. § 292). After serving a complaint and holding a hearing, the Secretary, if he finds that an association does monopolize or restrain trade contrary to the public interest, "shall issue and cause to be served upon the association an order . . . *directing such association to cease and desist from monopolization or restraint of trade.*" (7 U.S.C.A. § 292, emphasis added.) It is noteworthy that the cease and desist order is to be directed against the monopolization or restraint of trade.

In the Capper-Volstead Act, Congress intended to promote and preserve competition—not eliminate it. The public policy of the antitrust laws was to remain operative in the farm markets. The House Report states: "It is not sought to place these associations above the law [Sherman Antitrust Act] but to grant them the same immunity from prosecution that corporations now enjoy so that they may be able to do business successfully in competition with them." [9]

While it was generally believed by Congress that monopoly of farm products was not possible, the Senate Report took pains to indicate the monopolization of milk supply by a single cooperative was not intended:

"It is possible, however, to establish a monopoly . . . in the case of highly perishable products, like milk. . . . It would not be in the public interest, your committee believes, to permit all producers of milk within the area from which one of our great cities is supplied to effect a single organization having thus a monopoly which might or might not be utilized to exact extortionate prices of consumers." [10]

The Congress, alert to the risks of monopolizations, charged the Secretary with more than a passive duty. Congress said: "This bill *directs* the Secretary of Agriculture to supervise these associations." (emphasis added.)[11]

While the trigger to detect abuse of power was undue price enhancement under the Act, the evil to be remedied was use of power against public interest by "monopolization and restraint of trade." Senator Lenroot, who offered the amendment to have the Secretary's order direct the association to cease and desist from monopolization and restraint of trade," [12] stated in the debate in support of his amendment:

"So long as that monopoly is not using its power to the public injury it will not be disturbed, but if it does use its power to the public injury, it ought not to be a defense for that monopoly to say, 'We will cease charging this particular sum or price for our products, but our monopoly can continue.'" [13]

Congress looked to the Secretary to act expeditiously and effectively to protect the public in the event of abuse. Congress took cognizance of the private and public remedies available under the Antitrust Laws,[14] but relied upon the Secretary to take an active role in checking restraints of trade under Section (7 U.S.C.A. § 292). The House Report, while doubting that monopolies would occur, anticipated *expeditious* action by the Secretary if they did occur:

". . . There certainly is no reason to fear monopoly from farm associations.

[9] H.R. Rept. 24, 67th Cong., 1st Sess. (1921).
[10] S. Rep. 236, 67th Cong., 1st Sess. (1921).
[11] H.R. Rept. 24, 67th Cong., 1st Sess. (1921).
[12] Senator Lenroot offered the amendment to provide that the Secretary's order directing the association to cease and desist shall be "from monopolization and restraint of trade" and not from undue price enhancement. In the debate on the amendment which was adopted, Senator Lenroot explained:
"If this amendment is adopted, this result will follow: If the Secretary of Agriculture finds that there is a monopolization or restraint of trade, and also an undue enhancement of price, then under the bill as it would read if amended he is directed to issue an order, not against the undue enhancement of price, but against the monopolization or restraint of trade. In other words, when these facts exist the order goes against the monopoly, against the restraint of trade, and the command will be that they must desist from such monopolization or restraint of trade; and a mere abandonment of the undue enhancement of price will not be a defense." (Cong. Rec., February 8, 1922, at p. 2269).
[13] Cong. Rec., February 8, 1922, at p. 2270.
[14] "In the event that associations authorized by this bill shall do anything forbidden by the Sherman Antitrust Act, they will be subject to the penalties imposed by that law." (H.R. Rep. 24, 67th Cong., 1st Sess. (1921), at p. 3).

But in the event that any such association should monopolize or restrain trade so as to unduly enhance the price of any agricultural product ample provision is made in the bill to protect the public. The Secretary of Agriculture in a sundry fashion can act more *expeditiously* than could any other agency. In the event an association fails to abide by his judgment it can not only be hailed into court but a temporary injunction can *at once* be issued against it." (Emphasis added.)[15]

Under each of these enactments,[16] private actions are not foreclosed. An injured party can bring a private antitrust action or a complaint under the Agricultural Fair Practices Act.

The duty of the Secretary to investigate and act as well was not without forethought by Congress. Antitrust actions and private suits for predatory practices can be both lengthy and costly. Individual family farmers, small cooperatives and small business handlers do not normally have the resources to prosecute successfully an extended litigation against determined opposition which has available unlimited financial resources to secure a bevy of attorneys, a raft of economic experts and to maintain a determined pretrial discovery. Congress has frequently recognized that the small business or small farmer cannot withstand the expense and delay of protracted litigation. Congress was aware that the injured party in private actions may be forced out of business or compelled by the lack of economic resources to submit to an unreasonable settlement or even to abandon a valid and substantive cause of action. Accordingly, Congress imposed a duty upon the Secretary to act in the public interest and to defend the integrity of the regulatory scheme and fair practice in the marketplace by undertaking a timely investigation before the predatory practices and monopolization have destroyed the independent sector.

An administrative investigation can proceed with greater dispatch and the authority of the Secretary to issue a show cause order enables him to reach the heart of any unfair practices with a minimum of delay.

Under the statutory provisions relied upon, the Secretary not only has the authority to investigate but under the congressional intent has a duty to investigate the predatory practices of AMPI which have been cataloged in this petition and which have been manifested in five actions initiated in the Federal district courts of Texas and Missouri.[17]

Respectfully submitted,

CARLYLE C. RING, Jr.,
LAWRENCE D. HOLLMAN,
Attorneys for Schepps Dairy, Inc., and Marketing Assistant Plan, Inc.

EXHIBIT A

A. Petitioners

1. *Schepps Dairy, Inc.* ("Schepps") is a corporation incorporated under the laws of Texas, whose principal business is the processing and distribution of dairy products in the Dallas and Houston, Texas, environs. Schepps has its principal office and its dairy processing plant at 4935 Dolphin Road, Dallas, Texas. It also has a distribution plant and offices in Houston, for the distribution in refrigerated trucks of packaged dairy products to stores, restaurants, hotels and other customers in the vicinity of Houston. Schepps buys its milk primarily from Marketing Assistance Plan, Inc. and is regulated as a handler under the South Texas Order.

2. *Marketing Assistance Plan, Inc.* ("MAP") is a cooperative association of dairy farmers (producers) qualified under the Capper-Volstead Act and incorporated under the laws of Texas. Its members' milk is sold to handlers (dairies) regulated under the Mississippi, San Antonio, North Texas and South Texas Milk Marketing Orders promulgated by the Secretary of Agriculture under the Act (7 U.S.C. § 601 *et seq.*). MAP is incorporated under the laws of Texas and its principal business office is located at 3766 Richmond Avenue, Houston, Texas.

B. *Associated Milk Producers, Inc.* ("AMPI") the object of this petition, is a capital stock agricultural cooperative marketing association, incorporated under the laws of Kansas, with its "home office" in San Antonio, Texas. It is the

[15] H.R. Rep. 24, 67th Cong., 1st Sess. (1921), at p. 3.
[16] Capper-Volstead Act, Agricultural Fair Practices Act, and Agricultural Marketing Agreement Act.
[17] See pp. 18–19.

largest dairy bargaining cooperative in the country, according to Department of Agriculture publication (FCS Research Report No. 19, August 1971); its membership in June 1971 totaled almost 44,000 producers, according to its 1971 annual report. AMPI is the dominant cooperative in each and every relevant market in which petitioners do business, as well as in virtually every other market within its territory.

EXHIBIT III

[This letter was retyped from illegible original.]

JUNE 1, 1972.

Mr. CARLYLE C. RING, Jr.,
Kaler, Worsley, Daniel and Hollman,
Ring Building,
Washington, D.C.

DEAR MR. RING: In your letters of February 10 and February 18, 1972, you reassert your request for an investigation of the alleged predatory practices of AMPI.

As you are aware the initiation of a proceeding under the Capper-Volstead Act is authorized only if there is reason to believe that (1) the price of the commodity in question has been unduly enhanced and (2) such undue enhancement has resulted from monopolization or restraint of trade by a cooperative.

From the information available to the Department including the prices received by producers for milk in the markets in question it does not appear that there is reason to believe that the price of milk has been unduly enhanced within the meaning of Section 2 of the Capper-Volstead Act.

Even if it were to be assumed that a basis exists for initiating proceedings under the Capper-Volstead Act, the investigations and other preparation for and conduct of the formal administrative adversary proceeding that would be required and the resolution of the issue therein would necessarily take an extensive period of time. Moreover, if the proceedings ultimately resulted in the issuance of a cease and desist order, the order would be subject to a review in a trial *de novo* (the findings of facts in the order being only prima facie evidence of such facts) in a United States District Court. Thus, even assuming a basis for action under the Capper-Volstead Act the antitrust action brought by the Department of Justice, which substantially encompasses the issues in your petition of January 13, 1972, clearly affords the most expeditious means of resolving such issues and any action by this Department would constitute unwarranted duplication of governmental effort.

In light of the foregoing, your request must be denied and I, therefore, question that any purpose would be served by the meeting you suggest in your letter of April 10, 1972.

Sincerely,

RICHARD LYNN,
Assistant Secretary.

APPENDIX 6

Antitrust Application to Contemporary Food Production and Marketing Issues

(Ronald D. Knutson,[1] Staff Economist, Agricultural Marketing Service)

Structural change involving cooperative mergers, integration into farm production and food processing, and conglomerates signals a new set of antitrust regulatory issues for the food industry. But the current swell of antitrust activity in the food industry is more complex. It occurs at a time when there is great concern about rising food costs. The current activism of consumer groups and proponents of stronger antitrust reglations has brought marketing management strategies including advertising, product cycles, product and package modification, planned obsolescence, and shelf space management under direct antitrust scrutiny. The exemption of farm level food prices from the economic stabilization policies has—again raised the question of a conflict between agricultural policies designed to raise producer prices through price supports, marketing orders, and cooperative activity, and antitrust policies designed to promote decentralized structures and competitive prices. Producers are, on the other hand, calling for enactment of legislation which would give them greater equality of bargaining power in dealing with the larger firms who buy their products. These firms, which constitute what is commonly referred to as agribusiness are, at the same time, viewed by some as a direct threat to takeover or agriculture by ownership and contractual integration.[2]

The focus of this paper shall be upon specific regulatory cases being litigated in the food industries. Since these cases are in litigation, this discussion suffers from a lack of finality. Yet the issues are so pervasive with research, management, and policy implications that they should hardly be ignored.

The Cereal Cases: Concentration, Growth, and Market Strategies

The cereal cases have been heralded by some as the most important antitrust actions in the history of the antitrust laws.[3] In a sense they might be interpreted as an attempt by the Federal Trade Commission to enforce the provisions of the Concentrated Industries Act[4] before it is enacted. In another sense they cut at the heart of many of the marketing strategies that have become a part of our Madison Avenue oriented marketing system.

The ready to eat (RTE) cereal industry is composed of six firms. The four largest firms—Kellogg, General Mills, General Foods, and Quaker Oats—accounted for over 90 percent of RTE cereal sales in 1970. Since 1950 these concerns consistently accounted for over 84 percent of sales. This high level of concentration was maintained despite more than a fourfold expansion in the value of cereal sold. High concentration in the cereal industry combines high levels of advertising—an average 13 percent of sales—with extensive brand proliferation—150 brands being marketed from 1950 to 1970.[5]

The charges brought under Section 5 of the Federal Trade Commission Act in these cases are extensive. They boil down to an alleged maintenance of high levels of concentration of market sales in the hands of the four largest firms by artificial and nonproductive brand proliferation, product differentiation, and

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[1] The views expressed in this paper are those of the author and do not necessarily represent those of the U.S. Department of Agriculture.

[2] "A Tough Row to Hoe," *Fortune*, August 1972, p. 135.

[3] Thomas M. Hiura. *Antitrust Law and Economics Review*, Vol. 4 No. 4, Fall 1971. p. 58. Walter B. Comegys, "The Federal Trade Commission—Its Current Activities and Future Directors." American Bar Assn., Wash., D.C. April 14, 1972.

[4] The Concentrated Industries Act would deconcentrate oligopoly structured industries where the four largest firms have over 70 percent of market sales in seven of ten or four of five most recent base years. S. 2614, September 30, 1971.

[5] In the Matter of Kellogg Corp. et. al., Docket No. 8883, April 26, 1972.

trademark promotion. A system of supermarket shelf space allocation used by the cereal companies has also come under scrutiny.

Two aspects of this case appear to be particularly important for those interested in marketing and antitrust policy. First, this is one of the first attempts to deconcentrate an industry where high levels of concentration were attained and maintained largely by means of internal growth. While three acquisitions are mentioned in the complaint, they represent what must be considered a relatively insignificant factor in the current high level of concentration. Previous to this action, the major thrust of the antitrust laws from a structural standpoint was the prohibition of mergers where the effect is to substantially lessen competition under the Clayton Act. Highly concentrated market structures were attacked by the Justice Department under the Sherman Act only when there was evidence of predatory or conspiratorial practices.

Internal growth resulting in high levels of market concentration has not easily been reached by the Sherman Act. The largest firm must generally have over two-thirds of the market combined with a finding of intent to monopolize, or there must be evidence of predatory or conspiratorial activities among firms. This policy was recently confirmed when the Supreme Court refused to review a Court of Appeals decision. This decision held that the construction of a milk processing plant by Kroger in the St. Louis market had not violated the Sherman Act.[6]

Action under Section 5 of the Federal Trade Commission Act was previously applied largely to anticompetitive and deceptive practices. The cereal cases are being used to attack a structural situation where high levels of concentration give firms discretionary power to engage in unfair methods of competition proscribed by Section 5. In the future, such a theory could be applied to: (1) horizontal structures where high levels of market concentration result from either internal growth or mergers, (2) vertical structures such as where a food chain builds its own processing facility, or a processor buys land for agricultural production purposes, or (3) conglomerate structures where power relationships among products or markets result.

The second important aspect of the cereal cases involves the charges relating to high barriers to entry created by high levels of advertising directed to a vulnerable child audience and the FTC charge that the . . . "Respondents artificially differentiate their RTE cereals." To do this the "Respondents produce basically similar RTE cereals and then emphasize and exaggerate trivial variations such as color and shape." [7] Trademarks and premiums are then, according to the FTC, used to conceal basic similarities. The National Commission of Food Marketing study of grocery manufacturing tends to support these allegations when it found 27 new products were introduced between 1955 and 1964, the vast majority of which were minor variations of existing products aimed primarily at displacing existing products.[8]

These charges should be recognized as a direct attack by the FTC on modern marketing management strategies designed to take advantage of product cycles and planned obsolescence. New product introduction combined with high levels of advertising followed by new improved product or package, and another dose of advertising, has become an integral part of our marketing strategies.

Such strategies are seldom analyzed in terms of the costs they impose or replace in the marketing system. The FTC complaint charges that the costs are high—artificially inflated prices, high profits, lack of product innovation, lack of meaningful competition, and blocked entry to potential competition.[9] Market strategies retort that nonprice competition benefits consumers by increasing sales and reducing costs, increasing variety available to consumers, reducing the size of the needed sales force and distribution network. They argue such benefits outweigh the costs as set forth in the FTC complaint against the benefits as set forth by market strategists.[10] If anything, the wealth of empirical studies of the

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[6] Highland Dairy, Inc., v. Kroger Co., 402F 2nd 968 (1968) Cert. denied 395 U.S. 961 (1969).

[7] Kellogg, p. 5.

[8] National Commission of Food Marketing, *Studies of Organization and Competition in Grocery Manufacturing*, Technical Study No. 6, 1966, p. 79. Louis W. Stern, "Public Policy Implications of Nonprice Marketing Strategies and De-Oligopolization in the Cereal Industry," AMA Public Policy and Marketing Conference, June 12–13, 1972, p. 6.

[9] Kellogg, p. 9 and 10.

[10] A step in this direction was made by the National Commission of Food Marketing, *Food From the Farmer to the Consumer*, Washington, D.C., June 1966 and the related technical reports. But the report suffers by lacking a comprehensive analysis of costs and benefits.

relationship between structure and performance—even considering the large unexplained portion of variation in profits—economic theory, and legal precedence tend to support the FTC and place the burden of proof on the defendant corporations and market strategists.

If the cereal cases are successfully litigated, it goes without saying that major changes in market management theory and practice will be required.

AGRIBUSINESS INTEGRATION STRATEGIES

The entrance of agribusiness into food production has come under increasing scrutiny and criticism during the past year. The charge is that agribusiness corporations such as Tenneco, United Brands, Gates Rubber, Del Monte, and Ralston Purina are converting agriculture from a competitive industry to one dominated by conglomerates. In the process, these are said to be driving family farmers off the land. The intensity of the issue is evidenced by the controversy surrounding the nomination of the Secretary of Agriculture[11] and the introduction in Congress of the Nelson Family Farm Act[12] which would prohibit much of the contractual and vertical integration existing in agriculture today. Exaggeration of the extent of vertical integration tends to be commonplace. For example, it is estimated that only 4.5 percent of total agricultural production is vertically integrated. However, 15–17 percent of total production is produced under production contract arrangements with agribusiness firms.[13]

The introduction of the Family Farm Act and similar proposals has tended to overshadow antitrust remedies to problems of integration. There is currently in FTC litigation, a very interesting case in point. It challenges the acquisition of at least nine small growers of lettuce and celery by United Brands—a 1.5 billion dollar food industry conglomerate. Of even greater significance, it challenges leasing, joint ventures, and full supply arrangements between United and many otherwise independent producers. These arrangements give United control of approximately 11 percent of the Nation's lettuce production.

Among other things, it is alleged by the FTC that these arrangements have anticompetitive effects by transforming the structure of the fresh lettuce, and celery industries ". . . from small independent profitable concerns selling in a competitive market into an industry dominated by large conglomerate companies selling at stable prices arrived at outside the competitive market . . ."[14]

Two facets of this case appear to be particularly important. First, it points up the antitrust alternative to the Nelson Family Farm Act as a means of curtailing integration in agriculture if such is a desired public policy. Antitrust would appear to have some advantages in this respect. It is more flexible in that it could be applied only in those cases where substantial anticompetitive effects, relative to efficiency gains, are likely. And the same standards would be applied to structural questions in agriculture as in the remainder of the economy resulting in, among other things, fewer economic distortions.

Second, the United Brands case is more than an ownership integration case. In fact, the proportion of production controlled by ownership of land is small relative to that controlled by leasing, joint venture, and full supply arrangements. If this case is litigated successfully, it would, accordingly, appear to be a relatively small step to applying the antitrust laws to agricultural commodities where contract integration is extensive—broilers, turkeys, processing vegetables, and sugar beets for example.[15]

COOPERATIVE GROWTH AND MARKET STRATEGIES

Producer efforts to organize bargaining activities are currently being questioned by the Justice Department. The 1960's saw a major consolidation of cooperative activity in the milk industry particularly in the Central and Southeastern United States. In 1971, cooperative bargaining activity in the Central and Southeast United States by four major cooperatives and two federations encompassed nearly 100,000 producers of 34.4 billion pounds of milk. This represents over 30 percent of the Nation's milk production and over 75 percent of the

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[11] Nomination of Earl Lauer Butz, Hearings before the Committee on Agriculture and Forestry, November 17, 18, 19, 1971.

[12] H.R. 11654, 92nd Congress, November 9, 1971.

[13] R. L. Mighell and W. S. Hoofnagle, *Contract Production and Vertical Integration in Farming, 1960 to 1970*, ERS 479, USDA, April 1972, p. iv.

[14] *United Brands Company*, FTC Docket, 8835, CCH Trade Reg. Rept. paragraph 19485.

[15] Mighell and Hoofnagle, p. 4.

production in many Central and Southeast United States Federal order milk markets.[16]

There are at least 14 suits pending against one or more of these cooperatives alleging violations of the antitrust laws since these organizations and their predecessors were formed. The plaintiffs in these suits include such parties as the Department of Justice, the State of Illinois, other cooperatives, handlers, and consumers. All of the suits contain nearly the same basic allegations. These allegations generally involve diverse forms of market conduct with the alleged effect of coercing producers who were not cooperative members into the cooperative, foreclosing markets to noncooperative members, forcing handlers into full supply arrangements, acquiring competitors, and raising prices above competitive levels.[17]

The allegations are pervasive in their coverage. If successfully litigated, they have multidimensional implications for cooperative activity. Two aspects of the case merit comment. First, the cases raise a basic question of the extent and means by which cooperatives can, under the Capper-Volstead Act, increase control over the markets for which they produce. Assessment of the appropriateness of various forms of cooperative activity is an important aspect of answering this question.

Two basic alternatives appear to exist: (1) The cooperative may be viewed as one of many participants in competitive agricultural markets. If viewed in this manner, the antitrust laws and Capper-Volstead Act may be interpreted as having the role of maintaining a competitive balance between the various segments, but not allowing the balance of market power to swing one way or the other. (2) Producers may be viewed by some as being in such an inferior bargaining position that cooperative activity, even to the extent that it achieves a monopoly position for producers, should not be restrained.

Consistent with the latter position, the dairy cooperative cases bring into focus a conflict between: (1) programs of the Department of Agriculture promoting cooperative group action that are, in part, designed to raise farm prices by the exercise of market power thereby enhancing producer returns, and (2) antitrust policies designed to maintain a competitive market environment. The implications for enactment of proposals, such as the Sisk Bill,[18] which create an obligation for handlers to bargain with qualified cooperatives, should not be overlooked. The basic questions raised include the appropriate limits on bargaining and the extent to which Government supported self-help programs, as opposed to Federal revenues and/or decisions, should be used to raise producer returns. In answering these questions, clarification and recognition of a legitimate expansive role for cooperative activity in the public and producer interest is needed.

Second, certain questions of import to the development of cooperative structures[19] will likely not be answered by the current dairy cooperative cases. A specific question involves the extent and conditions under which cooperatives can combine with noncooperatives in various types of joint ventures and bargaining activities. The Courts have consistently held that cooperatives cannot maintain Capper-Volstead immunity from antitrust prosecution when they combine with noncooperative firms.[20] The unanswered question is whether a basis for distinction exists in cases where joint ventures between cooperatives and noncooperatives result from a legitimate market need which has no direct competition suppressing effects. Another question arises as to whether financing and profit sharing arrangements can be worked out that are within Capper-Volstead legal requirements.[21]

Some insight into the attitude of the Justice Department toward these questions was provided by a recent advisory opinion.[22] This resulted from an application by Holly Farms, one of the Nation's largest broiler contractors, to become a member of the National Broiler Marketing Association (NBMA), a Capper-Volstead broiler marketing cooperative.

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[16] Ronald D. Knutson, et. al., *Milk Pricing Policy and Procedures*, Report of the Milk Pricing Advisory Committee, USDA, Washington, D.C., March 1972, p. 30. Ronald D. Knutson, Cooperative Bargaining Developments in the Dairy Industry, FCS Research Report No. 19, Washington, D.C., August 1971.

[17] *U.S.* v. *Associated Milk Producers, Inc.*, Civil Action No. SA 72CA49, U.S. District Court, San Antonio Division, February 1, 1972.

[18] H.R. 14987, May 15, 1972.

[19] Arthur Goldberg, "Profitable Partnerships Industry and Farmer Coops.," *Harvard Business Review*, March–April 1972, Vol. 50, No. 2.

[20] *Maryland and Virginia Milk Producers* v. *U.S.*, 362 U.S. 458 (1960).

[21] *Case-Swayne* v. *Sunkist Growers*, 398 U.S. 384 (1968).

[22] Department of Justice, November 17, 1971.

The opinion stated that NBMA's exempt status under the Capper-Volstead Act may be jeopardized if Holly Farms became a member. Justice indicated it would consider Holly's contract as productive nonmember production which cannot under the Capper-Volstead Act exceed 50 percent of the cooperative's volume. The rationale Justice used was that Holly's contracts did not make it a producer because it did not ". . . assume substantially all the risk typically inherent in the role of a farmer." [23] Regardless of the merits of this particular rationale, a more basic question can be raised as to whether Congress ever intended or even envisioned agribusiness entering into contract production and forming cooperative-corporate combines for the purpose of raising prices.

ISSUES IN SUPERMARKET STRATEGIES AND CONTROL

The merchandising and purchasing strategies of supermarkets also appear to be coming under increasing scrutiny. The concerns of the regulators and consumer activists cover a wide range of supermarket decisions—shelf space allocation, private label differentials, unit pricing, open dating, grade, and nutritional labeling, supermarket processing pricing, and procurement strategies.

Retailer shelf space allocation policies will likely be looked at closely in the cereal cases. The concern is that barriers to the entry of new products and food processors may be created by supermarket shelf space allocation procedures. Such procedures may either be developed and operate by a supermarket chain for its stores or by a food processor for the product line which it manufactures. They are generally operated on a volume turnover basis. However, such procedures can impose substantial barriers to the entry of new products if strict volume allocation procedure is used.

Barriers to entry can also be imposed by the not particularly uncommon practice of allocating a large proportion of the shelf to private labels, or completely excluding brands other than the supermarket's own label. The interesting question is also posed of the obligation of the chain to provide the consumer with a choice of available products. If such an obligation does not exist, if for example all chains backed their own bread, proprietary firms could be excluded from a market and consumers limited to a single brand within a store. If the obligation does exist, is it an inherent obligation, or does it only exist when there are physical or quality differences in the products? Who determines whether there is a quality difference?

An initially plausible alternative to allocating shelf space on the basis of volume, is allocating it to maximize profits. Space then becomes a function of both volume turnover and margins. This procedure also has pitfalls in terms of imposing barriers to entry. Private labels frequently have wider margins than packer labels. The private label would thus receive favored treatment over packer labels. Packers labels could conceivably not be allocated any shelf space if other products could generate higher profit levels.

Logical extensions of this barrier to entry shelf space allocation theory can be made to pricing, procurement, and integration policies which have the effect of denying particular processors shelf space or artificially disadvantaging them in terms of price. The legal concept and precedent to be applied may be that of a chain store discriminating in favor of itself.[24]

The procurement strategies of chains have also come under scrutiny as the powers of the long dormant Section 2(f) of the Robinson-Patman Act have come to life. The pace of FTC activity appears to be steadily increasing [25] following the landmark *Automatic Canteen* decision holding that the Commission's trade experience evidence could be used to show that the buyer knowingly induced a discriminatory price within the meaning of Section 2(f).[26] Thus, in the recent

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[23] The conclusion that Holly Farms does not bear substantially all the risk is an interesting one since Holly held title to the fowl, supplied all feed and certain management inputs, and paid producers on the basis of a minimum price per bird delivered with an escalator if the market price was above specific levels. The farmer essentially was paid a piece wage which depended on the number of birds delivered. His most significant risk was that of disease and other natural disasters which could result in bird losses. If Justice came to the right conclusion, it appears to have done it for the wrong reasons.

[24] *State Wholesale Grocers* v. *A&P*, 258 F. 2nd 831 (1958).

[25] American Bar Association, *Antitrust Developments 1955–68*, Chicago, 1968, p. 152. Federal Trade Commission, *Annual Report of the Federal Trade Commission 1971*, Washington, D.C., 0, 48.

[26] *Automatic Canteen Co.* v. *FTC* 346 U.S. 616 (1953).

Kroger case the Court of Appeals upheld an FTC decision that Kroger knowingly induced a discriminatory price concession when its milk purchasing agent gave false competitive bid information to Beatrice.[27] The Commission's *trade experience* evidence included the findings that the discount as large as the one ultimately induced was unheard of in the market, was substantially below average discounts for the market, and was not, in fact, responsive to an actual lower offer by a competitor in the market.

The Court of Appeals inferred injury to competition from: (1) the substantial price advantage afforded Kroger, (2) the fact that Kroger labeled milk was received at cheaper prices than Beatrice labeled milk, and (3) while this price differential existed Kroger ". . . did not reduce the retail price of its private label milk and, thereby, pass on lower prices to the consumer, but reaped higher profits for itself."[28] The Commission inferred competitive injury since the higher profits *could* be used by Kroger to adversely affect its competitors. Passthrough of price differences might also be required to prevent multiproduct margin discrimination which adversely affects the demand for high margin products and thereby injures particular firms. In an era of consumerism, passthrough might be required under Section 5 of the FTC Act to prevent consumer injury.

Problems, however, result from the high degree of regulation implied by the application of such passthrough concepts. At the extreme is the question of passthrough requirements for those products processed by chains. A more likely solution to this problem is the application of the antitrust laws to provide a sufficiently decentralized structure to insure competitive forces to encourage passthrough and render high margins on particular items no more than temporary phenomena.

IMPLICATIONS

Antitrust enforcement in the food industry appears to be rising to a new level of sophistication. The problems being litigated are not purely those of structure, conspiracy, and predatory behavior. The implications of this higher level of sophistication are fourfold.

(1) More intensive analysis of the tacit and consciously parallel forms of firm behavior can be expected in the future. These are the means by which oligopolists can allegedly accomplish the same degree of market control as monopoly and collusive oligopoly. In the process, many of the management strategies that are alleged to enable oligopolists to maintain protected markets will be attacked.

(2) A renewed emphasis is being placed on the vertical market relationships by which firms at one market level influence and control market activity at a second level. The emphasis will increasingly shift from vertical acquisitions, resale price maintenance, and restrictions on distribution channels to buyers who control market access. The resurrection of the long dormant Section 2(f) will result in greater buyer responsibility in sales negotiation. The conditions under which agribusiness firms purchase products from producers will be scrutinized more carefully.

As a result of these changes, researchers and management efforts to develop better vertical market relationships in a system or subsector configuration must carefully consider the antitrust constraints and implications of their actions and advice.

At the same time, the regulators must be careful to enforce their policies in a way that does not unduly impede the development of cost reducing means of vertical coordination.

(3) Attempts will be made to bring increased rationality to apparently conflicting laws. The lines of demarcation between the Capper-Volstead and Sherman Act will be brought into better focus by the cooperative case. At the same time, pressures are building for enactment of laws which raise additional questions of conflict. The proposal to create obligations on the part of processors to bargain with producers, or to exempt soft drink bottlers from antitrust limitations on the allocation of territorial franchises[29] are illustrations.

(4) More weight will likely be given to the ultimate effect of market structure and firm behavior upon the consumer. The cereal complaints charges of inflated

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[27] *Kroger Co.* v. *FTC*, 1971 Trade Cases, paragraph 73, 489.
[28] Ibid., p. 90,005.
[29] *Business Week*, Number 2241, August 12, 1972, p. 34.

prices, high profits, and product imitation rather than innovation are illustrative. They do not differ substantially from the finding that Kroger failed to pass-through a price difference or the charges in the cooperatives case that consumers have been deprived of an opportunity to buy milk at competitive prices. In the offing may be a new antitrust standard of legality which places greater emphasis on revealed consumer benefits and costs.

The implications of such a development for marketing analysts are obvious. We have for too long drawn our implications for performance from structure. But there is the danger of taking too narrow a view of the concept of consumer benefits. Emphasis needs to be placed on the development of a multidimensional approach to performance. Such an approach would, in addition to measuring the degree of monopolistic pricing, evaluate the contributions of firms in dimensions such as realization of technical efficiency, opportunities and restrictions placed on other firms at the same as well as other levels in the market channel, adoption of technology, innovation in products, variety, the quantity and quality of information provided for decisionmaking, and the responsiveness of the industry to changes in consumer demand and customer complaints. This is a big task. Industrial organization specialists have spent too much time counting firms and calculating concentration ratios while marketing specialists have been rationalizing market strategies on the grounds that success of their use signifies consumer acceptance and satisfaction. While this has been happening, public confidence in both antitrust policy and business has declined perceptibly.

APPENDIX 7

JULY 26, 1973.

Mr. CLARENCE ADAMY,
President, National Association of Food Chains,
Washington, D.C.

DEAR MR. ADAMY: I would like to thank you for your willingness to provide the antitrust subcommittee with those items requested during your recent testimony. I thought it would be helpful to recapitulate what those items are.

1. The private newspaper surveys you mentioned—the Metro Market study and the Supermarket News study—that purport to show the share of metropolitan markets by individual supermarket companies.

2. The survey of various supermarket chains showing their pricing policy on specific cuts of beef as a carcass moves from wholesale to retail that you said on April 11, 1972, you would supply to the House of Representatives Subcommittee on Livestock and Grains of the Committee on Agriculture.

3. The average percentage of supermarket chain mark-up from production to wholesale (as appropriate) and from wholesale to retail of certain broad categories of food items.

Specifically: Beef, poultry, pork, seafood, processed meats, milk, eggs, cheese, bakery items, sugar, and flour.

Frozen vegetables, a. Name brand, b. House brand.

Canned vegetables, a. Name brand, b. House brand.

Fresh vegetables and canned fruits, a. Name brand, b. House brand.

Fresh fruit, snack foods, and convenience dinners.

We trust that you can provide us with this promised information before the record closes, so that we can insert that material along with this letter.

Best regards,
Sincerely,

PETER W. RODINO, Jr.,
Chairman.

THE NATIONAL ASSOCIATION OF FOOD CHAINS,
Washington, D.C., August 16, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on Judiciary, 2137 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in the nature of a progress report regarding your July 26, 1973 request for information following my earlier testimony before your subcommittee.

1. Concerning your request for the private newspaper surveys of "share of market" of individual supermarket companies, we do not maintain files of these studies in our office. Accordingly, I would appreciate it if you would request copies directly from the publishers:

Supermarket News, 7 East 12th Street, New York, New York 10003, and Metro Market Studies, Inc., Grocery Distribution Guide, 4 Lakewood Circle North, Greenwich, Conn. 06830.

You should be advised that these studies are not based on anything resembling a census-type analysis and do not, insofar as I am aware, use actual sales figures. Studies which do rely exclusively on actual sales figures and cover a full universe would, of course, be more reliable.

2. Pricing policies relative to various cuts of meat vary company by company, community by community, and season by season. Further, the distortions caused by the various Phases of the Economic Stabilization Program, and particularly the current beef freeze, make generalizations about past practices inoperative in today's chaotic market. I am enclosing two documents, however, that can be considered illustrative.

a. A booklet entitled "The High Cost of Beef—A Fact-Finding Tour" published last year by Super Market Institute. One company's pricing chart during the period the study was made is on the third page from the back.

b. A cutting chart on hogs—published by the Kansas Food Dealers Association—showing the percentage of various pork cuts in a typical hog carcass.

3. I am attaching a rundown from the July, 1973, issue of *Chain Store Age* magazine giving average markups in various product categories. These categories differ somewhat from those you requested, but are the only ones we have in the office. Incidentally, I do not know how these figures were collected or what they are actually averages of, so they should be considered illustrative rather than as reflection of "common" or "standard" practice.

I appreciate the invitation to appear before your subcommittee and hope that the views I presented were useful.

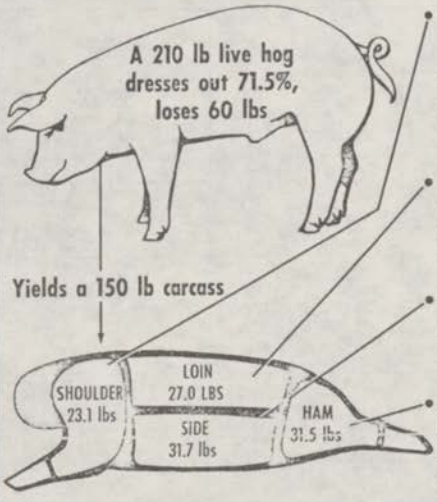
Sincerely,

CLARENCE G. ADAMY,
President.

Attachments.

SAVE FOR IN-STORE POSTING

Why a Hog's Not All Chops



An additional 30 lbs of fat for lard, bones and waste further reduces this 150 lb carcass to only 120 lbs of saleable retail cuts—chops, hams, bacon, ribs and sausage—that the retailer wraps and puts on display in the meat case.

Figures are averages taken from actual cut out tests. Carcass data vary, depending on cutting method and type of hog.

Prepared by the National Live Stock and Meat Board

SHOULDER 23.1 lb *(15.4% of total carcass)*

	Saleable cuts	Waste	
Boston shoulder	9.4		
Fat for lard		.5	
Picnic shoulder cubes	7.0		
Bone		2.8	
Hocks	3.4		
TOTAL	19.8 lb	3.3 lb	23.1 lb

LOIN 27.0 lb *(18.0% of total carcass)*

Blade roast (5 rib)	6.3		
Center chops	13.3		
Sirloin roast	4.2		
Fat for lard		3.2	
TOTAL	23.8 lb	3.2 lb	27.0 lb

SIDE 31.7 lb *(21.1% of total carcass)*

Bacon, cured	24.0		
Sausage trimmings	2.0		
Spareribs	5.7		
TOTAL	31.7 lb		31.7 lb

HAM 31.5 lb *(21.0% of total carcass)*

Rolled leg of pork roast, boneless	19.8		
Sausage trimmings	2.8		
Skin	2.2		
Fat for lard		3.2	
Bone and shrink		3.5	
TOTAL	24.8 lb	6.7 lb	31.5 lb

MISCELLANEOUS 36.7 lb
(24.5% of total carcass)

Jowl, trimmed	4.5		
Feet, tail, neckbones	9.0		
Sausage trimmings	6.4		
Fat for lard		16.8	
TOTAL	19.9 lb	16.8 lb	36.7 lb

Consumers prefer pork chops to pork steaks or shoulder roasts, as indicated by their traditional buying habits. But there are only 13 pounds of chops in the 120 pounds of saleable pork the retailer gets from a 150 pound carcass. He must sell 107 pounds of other cuts as well. That's why high-demand cuts, like pork chops, cost more. The retailer must price his pork so he sells it all with no picnics, hocks or ribs left over.

Kansas Food Dealers Association, Inc.
P. O. Box 816
Arkansas City, Kansas—67005
Address Correction Requested

Bulk Rate
U. S. Postage
PAID
Arkansas City, Kans.
PERMIT NO. 6

BY DEPARTMENT

	Product category	1972 Average gross margins	% of 1972 total supermarket sales	% of 1972 gross profit $	1972 supermarket sales (in millions)
CANNED FOODS	Canned vegetables	19.2	2.41	2.23	$ 1,574.9
	Canned fruit	18.3	1.31	1.18	828.9
	Canned juice	16.5	1.33	1.08	841.5
	Canned meat/specialty	17.2	1.06	0.92	683.3
	Canned & dry soup	13.8	1.17	0.80	740.3
	Canned fish	13.4	0.94	0.62	594.8
	Canned & dry milk	9.1	0.38	0.17	240.4
DRY FOODS	Breakfast foods	13.9	1.73	1.19	1,094.6
	Macaroni/pasta products	19.1	0.73	0.69	461.9
	Dried vegetables	20.9	0.32	0.32	202.5
	Dried fruit	22.2	0.23	0.26	145.5
GROCERY PERISHABLES	Frozen foods	24.4	4.70	5.67	2,973.8
	Fluid milk, cream	17.2	3.81	3.24	2,419.7
	Eggs	19.5	1.89	1.82	1,195.8
	Cheese	23.6	1.76	2.05	1,113.6
	Ice cream	24.8	1.35	1.66	854.2
	Margarine	16.2	1.17	0.94	740.3
	Refr. bakery, juice, dips, etc.	23.4	0.86	1.00	544.1
	Butter	6.8	0.66	0.23	417.6
BEVERAGES	Soft drinks & mixes	19.3	1.89	1.80	1,195.8
	Regular coffee	3.5	1.48	0.25	936.4
	Beer	18.7	1.40	1.29	885.8
	Instant coffee & creamer	8.4	0.73	0.31	461.9
	Tea	17.6	0.43	0.37	272.1
	Wine & liquor	26.2	0.24	0.31	151.9
BAKERY PRODUCTS & SUPPLIES	Bakery foods	23.2	4.38	5.03	2,771.3
	Cookies & crackers	24.0	2.15	2.55	1,360.4
	Snacks (packaged)	24.2	1.31	1.57	828.9
	Premixes & baking supplies	15.8	1.00	0.78	632.7
	Sugar	4.1	0.85	0.17	537.8
	Oil & shortening	9.7	0.63	0.31	398.6
	Spices, extracts & seasonings	30.6	0.45	0.68	284.7
	Flour	9.9	0.38	0.19	240.4
DESSERTS, GARNISHES & CONDIMENTS	Pickles, olives & vinegar	25.3	0.71	0.89	449.2
	Dressings	14.6	0.77	0.55	487.2
	Sauces	19.3	0.62	0.59	392.3
	Desserts & toppings	17.3	0.49	0.42	310.0
	Jams, jellies & preserves	22.7	0.40	0.45	253.1
	Peanut butter	14.1	0.37	0.26	234.1
	Syrup, molasses & honey	18.1	0.26	0.24	164.5
OTHER DRY GROCERIES & CONVENIENCES	Pet products	18.5	1.74	1.59	1,100.9
	Candy & gum	27.7	1.36	1.86	860.5
	Baby food	7.3	0.77	0.28	487.2
	Nuts	26.2	0.33	0.42	208.8
	Dietetic & low-calorie	23.5	0.24	0.28	151.9
GENERAL MERCHANDISE & NON-FOODS	Tobacco products	8.2	4.51	1.83	2,853.6
	Health & beauty aids	26.3	2.99	3.88	1,891.8
	Paper/film/foil/supplies	17.9	2.71	2.39	1,714.7
	Soaps & detergents	11.4	2.23	1.26	1,411.0
	Housewares	32.5	1.31	2.11	828.9
	Laundering & ironing aids	18.2	0.80	0.72	506.2
	Cleansers	20.2	0.72	0.72	455.6
	Cleaning implements, bulbs	35.0	0.62	1.07	392.3
	Magazines & stationery	31.0	0.59	0.91	373.3
	Soft goods	31.7	0.41	0.64	259.4
	Waxes & polishes	25.1	0.35	0.43	221.5
	Meat	21.2	22.14	23.20	14,008.4
	Produce	31.3	6.91	10.69	4,372.0
	Unclassified	23.5	0.50	0.58	316.4
	Total	20.2	100.00%	100.00%	$63,272.2
	Note: Reduction in Unclassified category due to inclusion of Wine & Liquor				

The High Cost of Beef

a fact finding tour



INTRODUCTION

As we all know so well, the price of beef is very much in the public eye, a handy symbol of the inflation that has gripped America in recent years.

As beef prices have risen, criticism of the entire food industry also has increased. One key question raised by consumers seems to go unanswered: who is getting rich in the process of bringing beef to the super market? Is it the rancher? The cattle feedlot operator? The packer? The retail market?

Super Market Institute felt that such a probing, difficult issue required immediate attention. Consumers could not or would not understand until they heard the full story.

So, with a grant from Kraft Foods, a thorough fact-finding tour was organized for three key U.S. food editors. In early April, 1972, the editors followed beef from ranch, to feedlot, to packer, to retail store. They were given free access to management, employees, and accounting records at all stops along the way. Obviously, the editors were free to evaluate what they saw, to write what they learned, in order to teach their readers and other editors as well.

The three food editors were: Elaine Tait, *Philadelphia Inquirer;* Jeanne Voltz, *Los Angeles Times;* and Ann Worley, *Dallas Times Herald*.

Their itinerary covered the entire story of bringing beef to market. It included visits to a cattle ranch, feedlot operations, packing houses, and a representative super market operation.

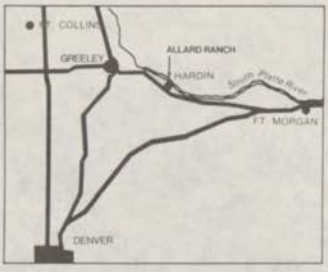
In addition to the stories they wrote, these three food editors presented a report on their trip to 50 of their professional colleagues at the annual Super Market Institute Convention held in Houston in mid-April, 1972.

The purpose of this booklet is to tell you the story of their tour. We, at SMI, also hope that this booklet will depict the powerful impact of open, honest, and creative communications.

Who is getting rich in the process of bringing beef to the super market? Let this booklet answer that question for you.



THE CATTLE RANCH



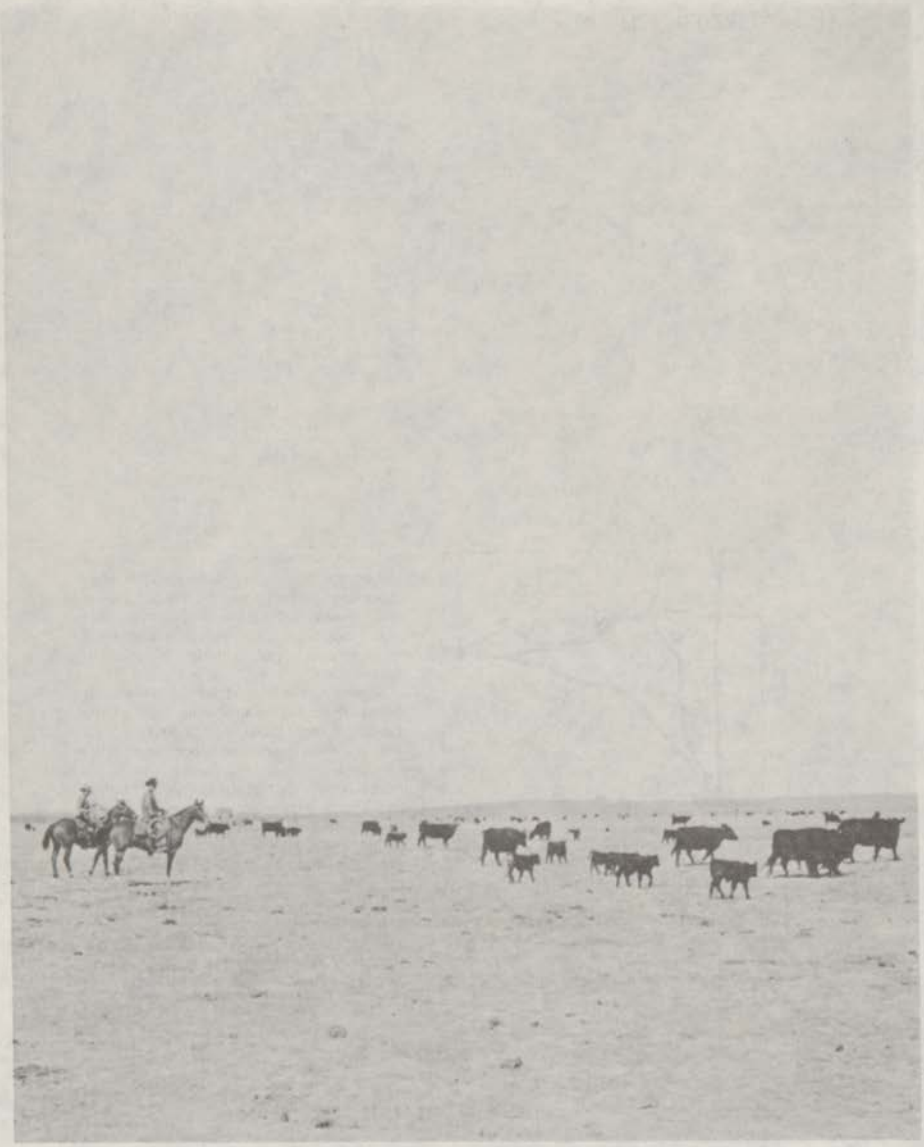
The first stop in the food editors' journey was the 20,000 acre cow-calf ranch of brothers George and Martin Allard, located in northern Colorado near Greeley.

A typical ranch of the area, the Allards raise some 1,000 cows and calves. Because of the climate and the quality of the land, it takes 20 acres to raise one cow and calf! George Allard supervises the breeding and calfing operation. His brother, Martin, specializes in weaning five month old calves and feeding them on the range for another seven months. Starting with insemination, it takes an average of 20 months to raise cattle for sale.

The editors inspected the ranch—with its beautiful acreage and distant view of the Colorado mountains—and then talked to the Allards in their living room about cattle ranching.

"Somehow we had the Hollywood notion that a cattle rancher couldn't get the money to the bank fast enough," Ann Worley wrote in the *Dallas Times Herald*. "If that's the case, the Allard's comfortable, modern, but certainly unpretentious yellow-brick house didn't reflect it. Neither did the Allards themselves."

A look at the accounting books showed that the Allards had made a profit in only two of their last ten years. In 1971, their net





profit was $64,127. This was a record high for them . . . but still a small 4% return on their buildings, land, equipment, and cattle, all valued at $1.5 million.

If the Allards were to sell their ranch at that price and invest their money at 5% interest, they could sit in their rocking chairs and earn $75,000 to split between them *each* year. This is over ten times greater than their average yearly profit. But the Allards aren't rocking chair-type people. They work seven-days-a-week, twelve-hours-a-day. In addition to housing and some transportation, they pay themselves $600 per month for their own labor. They also hire families for $350 per month each and give them a truck and housing. But if the profits aren't there, then why go through such daily labor?

"The thought of living in the city scares the hell out of me," admits George Allard. "I like raising my kids here, and I like having my parents with us. It's a good life."

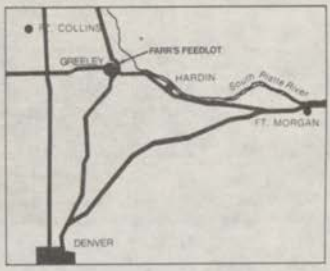
The ace-in-the-hole for the Allards is their land investment. They purchased this ranch four years ago at $60 per acre. And now George Allard estimates its worth at $80 per acre.



"In the past four years the Allards raised almost 4,000 head of cattle for the American housewife at almost no profit," Elaine Tait wrote in the *Philadelphia Inquirer*. "Market conditions have forced them to sell their cattle at cost and often below cost. But ranchers will only be able to afford to ranch without profit as long as there is an inflationary land value situation in this country."

Thus, the food editors discovered that unfair profits were certainly *not* being made on cattle ranches. So their next stop took them to a feedlot operation near the Allard ranch in Greeley, Colorado.

THE FEEDLOT



In 1971, George and Martin Allard sold some of their calves which weighed between 500 and 600 pounds each to Bill Farr, of Farr's Feedlots in nearby Greeley.

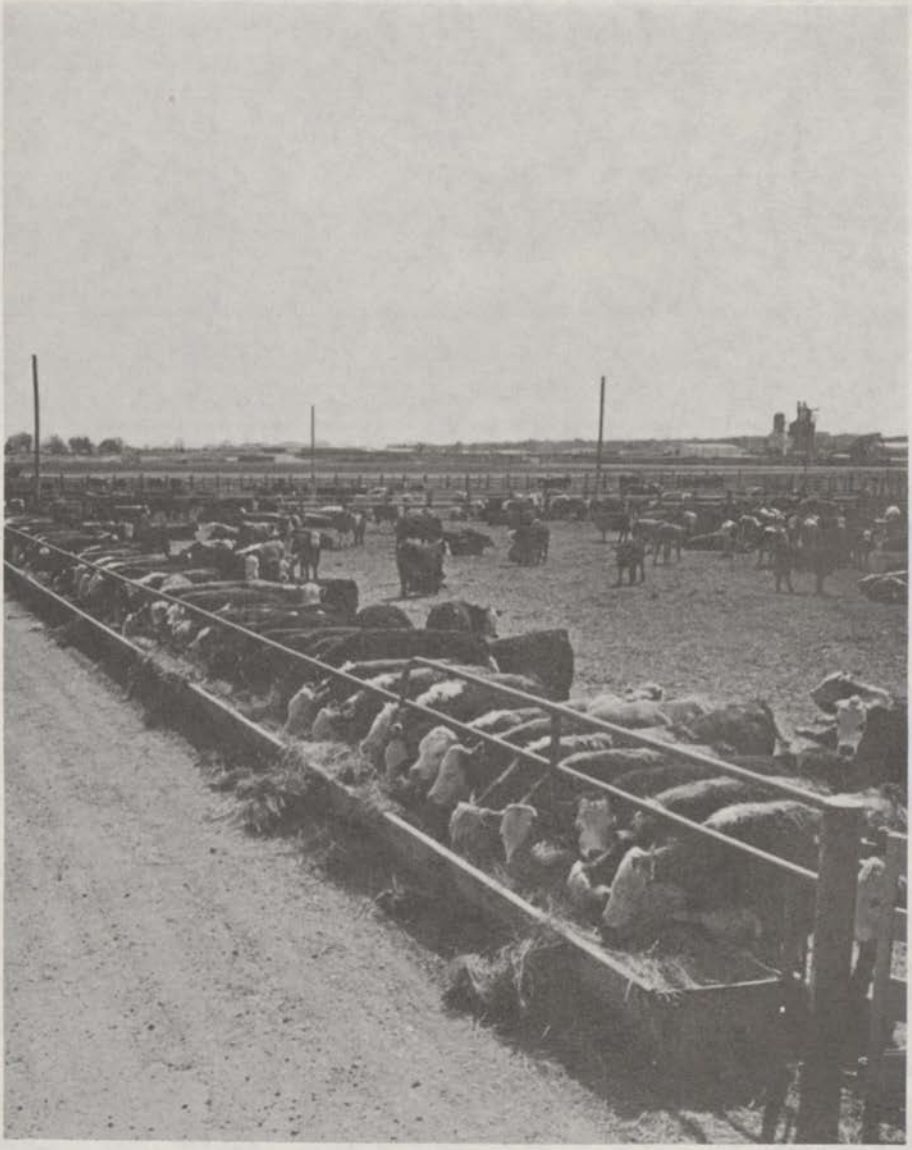
When the food editors visited Farr's operation, they learned that the key to success in the feedlot business is a feeding system that blends food ingredients, growth stimulants and antibiotics. This feeding process must add the most meat to the cattle in the shortest possible time . . . usually about five months.

Farr explained that he buys calves from a number of ranches and, through his computerized feeding system, adds from 400-500 pounds to each head. He then sells 1000-pound cattle to meat packing firms.

The editors learned that the feedlot operator has the riskiest business of all. This is primarily due to the fluctuation in cattle prices. In 1971, feedlots purchased cattle from ranchers for a price which ranged between 36¢ and 42¢ per pound. In the same year, they sold cattle to packers for 29¢ to 34¢ per pound. If feedlot operators need to buy cattle when prices are high and are ready to sell cattle when prices are low, they lose money.

For example, Bill Farr bought some cattle from the Allards for 39¢ per pound. These were fine 500 pound steers. Bill trucked these cattle to his feedlot, then fed and cared for them for five months at a cost of $120 per head. When the cattle were ready for sale, Bill had $315 invested in each head (500 lbs. x $.39 + $120 = $315). The cattle now weighed about 1000 pounds each and were worth 30¢ per pound on the open market. At that price Bill Farr received $300 for a steer in which he had a $315 investment.

From these discussions, and a later trip to a smaller Nebraska feedlot operation, it seemed clear that Bill Farr wasn't gouging the housewife with his feedlot business.





To make certain that Farr's feedlot operation was representative and accurately explained, the food editors then met with Robert Reierson, Economist from the U.S. Department of Agriculture. His purpose was to put the national beef price picture into perspective.

He placed special emphasis on the continual rise in beef consumption in the U.S. He told the food editors that, in 1950, a person in the U.S. ate approximately 62 pounds of beef. In 1972, Reierson explained, that average will be about 112 pounds!

"We've doubled the demand for beef," Reierson explained. "Supply and demand is the heart of the American free enterprise system, and it's been working through the years to force beef prices up."

Reierson also presented data that showed the economic demise of many small feedlot operators and the growth of only the larger, more efficient feeder businesses.

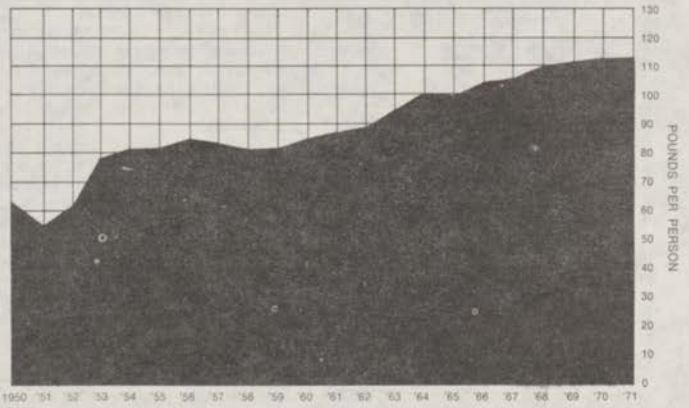
So what is the service provided by a feedlot operator?

"The feedlot basically does two things," Ann Worley wrote. "First, through computerized feeding and the use of growth stimulants the feedlot operator raises better quality beef. Second, he increases the supply of beef. The 400-500 pounds that he adds to each head of cattle almost doubles the quantity of beef that gets to market. The per capita consumption of beef continues to rise each year. Without feedlots, a housewife would have to pay higher prices for lower-quality beef."

Thus, the food editors' journey to discover who is making unreasonable profit gains from higher beef prices did not stop with the cattle rancher or the feedlot operator.

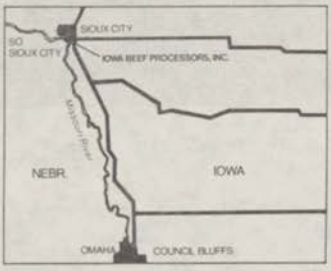
The next stop was the Iowa Beef Processors, Inc., located in South Sioux City, Nebraska.

BEEF CONSUMPTION PER PERSON



Source: United States Department of Agriculture





Iowa Beef Processors, Inc. is responsible for 10% of all the cattle slaughtered in the United States. The corporation slaughters more than 60,000 cattle each week. To do this, they employ over 4,500 people full-time.

Although our lady food editors did not see cattle actually being slaughtered, they did see the rest of the plant in operation, with its ultra-modern "disassembly-line" process of skinning, breaking, shrouding and cooling each carcass.

Again, the editors were able to get answers to their usual penetrating questions.

"A packer buys live cattle, slaughters them, and then prepares the beef to be shipped as carcasses or as box beef," explained Gerald Frankl, Iowa Beef Vice President. "We ship to wholesalers, retailers, or institutional food service operations."

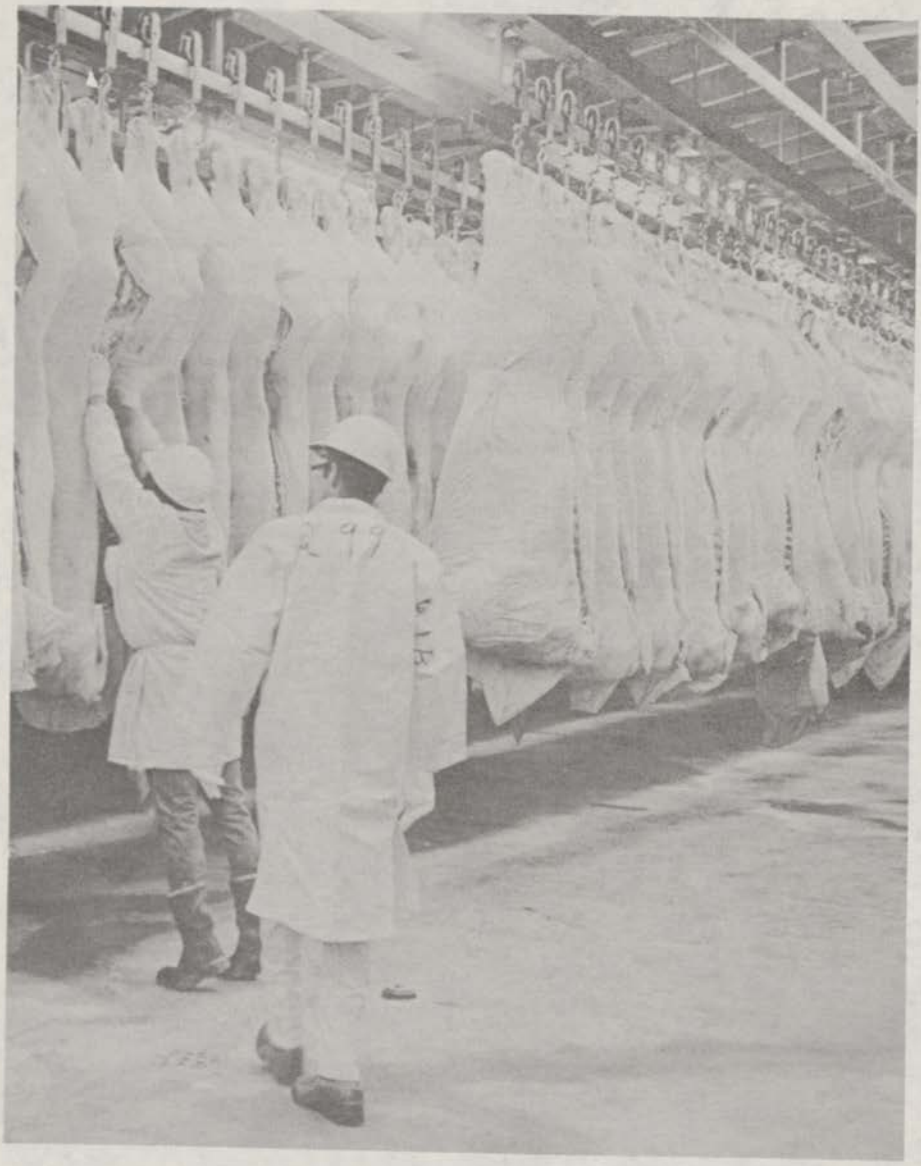
Box beef, the editors learned, is a new, more economical way of getting beef to the housewife. Some modern packers like I.B.P. are using their efficient "disassembly-line" to cut and box beef right at the packing house so that it's almost ready to be placed on the retail counter.

"This saves the housewife money in two ways," Mr. Frankl pointed out. "First, nobody has to pay to ship useless fat and bone across the country. Second, on a mass-production basis, we can fabricate the beef at a lower cost than the local store. That's partly due to the fact that we can salvage fat, bone and other by-products more efficiently than the super market can."

Mr. Frankl said that one-third of I.B.P.'s production was in box beef. He predicted that it would increase to one-half of his company's production by the fall of 1972. This won't be an easy goal to reach. The food editors learned that union regulations in several major markets prevent the shipment of box beef.

"Box beef may be the coming thing," offered Jeanne Voltz, "but right now the sirloins and T-bones that most housewives want come from the carcass beef that still accounts for two-thirds of your shipments. What are packers like I.B.P. doing to make these prices so high?"

August Ring, another Vice President of I.B.P. answered. "Right now we are buying



cattle from feedlots at 34¢ per pound. An average steer weighs 1056 pounds. That means this week we pay the feedlot an average of $359.04 per head. To that we must add $16.00 for slaughtering costs. This brings the cost per head to $375.04. Now let's see how much profit we can make on that animal.

"That steer will provide us with two hind quarters and two fore quarters," continued Mr. Ring. "On the average, each dressed hind quarter will weigh 156.4 pounds, and each dressed fore quarter will weigh 166.0 pounds. This week, choice hind quarters are selling for 63.88 cents per pound and choice fore quarters are selling for 44.97 cents per pound. Some simple multiplication will show you the sale of those four quarters will only produce income of $349.12 against our $375.04 cost in that animal.

"Now, you tell me," Augie Ring said, "who is getting robbed?"

The editors were too busy checking Mr. Ring's figures to answer him. Ann Worley was the first to discover that something was missing. "You gave us the average weights of the four quarters," Ann remarked. "That adds up to 644.8 pounds. But you bought a 1056 pound steer. What happened to the other 411.2 pounds?"

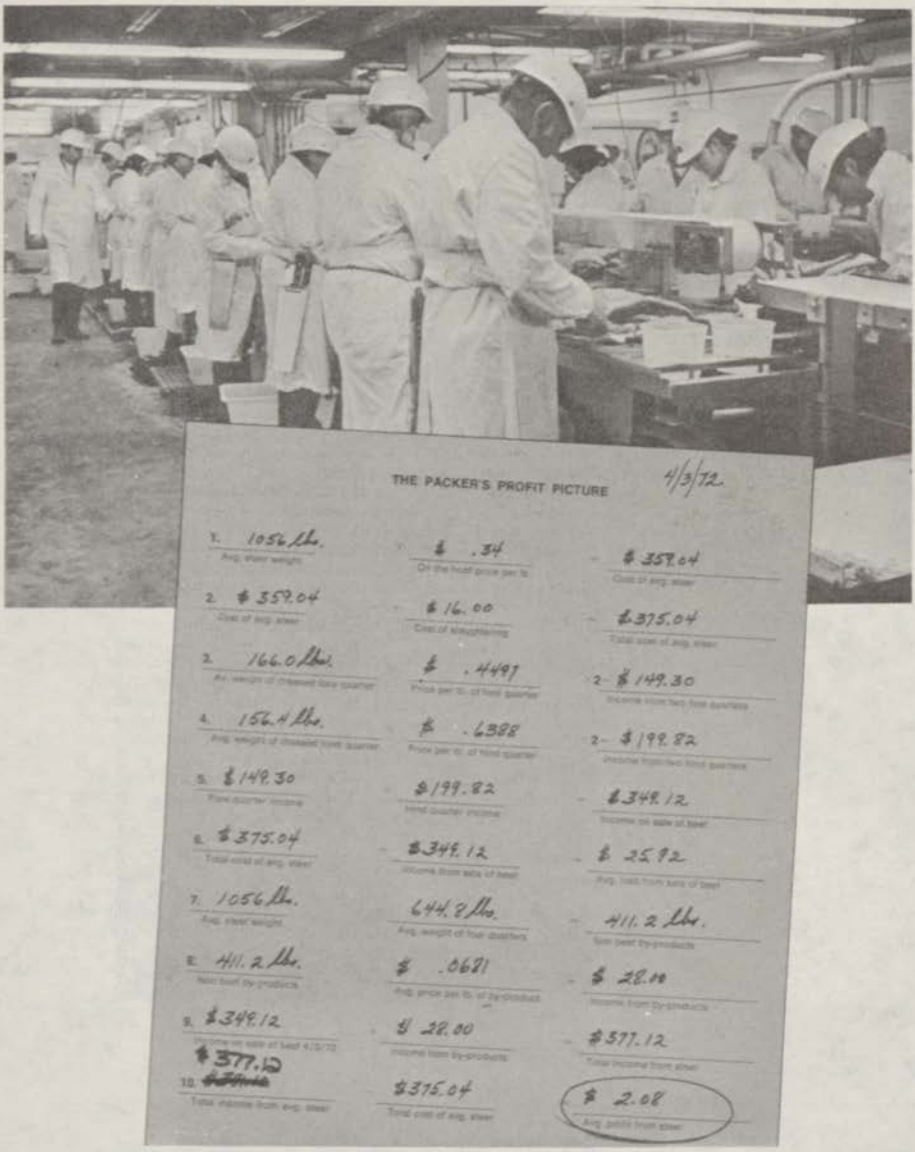
Augie Ring smiled. "I thought you would never ask. That 411.2 pounds is hide, fat, bones and blood. We paid 34¢ a pound for it too, but we can't sell it to retailers. Instead, we sell it for about 6½¢ per pound to companies like tanners, fertilizer plants and pharmaceutical houses."

By the editors' calculations the sale of by-products generated about $28.00 of additional income per steer. Added to the $349.12 from the sale of the four quarters, the packer received $377.12 against a cost per steer of $375.04. In reality, the packer was able to make about $2.08 profit per steer.

The editors now saw an interesting parallel between ranching and meat packing: the rancher sells his beef at cost, and sometimes at a loss, but is able to make money on his land value appreciation; the packer loses money on the sale of beef but is able to offset this loss by selling by-products profitably. In both cases, the housewife is the benefactor. In a sense, the beef she buys is subsidized, thus keeping her cost from being even higher.

The packer's story was now complete. And still, no culprit was in sight. So off the editors flew to Chicago where they examined a typical super market operation. The American super market: the last to get the beef, but the first to get the criticism.





THE PACKER'S PROFIT PICTURE 4/3/72

1. 1056 lbs. Avg. steer weight	$ .34 On the hoof price per lb.	$ 359.04 Cost of avg. steer
2. $ 359.04 Cost of avg. steer	$ 16.00 Cost of slaughtering	$ 375.04 Total cost of avg. steer
3. 166.0 lbs. Av. weight of dressed fore quarter	$ .4497 Price per lb. of fore quarter	2 $ 149.30 Income from two fore quarters
4. 156.4 lbs. Avg. weight of dressed hind quarter	$ .6388 Price per lb. of hind quarter	2 $ 199.82 Income from two hind quarters
5. $ 149.30 Fore quarter income	$ 199.82 Hind quarter income	$ 349.12 Income on sale of beef
6. $ 375.04 Total cost of avg. steer	$ 349.12 Income from sale of beef	$ 25.92 Avg. loss from sale of beef
7. 1056 lbs. Avg. steer weight	644.8 lbs. Avg. weight of four quarters	411.2 lbs. Non beef by-products
8. 411.2 lbs. Non beef by-products	$ .0621 Avg. price per lb. of by-product	$ 28.00 Income from by-products
9. $ 349.12 Income on sale of beef 4/3/72	$ 28.00 Income from by-products	$ 377.12 Total income from steer
10. $ 377.12 Total income from avg. steer	$ 375.04 Total cost of avg. steer	$ 2.08 Avg. profit from steer



The journey to discover the issues behind the high cost of beef began in Colorado, moved to Iowa, and ended for our three food editors in Illinois.

The food editors watched Dick Bevier, Vice President in charge of meat operations for a chain of food stores in Chicago, and a meat inspector employed by that chain, select beef in a meat distribution plant.

Mr. Bevier was selecting hind quarters for a coming steak sale at his chain. He purchased 10,000 hind quarters which were selling for 64¢ per pound.

A sample hind quarter, which weighed 120½ pounds, was chosen by the food editors for use as a case study. The food editors watched and timed the butchers as it was cut and wrapped for sale.

They found that it took 93 minutes of labor to cut one hind quarter and wrap it for sale. This specific hind quarter was particularly lean and yielded 56 packages of salable beef.

What became apparent to the food editors . . . and what most housewives don't realize . . . is that the super market paid 64¢ a pound for almost 38 pounds of useless bones and scrap. When the editors subtracted this 38 pounds, they discovered that the super market actually paid $1.05 per pound for the beef they sell to housewives.

And even more important, the editors discovered that the super market doesn't even make a profit on beef!

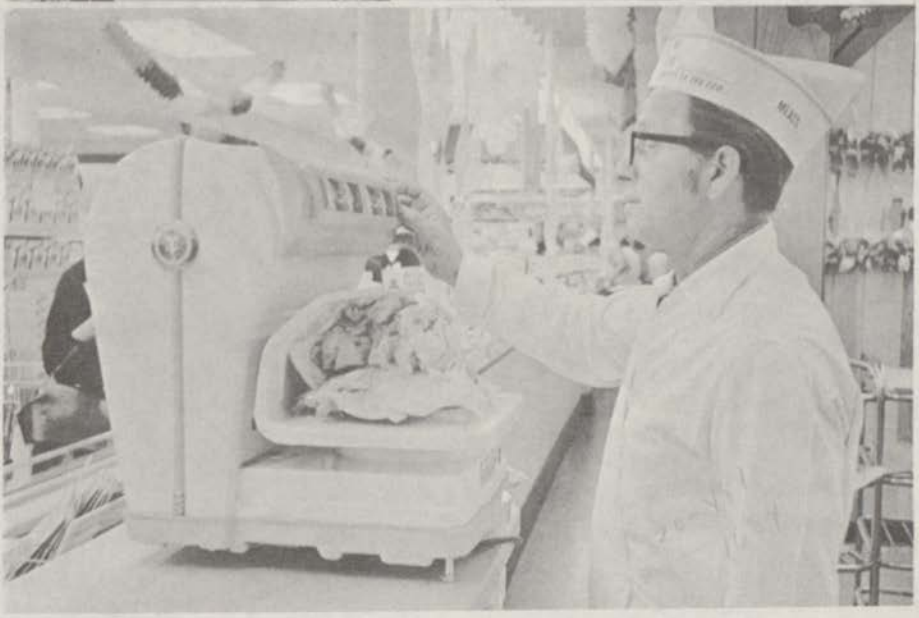
During the week of the steak sale the super market sold the various cuts of round steak, flank steak, etc. for an average of $1.09 per pound, versus their $1.05 per pound cost. This isn't enough of a spread to cover expenses like electricity, rent, insurance, administrative salaries and employee benefits. So the chain actually sold the beef for less than it cost them to buy and prepare it.

"We know we lose money on a steak




KEEP DOOR
CLOSED





What the super market paid for hind quarter

Item	Unit Cost		Total Cost
Hind Quarter	120.50 lbs. @ 64¢ per lb	=	$77.12
Labor	93 minutes @ 09¢ per minute	=	8.37
Packing Materials	56 packages @ 1 3/4¢ per package	=	.98
	Direct Cost of Preparing Hind Quarter for Sale	=	$86.47

What the super market cut away

Item	Unit Cost	Total Cost
Suet	8.50 lbs @ 64¢ per pound	$ 5.44
Fat	16.88 lbs @ 64¢ per pound	10.80
Bones	11.31 lbs @ 64¢ per pound	7.24
Other Cutting Loss	1.18 lbs @ 64¢ per pound	.76
	37.87 lbs @ 64¢ per pound	$24.24

What the saleable beef really cost the super market

Original Weight of Hind Quarter		=	120.50 lbs
What the Super Market Cut Away		=	37.87 lbs
Actual Beef left for Sale		=	82.63 lbs
Super Market Actual Cost of Saleable Beef	$86.47 ÷ 82.63 lbs.	=	$1.05 per pound

What the housewife paid for the hind quarter

Item	Weight	Sale Price	Store Income
Round Steak	7.29 lbs	$ .98	$ 7.14
Swiss Steak	2.77 lbs	.98	2.71
Sirloin Steak	10.58 lbs	1.19	12.59
Pinbone Steak	2.45 lbs	1.19	2.92
Porterhouse Steak	5.69 lbs	1.39	7.91
T Bone Steak	4.41 lbs	1.39	6.13
Club Steak	2.36 lbs	1.39	3.28
Cubed Sirloin Tip	3.36 lbs	1.39	4.67
Sirloin Tip Roast	4.67 lbs	1.29	6.02
Flank Steak	1.31 lbs	1.69	2.21
Boneless Rump	8.15 lbs	1.09	8.88
Heel of Round	6.64 lbs	.98	6.51
Boneless Stew	8.87 lbs	.98	8.69
Kidney	.73 lbs	.39	.28
Ground Beef	13.35 lbs	.75	10.01
Totals	82.63 lbs	$1.09 (avg.)	$89.95

What the super market lost during the sale

Super market income	=	$ 89.95
Direct cost of preparing beef	=	86.47
Difference	=	3.48
Less 3% for spoilage, pilferage and other losses	=	-2.70
Less 5% for meat department contribution to normal expenses like rent, insurance, taxes and employee benefits ($ 89.95 x .05)	=	-4.50
Loss during sales week	=	-3.72



sale," Bevier told the food editors. "But we need these specials to keep our customers coming to our stores."

The food editors' computations proved the store lost about $3.72 on each hind quarter they sold that week.

They also did some additional figuring. They wanted to know how the store profited when hind quarters weren't on sale. Their figures showed that the store made approximately $10.28 profit on each hind quarter in a non-sale week.

Was a $10.28 profit too much?

Bevier answered this way: "We have one steak sale per month. During that sale week we sell over twice as much beef as we sell in the entire balance of the month. We are lucky if our regular prices allow us to recover the losses we sustain during a sale week. Beef just isn't an item that we can ever expect to make much profit on. It's too popular, too much in demand, and too sensitive to price promotion," Bevier stated.

Elaine Tait of the *Philadelphia Inquirer* agreed with Bevier's point of view. "Economic specialists I have checked with agree that major food chains sell beef at almost *no* profit to themselves," she wrote. "Profits on other products sold keep the stores alive. But even there the super market makes less than one penny in profit out of every housewife's food dollar."

CONCLUSION

The fact finding tour just described took place April 4-6, 1972. All of the prices and costs the editors uncovered reflect what was actually happening that first week in April . . . when criticism of the beef industry, and particularly the super market, was at a peak.

The editors saw the price of beef go from 34¢ per pound on the hoof to a high of $1.69 per pound for flank steak in a Chicago super market. But nobody was getting rich. There was no mysterious middleman who could be labeled the culprit.

Perhaps Ann Worley of the *Dallas Times Herald* said it best. "There is agreement on one point all along the line from rancher to super market; the consumer is lucky to be getting beef at the current price. That's hard for many shoppers to swallow but it's incredible that beef isn't three times the price.

"We can say from personal experience and some hard looks at figures that left our non-computer type brains swimming," Ann concluded, "it's hard to find anyone who is getting rich off the operation of bringing beef to market."

The price of beef remains a difficult, complex issue. Perhaps boxed beef is the wave of the future. Perhaps automation and computers will continue to increase efficiency and keep beef prices from rising still further.

One thing is sure. The super market industry must continue to present a complete, honest story about beef prices and other important issues to the consumer. That is essential. And that's what this fact-finding tour was all about.



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APPENDIX 8

NATIONAL CANNERS ASSOCIATION,
Washington, D.C., July 31, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN RODINO: The National Canners Association is a nonprofit trade association of about 500 members with canning operations in 44 states and the territories. Members of the Association pack approximately 85% of the entire national production of canned fruits, vegetables, juices, specialties, meat and fish.

The food canning industry is a highly competitive industry. Mr. Alan Greenspan, President of Townsend-Greenspan and Co., an independent economic consulting firm, in his summary of a study of the food canning industry in 1971 stated:

"Food canning in the United States is a highly competitive industry dominated by relatively small firms. Profit margins on sales are thin and highly volatile, both for individual companies through time and among companies for any period. The strong competitive pressures confronting the industry have spurred a rapid increase in efficiency, especially in recent years, and hence acted as a restraint on the general inflationary forces which have been impinging upon the food processing industry." (Full text of report is "Attachment One" to this letter.)

The competitive nature of the canning industry is also reflected in the wholesale price index for canned vegetables and fruits as reported by the Bureau of Labor Statistics.

WHOLESALE PRICE INDEX FOR CANNED FRUITS AND VEGETABLES, 1959-72

[1967=100]

Year	Canned vegetables and juices	Canned fruits and juices
1959	79.0	100.9
1960	82.0	94.8
1961	85.6	96.2
1962	83.3	92.6
1963	80.3	99.9
1964	80.5	103.3
1965	86.2	98.0
1966	92.2	98.1
1967	100.0	100.0
1968	101.3	110.9
1969	100.4	109.2
1970	105.0	113.1
1971	107.8	118.6

The Association on behalf of the industry developed an agricultural policy statement in 1968 to reflect the position the industry consistently has taken on agricultural control legislation for the past 40 years. The statement is marked as "Attachment Two" to this letter.

We are not aware of any anticompetitive practices engaged in by canners. The industry, however, is under constant threat to become involved in marketing programs through state or federal regulations that would control the marketing conditions and supply of raw agricultural products and their terms of purchase. Should the provision of the Agricultural Marketing Agreement Act of 1937 be brought to bear on the entire fruit and vegetable canning industry, the extent of such possible control of the industry is described in the outlines of "How a Marketing Order Can Affect the Grower" and "What a Marketing Order on a

Canning Crop Can Do." These are "Attachment Three" and "Attachment Four" to this letter.

Legislation currently pending in Congress (H.R. 3723) also has serious anti-competitive implications. Our concern with regard to this type of legislation that would remove the right of a buyer to choose his suppliers is discussed in testimony presented to the Senate Committee on Agriculture, November 16, 1971, and the House Committee on Agriculture on August 16, 1972. This testimony is identified as "Attachment Five" and "Attachment Six."

We know of no market structures in the industry that could be considered anticompetitive. Farmers and growers have the ability to freely choose between many alternative uses of their land and resources, with the possible exception of cranberry growers and cling peach producers whose marketings are subject to federal and state controls respectively.

Likewise it is our observation that there is complete freedom in the distribution of the canned products of the industry. Price and other terms and conditions of sale voluntarily agreed upon by buyer and seller, subject to the limitations of the laws administered by the Federal Trade Commission and the Department of Justice, continue to adequately assure the general public as well as the industry against anticompetitive practices.

Finally, in response to your inquiry regarding enforcement of the antitrust laws, we have no reason to doubt that the Federal Trade Commission and the Department of Justice are properly and energetically maintaining surveillance of the food industry and taking appropriate action when warranted.

This letter and the attachments are respectfully submitted for the record in response to your letter of June 22, 1973.

Sincerely,

CHARLES J. CAREY,
President.

ATTACHMENT 1

TOWNSEND-GREENSPAN AND CO., INC.,
New York, N.Y., October 14, 1971.

NATIONAL CANNERS ASSOCIATION,
Washington, D.C.

GENTLEMEN: As requested we have reviewed and analysed the financial and operating structure of the food canning industry. The results are enclosed, including our suggestions as to how the food canning industry should be handled under Phase II.

Sincerely yours,

ALAN GREENSPAN,
President.

FOOD CANNING IN PHASE II—OCTOBER 14, 1971

SUMMARY AND CONCLUSIONS

Food canning in the United States is a highly competitive industry dominated by relatively small firms. Profit margins on sales are thin and highly volatile, both for individual companies through time and among companies for any period. The strong competitive pressures confronting the industry have spurred a rapid increase in efficiency, especially in recent years, and hence acted as a restraint on the general inflationary forces which have been impinging upon the food processing industry.

We conclude that Phase II of the President's anti-inflationary program would be best served by allowing this industry a maximum of flexibility in adjusting to competitive pressures. Because of the sensitivity of the price/cost adjustment process, cumbersome controls, by undermining the profitability and efficiency of food canning could, in the longer-term context, act to foster inflationary pressures rather than to suppress them.

Consequently, we recommend that this industry be considered a direct adjunct to the agricultural economy and hence exempt from controls; or if administratively necessary, be subject to only minimal surveillance. In the latter instance, guidelines should be so promulgated as to ensure, at minimum, immediate price adjustment for raw product, direct labor, container and other variable cost changes. Moreover, any set of guidelines should recognize that current levels of profitability are inadequate over the longer-run to sustain the flow of capital into this industry.

It is difficult to envisage any set of controls on canners' prices which could yield a less inflationary price pattern during Phase II than that which would be engendered by the competitive forces inherent in the nature of the canning industry.

Owing to the low and volatile margins, unless canners have sufficient latitude to adjust prices, both up and down, many companies can be quickly driven into extreme financial straits and a number into bankruptcy. (The industry is already having mounting difficulties with the rigidities of the Phase I freeze.)

The problem is that the price controls must be asymmetrical. They can seek to restrain price increases and increased profit margins but they cannot act simultaneously to prevent canners' prices and margins from falling as a result of competitive conditions. Since canning profits are characterized by large fluctuations, truncating the periods of high profitability without compensating for the periods of loss would gradually undermine the industry.

Profit instability is particularly pronounced in the major segment of this industry, that is, the canning of seasonal fruits and vegetables. Because canners generally contract in advance for a fruit or vegetable crop, the full adjustment to a supply/demand balance for any particular canned fruit or vegetable may take a year or more. For example, if the canner contracts at a relatively high price for a crop which comes in unexpectedly large, the canner would have to cut his price in order to dispose of his output (even assuming that he temporarily absorbs a large inventory of canned goods). The sharp reduction in profit margins would induce a lower grower price for the next crop as the canner attempts to re-establish his margins. Conversely, an unexpectedly small crop and, hence higher canner margins, would usually engender a larger planned increase for the next crop and a slippage in canners' prices and margins.

As a consequence, markups on raw product costs change dramatically from crop year to crop year. Hence, profits gleaned from the canning of any individual crop are unstable and losses frequent. An analysis of the volatility of the proportion of canners' price which represents cost of raw products, shows an average absolute annual change by product which is large relative to the average *level* of pretax margins.

We estimate, for example, that pretax margins on sales for canned fruits and vegetables averaged 3.1% during the period 1963–1970 (see Table 1). For the same period, the average absolute annual change in the percentage of raw product to total cost for selected key products was as follows: (See Tables 2 to 6.)

	Percent
Canned fruit cocktail	2.5
Canned peaches	1.7
Canned tomatoes	2.7
Canned peas	1.4
Canned corn	1.0

Multiproduct plants and companies, of course, can smooth out fluctuations in product profitability. The average absolute fluctuation in the raw product/sales percentage for the canning of all fruits and vegetables combined (i.e., 0.6% for 1963–1970) is significantly lower than for any of the individual products. Clearly, the value of product diversification is high in that it reduces the risks involved in this volatile industry.

However, few companies are capable of approximating the degree of diversification implied by the consolidating of all firms. Accordingly, sharp variations in individual company profit performances are to be expected. Of sixty-four firms canning seasonal fruits and vegetables covered by a study[1] of the pack years 1960–1964, only twenty-four exhibited a profit for every year, seventeen showed a loss in one year, seven in two years, twelve in three years and four a loss in four of the five years. Over the five year period, ten of the sixty-four firms reported a net loss. Moveover, for each of the years the dispersion of the individual company's after-tax profit margins was very large relative to the mean of the individual company's margins. (See Table 7) We obtained similar results

[1] Touche, Ross & Co., "Canning Industry, Earnings, Costs, and Financial Ratios," 1965.

from a year-to-year examination of profit margins grouped by asset size for the broader industry group, canned and frozen foods (SIC 203).[2]

Despite the highly unstable year-to-year profit performance and the typically very thin margins, companies in this industry, nonetheless, have until recently achieved a rate of return on equity capital which approached the average for all industry. Table 8 shows a comparison of the rate of return on equity for several recent periods. For the period 1965 through 1967, the canned and frozen food industry group (SIC 203) showed a 9.2% rate of return on stockholders' equity. This was the same as that for the total food and kindred products industry but somewhat less than that for total manufacturing. The return on food canning, however, was probably somewhat lower than indicated. Data compiled by Touche, Ross & Co. imply that the secondary activities of companies primarily engaged in canning food produced a higher rate of return than canning. For the 1964 pack year, for example, the return on equity capital was 6.7% for the firms in their sample from the canning of seasonal fruits and vegetables. The return of total company activities in the industry was 7.7%.

However, in such an unstable business as food canning, the rate of return should be above average to compensate for risk. In fact, a decade ago the realized rate of return from canning was apparently above average, at least in comparison with other manufacturing corporations (see Table 7). In recent years it has clearly slipped and this may be the explanation as to why the reduction in the number of establishments in this industry has apparently accelerated.[3] In appears that only the most profitable operations are able to grow and prosper, with the less efficient (generally, but no exclusively, smaller firms) being forced out of business. The pressure to maintain profitability has undoubtedly been a major factor in the above average growth in output per man-hour, i.e., nearly 4% per year (see Table 9). Such gains have been especially important in view of the sharp increases in labor costs (see Table 10). Nonetheless, there is obviously a limit beyond which not even the most efficient firms can remain viable in conditions of subnormal risk-adjusted return to capital. Poorly formulated and administered controls in Phase II could do incalculable damage to this major segment of our food processing industry.

The elements cited above suggest many of the characteristics of textbook competitive behavior which should not be surprising considering the structure of the industry.

In 1967, for example, only 22% of the value of shipments of the canned fruits and vegetables industry was accounted for by the four largest companies. The twenty largest accounted for only 52% of shipments. Most companies in this industry have only one plant. The 1,223 establishments operating in 1967 were spread among 930 companies. Only two plants reported more than 1,000 employees and only 732 reported 20 or more employees. Few companies in the food industry, not to mention other segments of manufacturing, have so low a degree of concentration. (Despite the reduction in the number of plants, the degree of concentration declined between 1963 and 1967.)

Hence, the structure of the food canning industry is consistent with a high degree of competition which is confirmed by the experience of the industry. Moreover, there are no developing trends to suggest any change in the degree of competition in the foreseeable future; thus, food canning must appropriately be viewed as an adjunct to the agricultural economy and should, therefore, be granted coverage under the agricultural exemptions of Phase II.

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[2] The data were obtained from the *Source Book of Statistics of Income* of the Internal Revenue Service.

[3] There were a reported 1,718 canning establishments (SIC 2031, 2, 3) in the 1967 Census of Manufactures. This compared with 2,008 in 1963 and 2,148 in 1958.

TABLE I.—INCOME STATEMENT, CANNED FRUITS AND VEGETABLES (SIC 2033)

[Dollar amounts in millions]

	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
Sales	$2,333.9	$2,335.5	$2,515.9	$2,626.1	$2,626.5	$2,742.8	$2,966.3	$2,982.0	$3,215.8	$3,467.8	$3,654.1	$3,670.1	$3,700.0
Labor cost	372.6	390.5	397.6	414.5	431.1	427.4	453.3	457.9	492.5	536.4	582.9	594.6	613.4
Wages	269.9	282.1	282.6	290.5	304.8	303.5	320.3	317.8	341.1	376.0	409.5	419.5	424.5
Salaries	70.4	72.8	77.1	83.2	81.2	78.6	84.1	89.3	92.8	97.8	106.5	104.9	114.6
Supplementary labor costs	32.3	35.6	37.9	40.8	45.2	45.3	48.8	50.8	58.5	62.6	66.9	70.2	74.3
Materials and other costs	1,810.1	1,791.4	1,941.1	2,055.7	2,124.8	2,151.3	2,376.1	2,343.7	2,527.4	2,725.7	2,881.9	2,943.4	2,916.4
Fresh fruits and vegetables	492.9					633.1	690.9	702.9	769.5	812.7	876.6	810.7	793.2
Other food ingredients	104.7					155.6				170.5			
Containers	500.7					562.5	595.6	571.4	614.5	627.5	708.5	720.8	728.2
Other materials, supplies, etc.	385.7					361.1				443.8			
All other costs	326.1					438.0				671.2			
Depreciation	41.5	41.5	46.3	50.5	51.9	59.9	57.1	63.7	62.0	72.0	77.1	80.7	81.4
Profits before tax	109.7	112.1	130.9	105.4	18.7	104.2	79.8	116.7	133.9	133.7	112.2	51.4	88.8
Percent of sales:													
Total labor cost	16.0	16.7	15.8	15.8	16.4	15.6	15.3	15.4	15.3	15.5	16.0	16.2	16.6
Wages	11.6	12.1	11.5	11.1	11.6	11.1	10.8	10.7	10.6	10.8	11.2	11.4	11.5
Fresh fruit and vegetable costs	21.1					23.1	23.3	23.6	23.9	23.4	24.0	22.1	21.4
Other food ingredient costs	4.5					5.7				4.9			
Container costs	21.5					20.5	20.1	19.2	19.1	18.1	19.4	19.6	19.7
Profits before tax	4.7	4.8	5.2	4.0	.7	3.8	2.7	3.9	4.2	3.9	3.1	1.4	2.4

Source: Sales—1958-69 from Census of Manufactures. 1970 estimated on basis of detailed price and volume data on packs of individual fruits and vegatables. Labor cost—Payroll, 1958-69 from Census of Manufactures. 1970 estimate from Bureau of Labor Statistics data. Fringe benefits, levels for 1957, 1967, and 1968, from 1958 Census of Manufactures and Annual Survey of Manufactures 1968. Other years estimated from data for SIC 20 in National Income Accounts. Cost of Materials—Costs of fruits, vegetables and containers, Census of Manufactures for 1958, 1963, and 1967. Other years interpolated on basis of data in tables 2 to 6. Other food ingredients, Census of Manufactures. Other materials, supplies, Census of Manufactures. Depreciation—Based on data for SIC 203 from Internal Revenue Service, Corporation Source Books of Statistics of Income. Profits—Profit margins derived from Touche Ross data for (1) a sample of California canners 1960-68, and Northwest, East, and Midwest canners for 1960-64, and (2) a smaller sample of total company pretax margins for 1960-70. Regional data were reweighted according to national totals from the Census of Manufactures and margin trends calculated using census profit margin proxies (ratio of value added less payroll to total sales). Estimates for 1958 and 1959 were obtained by linking to data for SIC 203 from IRS Source Books. All other costs—Derived as residual.

TABLE 2.—CANNED FRUIT COCKTAIL[1]

[Cost per case in dollars]

Pack year	Total cost to pack and sell	Standby and programed expenses	Variable cost				Ratio: Raw products to total cost	Change in ratio from preceding year
			Total	Raw product	Container	Other		
1960	6.34							
1961	6.74							
1962	6.47							
1963	6.81	1.02	5.79	2.92	1.04	1.83	0.4288	
1964	6.42	.93	5.49	2.68	1.04	1.77	.4174	−0.0114
1965	7.02	1.11	5.91	3.08	1.04	1.79	.4387	+.0213
1966	6.63	1.04	5.59	2.74	1.07	1.78	.4133	−.0254
1967	8.15	1.33	6.82	3.72	1.14	1.96	.4564	+.0431
1968	7.43	1.19	6.24	3.15	1.17	1.92	.4240	−.0324
1969	7.49	1.49	6.00	2.93	1.21	1.86	.3912	−.0328
1970	8.24	1.64	6.60	3.32	1.21	2.07	.4029	+.0117
Average of absolute changes								.02544

[1] Weighted average of 15 plants (located in California) for 24/2½ choice. Exclusive of freight (f.o.b. plant basis) and advertising and promotion expense on featured brands.

Source: Touche Ross & Co.

TABLE 3.—CANNED PEACHES[1]

[Cost per case in dollars]

Pack year	Total cost to pack and sell	Standby and programed expenses	Variable cost				Ratio: Raw product to total cost	Change in ratio from preceding year
			Total	Raw product	Container	Other		
1960	4.92							
1961	5.16							
1962	5.07							
1963	5.04	0.77	4.27	1.17	1.04	2.06	0.2321	
1964	5.01	.75	4.26	1.20	1.05	2.01	.2395	+0.0074
1965	5.42	.88	4.54	1.36	1.04	2.14	.2509	+.0114
1966	5.39	.87	4.52	1.60	1.07	1.85	.2968	+.0459
1967	6.18	1.05	5.13	1.94	1.14	2.05	.3139	+.0171
1968	5.92	.98	4.94	1.77	1.17	2.00	.2990	−.0149
1969	6.18	1.21	4.97	1.74	1.21	2.02	.2816	−.0174
1970	6.57	1.36	5.21	1.86	1.21	2.14	.2831	+.0015
Average of absolute changes								.01651

[1] Weighted average of 25 plants (located in California) for 24/2½ choice halves yellow cling. Exclusive of freight (f.o.b. basis) and advertising and promotion expense on featured brands.

Source: Touche Ross & Co.

TABLE 4.—CANNED TOMATOES[1]

[Cost per case in dollars]

Pack year	Total cost to pack and sell	Standby and programed expenses	Variable cost				Ratio: Raw product to total cost	Change in ratio from preceding year
			Total	Raw product	Container	Other		
1960	3.76							
1961	3.88							
1962	3.88							
1963	3.74	.62	3.12	.66	1.04	1.42	0.1765	
1964	3.89	.63	3.26	.66	1.05	1.55	.1697	−0.0068
1965	4.43	.77	3.66	.97	1.10	1.59	.2190	+.0493
1966	4.48	.78	3.70	1.00	1.13	1.57	.2232	+.0042
1967	4.86	.89	3.97	1.27	1.14	1.56	.2613	+.0381
1968	4.63	.82	3.81	1.29	1.17	1.35	.2786	+.0173
1969	4.59	.95	3.64	1.01	1.27	1.36	.2200	−.0586
1970	4.62	1.01	3.61	.95	1.28	1.38	.2056	−.0144
Average of absolute changes								.02696

[1] Weighted average of 28 plants (located in California) for 24/2½ standard peeled with added juice. Exclusive of freight (f.o.b. plant basis) and advertising and promotion expense on featured brands.

Source: Touche Ross & Co.

TABLE 5.—CANNED PEAS [1]

[Cost per case in dollars]

Pack year	Total cost to pack and sell	Standby and programed expenses	Variable cost				Ratio: Raw product to total cost	Change in ratio from preceding year
			Total	Raw product	Container	Other		
1962	2.99							
1963	3.00	0.85	2.15	0.72	0.79	0.64	0.2400	
1964	2.99	.88	2.11	.72	.78	.61	.2408	+0.0008
1965	2.96	.89	2.09	.68	.79	.62	.2297	−.0111
1966	3.29	1.05	2.24	.76	.82	.66	.2310	+.0013
1967	3.34	1.19	2.15	.60	.83	.72	.1797	−.0514
1968	3.48	1.21	2.27	.64	.87	.76	.1839	+.0043
1969	3.71	1.41	2.30	.62	.91	.77	.1671	−.0168
1970	3.55	1.32	2.23	.56	.94	.73	.1577	−.0094
Average of absolute changes								.01359

[1] Weighted average of 21 plants (located in Midwest) for 24/303 Fancy Sweet; exclusive of freight (f.o.b. plant basis) and advertising and promotion expense on featured brands.

Source: Touche Ross & Co.

TABLE 6.—CANNED CORN [1]

[Cost per case in dollars]

Pack year	Total cost to pack and sell	Standby and programed expenses	Variable cost				Ratio: Raw product to total cost	Change in ratio from preceding year
			Total	Raw product	Container	Other		
1962	2.69							
1963	2.65	0.60	2.05	0.54	0.79	0.72	0.2038	
1964	2.67	.65	2.02	.54	.78	.70	.2022	−0.0016
1965	2.76	.69	2.07	.56	.79	.72	.2029	+.0007
1966	2.85	.72	2.13	.56	.81	.76	.1965	−.0064
1967	3.14	.84	2.30	.60	.83	.87	.1911	−.0054
1968	3.18	.79	2.39	.66	.86	.87	.2075	+.0164
1969	3.25	.93	2.32	.54	.90	.88	.1662	−.0413
1970	3.36	.95	2.41	.56	.95	.90	.1667	+.0005
Average of absolute changes above								.01033

[1] Weighted average of 17 plants (located in Midwest) for 24/303 Fancy Whole Kernel Golden; exclusive of freight (f.o.b. plant basis) and advertising and promotion expense on featured brands.

Source: Touche Ross & Co.

TABLE 7.—CANNED FRUITS AND VEGETABLES, COMPOSITE STATEMENT

[1960-64 pack years]

	1960	1961	1962	1963	1964	5-year average
Net profit as percent of sales	2.4	1.7	0.1	0.8	0.2	1.4
Arithmetical mean (percent)	1.9	1.7	0	1.6	1.6	1.4
Standard deviation (percent)	2.3	2.6	2.6	2.2	1.9	1.7
Number of firms with profit	54	49	32	51	54	54
Number of firms with loss	10	15	32	13	10	10

Note: Composite earnings are limited to canning operations on seasonal fruits and vegetables in 2 regions (California Northwest and Midwest and Midwest/East).

Source: Touche Ross & Co.

TABLE 8.—NET INCOME AS A PERCENT OF EQUITY

	All corporations	Total manufacturing	Food and kindred products	Canned and frozen foods	Canning industry selected group [1]
	(1)	(2)	(3)	(4)	(5)
Annual averages:					
1959–61	5.9	6.8	7.3	8.0	([2])
1962–64	6.4	7.9	7.9	6.4	[3] 8.1
1965–67	8.1	10.1	9.2	9.2	9.9
1968–70	([2])	([2])	([2])	([2])	4.6

[1] Total company, including other seasonal and nonseasonal food products and cartain foreign and other operations.
[2] Not available.
[3] Average of 1963 and 1964.

Source: Cols. 1 through 4—Internal Revenue Service, "Corporation Income Tax Returns." Col. 5—Touche Ross & Co. study of 9 major fruit and vegetable canners.

TABLE 9.—MEASURES OF OUTPUT PER MAN-HOUR

[Indexes 1967=100]

	SIC 203—Canned, cured, and frozen foods			SIC 2033—canned fruits and vegetables	Manufacturing sector	Private nonfarm sector
	(1)	(2)	(3)	(4)	(5)	(6)
1958	76.2	71.4	69.9	58.7	74.4	76.7
1959	79.3	73.2	71.8	64.4	78.5	79.3
1960	84.1	80.9	77.2	75.7	79.9	80.3
1961	89.7	83.4	80.4	77.1	81.8	82.7
1962	90.7	85.0	85.3	82.5	86.6	86.4
1963	90.9	86.5	85.5	89.2	90.1	89.1
1964	95.9	91.3	89.6	96.9	94.5	92.4
1965	101.0	94.4	93.7	99.2	98.3	95.1
1966	99.4	96.3	98.8	99.8	99.9	98.4
1967	100.0	100.0	100.0	100.0	100.0	100.0
1968	104.6	103.4	104.3	101.7	104.8	102.9
1969		105.9	108.5	114.5	106.2	102.9
1970		112.6	115.5	112.6	107.8	103.5
Annual growth rates (percent):						
1960–65	3.7	3.1	3.9	5.6	4.2	3.4
1965–70	([1])	3.6	4.3	2.6	1.9	1.7
1960–70	([1])	3.4	4.1	4.1	3.0	2.6

[1] Not available.

Sources: Col. 1—Bureau of Labor Statistics Bulletin 1692, "Indexes of Output Per Man-Hour, Selected Industries, 1939 and 1947–70," p. 26; col. 2—Federal Reserve Board's production index divided by man-hours estimated from BLS data; col. 3—Federal Reserve Board's production index divided by man-hours estimated from census of manufactures data; col. 4—double deflated value added per man-hour. Value of shipments and cost of materials deflated using price indexes supplied by National Canners Association. Man-hours from census of manufactures; cols. 5 and 6—Bureau of Labor Statistics, "Productivity, Wages, and Prices." Output (gross product originating) from Office of Business Economics of Department of Commerce; man-hours data from BLS.

TABLE 10.—MEASURES OF HOURLY COMPENSATION

	Average hourly compensation all employees			Average hourly earnings production workers		
	SIC 2033 canned fruits and vegetables	Manufacturing sector	Private nonfarm sector	SIC 2032, 3 canned foods, excluding seafoods	Manufacturing sector	Private nonfarm sector
	(1)	(2)	(3)	(4)	(5)	(6)
1958	$1.80	$2.62	$2.26	$1.68	$2.11	$1.95
1959	1.88	2.73	2.36	1.74	2.19	2.02
1960	1.95	2.84	2.43	1.83	2.26	2.09
1961	2.01	2.93	2.51	1.88	2.32	2.14
1962	2.09	3.05	2.61	1.95	2.39	2.22
1063	2.21	3.15	2.71	2.01	2.46	2.28
1964	2.33	3.30	2.83	2.04	2.53	2.36
1965	2.38	3.38	2.94	2.08	2.61	2.45
1966	2.54	3.54	3.12	2.18	2.72	2.56
1967	2.72	3.71	3.30	2.31	2.83	2.68
1968	2.95	3.98	3.54	2.47	3.01	2.85
1969	3.07	4.23	3.76	2.62	3.19	3.04
1970	3.31	4.50	4.00	2.79	3.36	3.22
Annual growth rates (percent):						
1960–65	4.1	3.5	3.9	2.6	2.9	3.2
1965–70	6.8	5.9	6.4	6.0	5.2	5.6
1960–70	5.5	4.7	5.1	4.3	4.0	4.4

Sources: Col. 1—Census of manufactures. Cols. 2 and 3—Compensation from Office of Business Economics (Department of Commerce), man-hours from Bureau of Labor Statistics. Cols 4, 5, and 6—Bureau of Labor Statistics.

ATTACHMENT 2

NATIONAL CANNERS ASSOCIATION POLICY REGARDING AGRICULTURAL LEGISLATION AND CONTROLS—MAY 21, 1968

The National Canners Association believes that experience has repeatedly demonstrated that the complex problems of planning the production and marketing of processed foods are best resolved in the American tradition of free enterprise, competitive incentive, and individual, imaginative business management. These beliefs provide the basis for the Association's policy regarding agricultural legislation and controls.

I. GOVERNMENT INVOLVEMENT IN BARGAINING AND MARKETING ACTIVITIES

1. Since we support the right of growers and processors to make individual determinations concerning how they will best sell (growers) or best procure (processors) their raw products, we are opposed to Federal or State government intervention in raw product bargaining activities between processors and growers, and to the establishment of a Federal agricultural bargaining board or similar agency that would control in any manner these bargaining activities.

2. We are similarly opposed to Federal or State government intervention in the marketing of agricultural commodities and products, and to the establishment of Federal marketing boards which would regulate or control any phase of marketing activity.

II. PROMOTION AND ADVERTISING OF COMMODITIES

Grower-financed programs for promoting and advertising particular commodities may be beneficial, and in general the Association is *not opposed* to legislation authorizing grower-financed programs of this type. We believe, however, that processors' funds can best be utilized to support their own promotion and advertising programs. Although it is preferable that the growers be directly responsible for the payment of any assessments to finance such programs, the Association will not oppose a so-called checkoff by processors if that is deemed to be the most effective means for collection of such assessments from growers.

III. RAW PRODUCT RESEARCH AND MINIMUM QUALITY STANDARDS

Federal, State or voluntary programs providing for raw product research and reasonable raw product minimum quality standards for the purpose of eliminat-

ing unsuitable raw material may be beneficial, and the Association in general will not oppose appropriate legislation authorizing such programs where processors are afforded an equal voice and vote in the formulation, adoption, and administration of the programs.

IV. RAW PRODUCT SUPPLY CONTROLS

1. We seriously question the long term benefits to either the growers or processors of Federal and State government raw product supply controls and in general do not approve the establishment of such controls.

2. Other than as recognized under the circumstances covered in paragraph 3, the Association will continue to urge that *no supply controls* be imposed by government on fruits and vegetables for canning or freezing either by mandatory marketing orders or in any other way.

3. It is recognized, however, that some segments of the industry believe that there may be exceptional circumstances when supply controls might be of short term benefit as applied to *perennial* fruits and nuts (vine, bush, or tree) in appropriate sections of the country for limited periods of time. Accordingly, the Association will evaluate on a crop by crop basis whether to modify its position in the case of particular individual *perennial* fruits and nuts for canning or freezing for which Federal or State enabling legislation authorizing mandatory supply controls are proposed, but *only* if

> The proposed legislation or order affords to the processors of the affected commodity an equal voice and vote in the formulation, adoption, and administration of the supply control program (since such controls applicable to the grower will affect the operations of those who process that commodity); and if
>
> The proposed marketing order or supply control program does not apply to the commodity after it comes into the possession and control of the processor and he has become responsible for payment.

This paragraph 3, however, does not apply to mandatory supply controls on any *annual* crop for canning or freezing.

ATTACHMENT 3

HOW A MARKETING ORDER CAN AFFECT THE GROWER

1. Dictate the { precise acreage / production schedules / farming techniques } of every canner in his dealing with his growers. Since this must be done on an historical basis, the growers in any area can be curbed from increasing production and growing new crops.

2. Control the { quantity / quality / grade / size / market } of every product grown by the farmer and processed by the canner.

3. Limit the total production { nationally / by region / by area } of each item of canned fruit or vegetable -- on any basis administratively determined.

4. Allocate available raw material and production between { fresh market / canning / freezing / drying } outlets.

5. Do each of the above on a { day-to-day / week-to-week / month-to-month / seasonal } basis.

6. Require inspection and the installation and use of inspection systems.

7. Limit the amount and size and grade of the canned product that may be shipped to each consumer market, and thus additionally control what growers may sell for processing.

These programs restrict the grower's independence and freedom by substituting someone else's judgment for his own.

ATTACHMENT 4

WHAT A MARKETING ORDER ON A CANNING CROP CAN DO

1. Control the - (quantity / quality / grade / size / source) of every canner's raw material obtained from each grower.

2. Limit the total production - (nationally / by region / by area / by canner) of each canned item -- on any basis administratively determined.

3. Allocate available raw material and production between - (canning / freezing / drying / fresh market) outlets.

4. Do each of the above on a - (day-to-day / week-to-week / month-to-month / seasonal) basis.

5. Provide for - ("determination" of "surpluses" / disposition of "surplus" / establishment of reserve pools) for any raw commodity or canned product, and assess canners for costs of maintaining them.

6. Require inspection and install an inspection system.

7. Require that canners sell only at posted prices.

8. Limit the amount and size and grade of the canned product that may be shipped to each consumer market.

9. Regulate every phase of canning and marketing the canned product that may be administratively called an "unfair trade practice."

10. Provide for - (market research / market development / advertising) for any canned product, at canner costs alone.

11. Assess canners alone for the cost of - (administration / inspection systems / market research and promotion / storage and disposition of surplus pools) (such collections do not go into U. S. Treasury, but are directly spent.

12. Apply all of the above controls and authority directly to the raw commodity and the canned product.

Compulsory Marketing Orders can be put into operation over canner objection that they are not needed, unworkable, and extremely costly.

ATTACHMENT 5

STATEMENT ON BEHALF OF THE NATIONAL CANNERS ASSOCIATION
NOVEMBER 16, 1971

My name is Edward Dunkelberger; I am a member of the firm Covington & Burling, which is counsel for the National Canners Association, a nonprofit trade association of about 550 members who have canning operations in 44 states and the territories. Members of the Association pack approximately 85 to 90 percent of the entire national production of canned fruits, vegetables, juices, specialties, meat, and fish.

We very much appreciate this opportunity to present the views of the canning industry on S. 1775 and related bills, which in our view could well be the most

significant and far-reaching agricultural legislation to be considered by Congress in recent years.

These bills would drastically reshape the economic relationships between processors of agricultural commodities and the growers who supply them with their raw product, by establishing unprecedented Federal intervention in negotiations between buyers and sellers of agricultural products, eliminating the processor's right to choose his suppliers and to decide with whom he will deal, and putting the power of the Federal Government behind the establishment of monopoly in agriculture.

The full impact of these bills can be fully appreciated only in the light of a general understanding of existing practices in the production and sale of canning crops. Canners arrange for the purchase of raw fruits and vegetables in any one of a number of ways, but by far the greatest volume of these commodities is sold pursuant to contracts entered into between the canner and individual growers prior to planting in the case of most annual vegetables, and prior to harvesting in the case of most perennial fruits.

This contract farming provides important advantages to both the processor and the grower. The grower is assured of a market for his product well in advance of the harvest season, and is in a position to negotiate a price at a time when he is not under pressure to dispose of the product in perishable form. And although the grower continues to bear the natural and seasonal risks inherent in farming, the contract has the effect of transferring the economic risk to the canner, for the grower is assured of his contract price no matter what happens to the market.

The processor, in turn, endeavors to line up a sufficient quantity of product to meet his anticipated demands, and is able to consult with and advise the growers concerning the planting, raising and harvesting of the crop. Typically growers and processors establish long term relationships with each other and over the years the inefficient drop by the wayside.

There are, of course, other ways in which canning crops are purchased. Some commodities are occasionally sold on a spot basis—particularly in the case of commodities that are not quite so highly perishable and may be held for a period while the grower is attempting to find a buyer.

Some processors grow a portion of their requirements on land that they own or lease. Although the total volume of crops grown by canners is relatively small.

Two other patterns in the production and sale of canning crops involve agricultural cooperatives. Some agricultural cooperatives process the production of their member growers and some cooperatives represent their individual farmer members in negotiations for the sale of their production to independent canners. These bargaining cooperatives attempt to sign up a sufficient number of members so as to make it desirable, if not necessary, for canners to negotiate with the association for price and other terms of purchase.

The latter two arrangements necessarily depend upon the right of growers to join and work through agricultural cooperatives—a right that is explicitly recognized, and to a degree regulated, under the laws of all States. Such cooperatives or associations of agricultural producers are provided limited immunity from the Federal antitrust laws by reason of the Capper-Volstead Act (42 Stat. 388, 7 U.S.C. §§ 291–92). The leading cases under that Act have spelled out the degree of antitrust immunity it affords. (See *e.g., United States* v. *Borden Co.*, 208 U.S. 188 (1939); *Maryland and Virginia Milk Producers Association* v. *United States*, 362 U.S. 458 (1962); *Case-Swayne Co.* v. *Sunkist Growers, Inc.*, 389 U.S. 384 (1967).)

Under the Capper-Volstead Act as interpreted by the courts, growers are permitted to combine for the collective negotiation for the sale of their production, and apparently up to 100 percent of the growers in an area may combine in this manner without running afoul of the antitrust laws. Processors must, of course, continue to act individually in dealing with growers or with bargaining associations.

Under this framework, growers may decide for themselves if it is to their best interest to join or establish a bargaining association. If they feel that they have insufficient bargaining power, they have a legal opportunity that is available to few other businessmen—the right voluntarily to combine their bargaining power in negotiating with their customers. The fact is, however, that a great number of growers believe it is to their advantage to negotiate individually with canners. Although bargaining associations have been in existence for many years, it is probably safe to say that most fruits and vegetables for canning are sold in individual transactions between single growers and a single canner.

Indeed, it was apparently because of the inability of bargaining association representatives to achieve their goals, that a number of farm groups urged the enactment of the Agricultural Fair Practices Act several years ago. The sponsors of S. 109—the bill in the 90th Congress that eventually became law on April 16, 1968—maintained that canners were engaging in discriminatory and coercive practices designed to discourage independent growers from joining bargaining associations and marketing their production through them.

Although members of the National Canners Association were satisfied that there was no truth to the charges that fruit and vegetable canners had engaged in discriminatory or oppressive practices with respect to members or potential members of bargaining associations, they had no objection to reasonable legislation that prohibited such practices. One of the industry's principal concerns with the earlier versions of the bill, however, was that it might be interpreted to compel processors to negotiate with bargaining associations. Canners were concerned that the canning industry would be deprived of the basic right of all businessmen to select their suppliers and customers and to decide with whom they wish to deal.

Congress obviously agreed that this was a legitimate concern, for it wrote into the bill a new Section 5, which was explained in the Senate Report as follows:

"Section 5 disclaims any intent to prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in an association of producers, or to prevent handlers and producers from dealing with one another individually on a direct basis, or to require a handler to deal with an association of producers. The bill does not prevent or require these actions and is not intended to do so . . .

"There are many good, sound economic reasons for handlers and producers to select customers and suppliers. The bill does not attempt to prevent these sound reasons from operating." (S. Rept. No. 474, 90th Cong., 1st Sess. 7.)

This statement reflected the repeated assurance of the proponents of the legislation, principally the American Farm Bureau Federation, that it was not their intent to compel negotiations between processors and producers. For example, Mr. Charles B. Shuman, then the President of the Farm Bureau, stated in testimony on the bill in June of 1966:

"We want to emphasize that Farm Bureau does not seek, and *will not support*, legislation to force processors to negotiate with marketing associations. We seek only legislation which sets forth rules of fair-play on the part of processors and others in their business relationships with farmers and ranchers." (Emphasis added.) (Hearings on S. 109, 89th Cong., 2d Sess., June 14, 1866, at p. 15.)

In addition, the Justice Department had objected to an earlier version of S. 109, in part on the ground that "since the section might be interpreted in a manner to subject a purchaser to criminal penalties for seeking to choose his suppliers, the Department of Justice is opposed to the section." The Department felt it was important to retain for processors the right exercised by all businessmen to choose their customers and suppliers. In the Department's words, "A purchaser can generally choose to deal with whomever he wishes."

The House Committee apparently shared these views, for it explicitly rejected an amendment to delete all of Section 5, explaining:

"The committee was cognizant of the importance of this section to handlers and felt that since the scope of the bill embraced only the prohibited acts in section 4, the language of section 5 should remain substantially as it was approved by the Senate."

Against this background, we are now faced with a series of bills that in one way or another would directly and specifically reverse the fundamental policy decision reflected in the 1968 Act. The American Farm Bureau and other proponents of S. 1775 are now proposing to compel processors of agricultural commodities to negotiate with producers.

Before turning to the bill itself, I would like to read a paragraph from our 1967 testimony on S. 109, making clear the canning industry's position with respect to bargaining associations. We stated:

"The National Canners Association does not question the right of producers to establish and join bargaining associations. A great many of our members have dealt for many years with members of bargaining associations, to the mutual benefit of grower and canner. Any number of canning company contracts have been approved by bargaining associations. We recognize, as we must, the rights granted to agriculture under the Capper-Volstead Act, and we do not countenance the use of coercive or predatory practices to interfere with those rights."

In an earlier hearing we emphasized that "The question of whether a company chooses to purchase its raw products by means of negotiations with individual growers, or by means of collective bargaining with an agricultural association, has been—and will remain—a question of individual company policy on which this Association takes no position.

It should thus be entirely clear to this Subcommittee that the canning industry's opposition to the bills under consideration is most definitely not grounded in a rejection of the right of producers to join together in an effort to market their production through a common bargaining agent. That is a right that has been explicitly recognized in Federal law for more than 50 years.

But S. 1775 would substantially expand that right. Indeed, it would in effect override the basic principle of Capper-Volstead that each farmer is free to decide for himself whether he wishes to join a bargaining association.

We recognize that S. 726 and S. 727 differ in a number of respects from S. 1775, but all three bills would in some fashion or other require compulsory bargaining. In the interest of time, we will confine our more specific remarks to S. 1775, but most—if not all—of what we say will have some application to the other bills.

The fundamental purpose of Title I of S. 1775 is to require that handlers negotiate in good faith with respect to price, terms and other contract provisions for the sale of agricultural commodities with "qualified" bargaining associations, and to establish a National Agricultural Bargaining Board with the authority to determine the qualification of bargaining associations and to consider and resolve charges that a qualified association or handler has refused to bargain in good faith.

Only qualified associations would be entitled to enjoy the benefits provided by the Act. An association of producers desiring qualification must file a petition with the Board. The Board must qualify the association if based on the evidence at a hearing, the Board finds five basic factors are satisfied:

(1) Under the charter or bylaws of the association, the association is directly or indirectly producer owned and controlled;

(2) The association has contracts with its members that are binding under State law;

(3) The association is financially sound and has sufficient resources and management to carry out its purposes;

(4) The association represents a sufficient number of producers and/or quantity of products to make it an effective agent in bargaining with handlers; and

(5) One of the functions of the association is acting as a principal or agent for producer members in negotiations with handlers for price and other terms of contract for the production, sale and marketing of their products.

Qualified associations must file annual reports with the Board; and qualification may be revoked if an association does not continue to maintain the five standards listed above.

The basic requirement of Title I is found in Section 106(a), which establishes the mutual obligation of a handler and a qualified association to negotiate in good faith with respect to price, terms of sale, and other contract provisions for the sale of agricultural commodities. This obligation on the part of handlers extends only to a qualified association that represents producers "with whom such handler has had a prior course of dealing." A handler is determined to have had a "prior course of dealing" with a producer if he has purchased commodities produced by the producer in any two of the preceding five years.

This language of the bill might be read to mean that a qualified association representing only a few producers who have had a prior course of dealing with the handler could insist on bargaining with the handler, even though most of the producers represented by the association had not had such a course of dealing. Presumably two or more producers who have dealt with the handler in the past would be a sufficient basis for an association to claim an obligation to bargain on the part of the handler.

The bill provides that the obligation to bargain does not require either party to agree to a proposal or make a concession. Nevertheless, the requirement of good faith negotiation would almost certainly be interpreted to mean that the handler must negotiate with the intent and purpose of reaching agreement. Clearly pro forma discussions would not meet this requirement if it could be shown that the handler did not intend to try to reach agreement with the association.

Other provisions in Section 106 would further limit the freedom of handlers in their dealing with producers. Subsection 106(c) provides that nothing in the Act

should be determined to prohibit a qualified association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers. Subsection 106(d) would make it unlawful for a handler to negotiate with other producers while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of the handler for the product in question. And under subsection 106(e) it would be unlawful for a handler to purchase a product from other producers under more favorable terms than those negotiated with a qualified bargaining association.

If it is charged that a qualified association or a handler refuses to bargain as provided in Section 106(a), the Board is required to investigate the charges, to issue a complaint, and to hold a hearing. If it finds that the charges are justified, the Board may issue an order requiring the party to bargain, and may order such further affirmative action, including an award of damages, as it deems necessary.

The Board may obtain enforcement of its orders by a petition to a court of appeals, and any person aggrieved by a final order of the Board may obtain judicial review in the same manner. In such review the factual findings of the Board are conclusive if supported by substantial evidence on the record. The Board is given subpoena authority, enforceable in the district courts.

Finally, it is provided that the activities of qualified associations and handlers in bargaining pursuant to the Act shall not be deemed to violate the antitrust laws. It specifically provides, however, that nothing in the Act shall be construed to permit handlers to contract, combine or conspire with one another in bargaining with qualified associations. Handlers would thus continue to be subject to the antitrust requirement that they act individually in negotiating with qualified associations.

The net effect of these provisions in Title I is that for the first time a relatively small segment of growers—and perhaps those that are marginal and relatively inefficient—will be able to establish bargaining associations with special statutory protection and monopoly power, and with the effect of foreclosing processors from dealing with independent growers who choose not to join.

The paradox is that bargaining association proponents have had only limited success in persuading growers to join and sell their production through associations. Having failed to obtain the degree of success that they would like, this legislation must be construed as an attempt to persuade Congress that the law must be rewritten so as to give these associations a highly unique status under the law with the effect of overriding the independent judgments of many growers themselves.

In depriving handlers of their right to select their customers, in compelling handlers to bargain with bargaining associations, and in virtually eliminating the right of independent producers to atempt to sell their products to handlers, the bill would in effect eliminate the producer's freedom of choice. If he hoped to have any success in selling his production, he would have no choice other than to join a qualified association.

Although the bill by its terms would not compel bargaining association membership, it would achieve that effect just as clearly by eliminating the rights of independent producers.

With this grant of monopoly power to producer bargaining associations, competition in the sale of agricultural commodities would cease to exist. Bargaining association representatives would have unlimited leverage to insist upon the price and terms of sale of any agricultural commodity. Handlers not willing to meet these terms would have no alternative sources of supply. Any efforts by handlers to attempt to meet the monopoly power of an association through joint action would be expressly prohibited under the Act and the Federal antirust laws.

But it is obviously not just the handler who will suffer. The independent grower will lose every bit of economic freedom. And many growers would suffer when the exercise of monopoly power under the bill had the effect of pricing a particular commodity or a particular region out of the market.

As for the consumer, the bill is a bald attempt to exercise monopoly power to raise prices. Clearly it is the American consumer who will pay, in terms of more limited choice, higher prices, and very possibly reduced quality.

In short, the canning industry accepts the principles of competition and supply and demand that are fundamental to our economic system. Unfortunately, literally hundreds of canners have been forced to go out of business in recent years, but the industry continues to believe that there is no substitute for competition, for in this way and in this way alone can resources be effectively and reasonably allocated, efficiency be rewarded, and consumers be supplied with what they need and want in terms of a wholesome food supply.

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A major exception to this rule of competition has been made for individual farmers, in that they are permitted to act collectively in bargaining for the sale of their production. Those farmers who are convinced that it is to their benefit to act together through bargaining associations have the legal power to do so. If collective bargaining were in fact the panacea that its proponents claim, then we cannot imagine why they should be asking Congress for the unprecedented support of the Government in compelling processors and other purchasers to deal with these bargaining associations. If they cannot make it economically—particularly under the rules of fair play contained in our antitrust laws and S. 109—than we see no conceivable justification for the adoption of further special statutory privileges to benefit this one type of business organization.

TITLES II AND III

Title II of S. 1775 would require that handlers deduct dues or fees of qualified associations from their payments to producers, if the producers authorize such a deduction. Such dues may not exceed 2 percent of the total value of the product.

On its face, and by itself, this provision might not seem to be particularly onerous for handlers, but coupled with the provisions of Title I that would in in effect compel all producers to join qualified associations, it would result in the accumulation of large amounts of money in the hands of the mangers of these associations. The associations would be spared the expense and inconvenience of collection, which would be borne by handlers, and the problems of enforcement, which would be in the hands of the Federal Government.

If nothing else, this provision is further evidence that bargaining associations can not make their own way on their own merits. Even in their dealings with their own members, whom they claim to serve, such associations must invoke a compulsory, handler administered, Federally supported strong-arm collection technique in order to be assured of the funds to finance their operations.

Finally, as if the bargaining and check-off provisions of the bill were not enough, proponents have included in the bill a deceptively brief provision in Title III under which marketing order controls, including supply controls, would be authorized for any agricultural commodity solely on the basis of the vote of a majority of producers of that commodity in a referendum. The controls and other provisions of the marketing order would be subject solely to the approval of the bargaining association representing the producers, for the single vote of the association approving the order would be deemed to constitute approval of all of the producers who were members of the association.

This is perhaps the ultimate irony of this legislation. An independent producer would not only be compelled—as a practical matter—to join a qualified association in order to have an outlet for his production, and his dues would be deducted from what he is owed for the sale of his crop, but he would also be disenfranchised with respect to a referendum on a marketing order, since the association is empowered by law to block vote on behalf of all of its members.

It would unduly lengthen this statement to undertake a thorough analysis of the potential impact of Title III on the production, sale, processing and consumption of canned foods. This Subcommittee is by now well acquainted with the views of the canning industry on Government supply control programs for canning crops.

In testimony two years ago and this past spring on the pear marketing order bills we developed our position in detail. I ask that our most recent presentation be included in the record of this hearing. In that statement there is a reference to a study "Marketing Orders: Performance, Potential and Limitations" undertaken by Professors John A. Jamison and Karl Brandt of the Food Research Institute, Stanford University. As that report made clear, virtually continuous state marketing order controls on California cling peaches over more than 30 years have failed to solve the economic programs of that industry. To cite a few of the facts and conclusions in the report:

—Total revenues to growers of cling peaches over this period have not increased as much as those of growers of other major canning fruits, including Bartlett pears, not subject to direct supply controls.

—The number of cling peach growers in California has increased since the 1930's, whereas for most California crops the number of growers has decreased. Marketing order controls have augmented, rather than reduced, the excess capacity for cling peach production, by encouraging entry of new producers.

—If reduction in the volume of a crop marketed has the effect of increasing prices on the canned product, consumers will shift to lower priced substitutes, thereby reducing demand for the commodity.

—For this reason, cling peach canners have not raised the price of canned peaches appreciably, in the light of competition for other competing products. Faced with constant pressure of increased prices for the raw product, some processors have begun to shift their capital to other enterprises.

The Jamison-Brandt study was financed, in part, through funds made available by the NCA. Copies of the report were presented to members of this Committee who also were supplied with the text of an article by Professor Jamison: "Marketing Orders, Cartels and Cling Peaches: A Long-Run View," Food Research Institute Studies, Vol. VI No. 2, 1966.

Since the publication of these two reports, additional research was carried on by Dr. Jamison at the Food Research Institute, Stanford University, with grant funds from NCA. This new research has been concluded. It is titled "Marketing Orders and Public Policy for the Fruit and Vegetable Industries." Dr. Jamison has given in-depth research to the marketing orders covering California cling peaches, California Bartlett pears, California-Arizona lemons, Pacific Coast walnuts and California almonds.

We have supplied the Committee with prepublication copies of the report and I ask that it be included in the official file of the Committee's consideration of the legislation under consideration.

Chapter VIII of the study contains Dr. Jamison's conclusions and policy guideposts. The opening paragraph describes this chapter as follows:

"The conclusions reached in this study are based primarily on investigation of five commodity-industries long subject to marketing order control. The experiences of other commodities under such controls have also been studied and taken into consideration. The five case studies illustrate different combinations of economic characteristics upon which marketing controls have been imposed. Structural and organizational differences as well as variation in utilization patterns and production characteristics have been observed. The first part of this second summarizes conclusions specifically related to each case study. The second draws upon these cases as well as the experiences of other industries under marketing order control and presents some general conclusions on the performance of this policy tool. In the third part some recommendations based on these conclusions are set forth as possible guideposts for policymakers."

I will not read the rest of the chapter but I do request that the sections entitled "General Conclusions and Policy Guideposts" be included in the transcripts of the hearing record at this point of my presentation. I am referring to the text, pages 189 through 195.

In the introduction to this study Dr. Jamison comments as follows:

"Fruits, tree nuts, and vegetables subject to marketing order control programs under federal or state legislation account for almost one-half of the total farm value of these commodities grown in the United States. Producers, handlers at all levels, and the consuming public have a vast stake in the operation and results of these programs. Contrary to most public policies affecting agriculture, marketing order activities have remained in relative obscurity during their almost 40 years of existence. Despite continuing calls for the appraisal and evaluation of marketing orders, there have been few such studies published. Those empirical evaluations that have appeared tend to focus on technical aspects of order operation. There seems to persist within the U.S. Department of Agriculture and the land-grant colleges of agriculture a distinct reluctance to engage in comprehensive evaluation and appraisal of this aspect of farm policy. These programs generally involve relatively little public experditure and this tends to shield them from the budgetary scrutiny that usually provides the impetus for investigation of other government activities. The commodities that marketing orders cover are individually of small relative importance to the national economy and this provides another impediment to notoriety. Numerous processors, packers, shippers,, brokers, wholesalers, and retailers provide a buffer between the growers of these commodities and the ultimate consumer, and the fragmented organization of these industries adds to the complexity of evaluating policy performance."

As the introductory paragraph implies and as the title "Marketing Orders and Public Policy" indicates, the report is interested in the market structure in which marketing orders operate. On page 13 your attention is directed to the following. I quote:

"The presence of producer cooperatives—either bargaining or marketing associations—provides another focal point for collective action by growers. Although separate from the marketing order organization, the activities of these cooperatives, particularly the bargaining groups, are often closely related to the order. In recent years several orders specifically include bargaining association representatives on the control board. In some cases the price negotiated by the bargaining cooperative becomes the established price upon which certain marketing order operations are based. Thus, the structure of the se'lers' side of such markets may be characterized by a grower bargaining association and one or more major marketing cooperatives. The membership of the bargaining and marketing associations usually overlaps to some degree. In some cases, a large share of the bargaining tonnage may be committed to the marketing cooperative, thus reducing the actual tonnage utilized for effective price bargaining with commercial buyers."

We hope that these two quotations will arouse your interest sufficiently that you read the entire study—not just the General Conclusions and Policy Guideposts that I have asked to be made a part of this testimony.

When the study is read and considered in its entirety and in the context of public policy it verifies, in our judgment, the canning industry's contention that mandatory, government administered supply controls—the exercise of monopo'y power—do not benefit the producer in the long run and are not in the best interests of the consumer.

Attachment 6

Statement on Behalf of the National Canners Association

My name is Edward Dunkelberger; I am a member of the firm of Covington & Burling, which is counsel for the National Canners Associatioin, a nonprofit trade association of about 550 members with canning operations in 44 states and the territories. Members of the Association pack approximately 85 to 90 percent of the entire national production of canned fruits, vegetables, juices, specialties, meat and fish.

We very much appreciate this opportunity to appear before the Subcommittee today to present the views of the canning industry on H.R. 14987 and on the changes that bill would make in the legislation originally introduced by Congressman Sisk in April of last year. Although we will not attempt to review the basis for the canning industry's fundamental opposition to compulsory bargaining legislation, as set forth in our testimony before the Subcommittee on September 22, 1971, we do urge upon each member of the Subcommittee, as well as the members of the full Committee, that attention to the changes that have been made in the legislation should not obscure the basic objections to federally imposed and enforced compulsory bargaining between handlers and growers of agricultural commodities.

In our view, consideration of the changes made in the original bill only serves to highlight some of the inherent defects in the legislation. We will not take the time to comment on each of the changes, but instead will attempt to make clear why some of the more substantive revisions fall far short of making this an acceptable bill.

One of the "principal changes" highlighted in the Committee's press release of August 9 relates to revisions "protecting the right of a producer not to belong to an association if he so chooses." We assume that this is intended to refer to the sentence added to Section 101 of the bill, setting forth the legislative findings and congressional purpose, which reads:

"No provision of this title is intended to interfere with, hinder or prevent the free exercise by a producer of the right not to belong to an association of producers organized for any purpose set forth in this Act."

The difficulty, however, is that this statement of purpose is in no way implemented by the operative provisions of the bill. None of the proposed revisions in the bill minimize the impact of Section 106(c), which explicitly provides that it shall be unlawful for a handler to negotiate with other producers once a demand for compulsory bargaining has been made by a qualified association representing a reasonable number of producers who have dealt with the handler in the past two years. The independent producer must thus sit on his hands for the period of negotiations, with no idea how long they will last or whether the association will insist on supplying all of the handler's requirements. Clearly the

practical effect of this provision is to compel producers to join a qualified association if they wish to have an outlet for their production.

In short, none of the proposed revisions, including those proposed by the Department of Justice and the Department of Agriculture, would significantly alter the anti-competitive effects of the bill—which are spelled out in the letter of July 24, 1972, from the Justice Department to Chairman Poage.

Another of the proposed changes would provide that compulsory bargaining would be applicable only between a handler and a qualified association representing a "reasonable number" of producers from whom the handler has purchased the commodity in the past two years. Here again the change is one of form rather than substance. There is no suggestion as to what would be regarded as a reasonable number. One might well expect that the handler and the association could differ in this regard, and yet neither would know whether his view would prevail before the Board or a court. And regardless of what was determined to be a reasonable number for this purpose, the nonmember growers would be frozen out of the negotiations, and perhaps out of their markets.

Yet another change would revise the language of Section 106(d) with the result that if a handler, after negotiating with a qualified association, subsequently purchased products from other producers under terms more favorable than those negotiated with the association, he must offer the same, more favorable terms to the qualified association. Once again the Justice Department's letter points up the gross inequity and anti-competitive effects of this provision, and calls attention to the serious adverse effect it would have on handlers forced to deal with a qualified association. There might well be differences in costs, timing or location that would clearly justify the payment of a higher price to other producers, and yet the association would enjoy a windfall for which it had not bargained and which was not justified on the facts.

Yet another revision in the bill—perhaps the most illusory—is the proposed change in the wording of Section 114 relating to the antitrust exemption. The Committee's release suggests that this change provides "that the antirust exemption would be limited specifically to those activities specified in the bill." Originally the antitrust exemption extended to the activities of a qualified association and handlers in bargaining with respect to the price, terms of sale, or other contract terms. Under H.R.14987, the reference to "price, terms of sale," etc., would be stricken and in its place a reference added to the "provisions of Section 106 of this Act." Nowhere is it noted that the very language stricken in Section 114 is contained in Section 106. The effect was and still is that the antitrust exemption extends to any activities of the association and handlers relating to bargaining for price and other contract terms.

Both the Justice Department and the Department of Agriculture have called for the elimination of this exemption. Although the basic objections to the bill for the most part do not turn upon the presence or absence of the exemption, there can be no doubt that its retention is acutely sought by bargaining association representatives. We can only assume that they see a need for bargaining associations to use the unprecedented power they would be granted in such a way as to violate established principles of antitrust law.

The net effect of the changes contained in H.R. 14987 is that a one-sided, anti-competitive, inflationary bill has been made no less so. We urge that this Subcommittee recommend against its enactment.

APPENDIX 9

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., July 27, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The National Council of Farmer Cooperatives was not invited, and did not request an opportunity, to appear before the Subcommittee on Monopolies and Commercial Law during the hearings it held on "Monopolistic Practices and Concentration in the Food Industry." The reason for this is that we did not feel we had a contribution to make in this field, because farmer cooperatives have not been engaging in any monopolistic practices and do not represent a form of "concentration" within the meaning of the word as the subject of these hearings.

However, the statement of Thomas E. Kauper, Assistant Attorney General, Antitrust Division, Department of Justice, before your Subcommittee on June 27, 1973, raised by direct implication an accusation that cooperatives are enhancing food prices to the detriment of the public interest. Such a statement is alarming since it indicates an appalling lack of sound economic analysis and judgment. Indeed, farmers and their cooperatives should be the last area to be considered as a possible cause of unduly high food prices.

We have therefore prepared the enclosed statement for consideration by Members of the Committee, so that Kauper's distorted and misleading statement will not be unanswered. We have prepared this brief analysis of the role of farmer cooperatives in relation to profit-oriented corporations as an explanation of their role in the price-making process for farm products.

We respectfully request that this letter and the attached statement be included in the record of the hearings of the Subcommittee.

Very truly yours,

KENNETH D. NADEN,
Executive Vice President.

STATEMENT OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives is an association whose members are farmer-owned and farmer-controlled cooperative associations engaged in marketing practically every type of agricultural commodity and furnishing the major types of farm supplies to their members and patrons. Approximately 4,500 farmer cooperatives serving more than 3.5 million farmer memberships are represented in the Council.

In its statement of June 27 to the Subcommittee, the Department of Justice reviewed some court cases and raised some questions about economic influence of cooperatives. Justice made a gigantic and unjustified leap from its experience with a few alleged unfair trade practices to a broad generalization about the market power of all large cooperatives. Our statement is made for the purpose of analyzing the merit of the charge by innuendo that cooperatives are big enough and strong enough to be a significant factor in raising food prices unreasonably. We find the charge to be devoid of merit and unwarranted.

The main thrust of the Justice Department statement can perhaps be summed up in one quotation from its submission:

"These changes, particularly in today's context of rising food prices, suggest the need for congressional reevaluation of antitrust immunity for cooperatives to determine, among other things, the *degree to which the activities of cooperatives enhance food prices*, to determine whether some size limitation should apply to cooperatives so that they do not dominate national or regional food markets, and to determine the effect of vertical integration by members of cooperatives into

processing, as well as the size and functions of individual members." [Emphasis added]

The Justice Department statement is remarkable for its naive and simplistic approach to competition in farm product markets. It does not understand how adversely the price-making process for farm products is distorted by the inequality in bargaining power that exists in farm product markets without farmer cooperatives. It does not comprehend the vital difference between competitive pricing of farm products and administered pricing by oligopolies in the farm marketing field. It has completely ignored the constructive role of cooperatives in holding food prices low by keeping costs of farm inputs low and improving productivity of farming operators. The statement indicates again that the Department of Justice just doesn't understand how farmer cooperatives operate or how they are organized under the limited immunity granted by the Capper-Volstead Act (42 Stat. 388, 7 USC 291). The Department doesn't recognize there is a fundamental difference between concentration which increases competition in the interest of consumers and that which decreases competition to the detriment of consumers.

Capper-Volstead provides three basic criteria which farmer cooperatives must meet:

(1) No member [producer] of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

(2) That the association does not pay dividends on stock or membership capital in excess of 8 percent, and

(3) That the association shall not deal in the products of nonmembers to an amount greater in value than it handles for its members.

It was clear when the statute was enacted and it is still required today that the cooperative association be operated for the mutual benefit of its members. The reasons why Congress deemed it necessary to permit farmers to work together and pool their production through a cooperative association free from the interference of the Department of Justice will be explained later in this submission. Suffice it to say at this point that with the concentration of buyers today—either processors or retailers—the need for adequate farmer marketing power is greater now than ever before. For a further emphasis on this point, we refer you to the statement and testimony by Professor Willard F. Mueller before this Subcommittee on July 19, 1973. Neither Professor Mueller nor any other witness suggested that farmer cooperatives had an undue or adverse influence on food prices.

While Capper-Volstead grants immunity for farmer-producers to organize together, the Department of Justice or other federal agencies are not inhibited from proceeding against a cooperative which appears to be acting to the detriment of the public interest. The Courts have held that cooperatives may not monopolize trade, restrain or suppress competition or engage in predatory practices, and the Department of Justice has been quick to act in bringing complaints against farmer cooperative associations. Indeed, if they had shown the same alacrity in preventing concentration through mergers and acquisition in other areas of the food industry, the consumer today would probably be getting better products at a cheaper price.

Should the Subcommittee desire to pursue the subject of the growth of farmer cooperatives and how they relate to the growth of their for-profit competitors, we are enclosing a copy of the recent study by Dr. Martin Abrahamsen of the U.S. Department of Agriculture on "Cooperative Growth—Trends, Comparisons, Strategy," FCS Information 87. Later in this statement we will use some of the data developed by Dr. Abrahamsen.

FARMER COOPERATIVE SIZE

Enemies of farmer cooperatives frequently point to the *Fortune* list of the 500 largest industrial corporations and wag their heads when they see seven farmer cooperatives listed. Size does not convey or measure market power. It must be considered in perspective. Heading the *Fortune* 1972 list, ranked by sales, was General Motors, with sales of more than $28 billion and over $18 billion in assets and net income after taxes of nearly $2 billion. General Motors' after-tax income was more than total *sales* for the largest farmer cooperative, which ranks 147th on the *Fortune* list. To further put farmer cooperative size into proper perspective, we can compare the combined net assets of all farmer cooperatives in the United States (7,289) with those of General Motors. All farmer cooperatives combined had total net assets of $7.7 billion v. General Motors' $18 billion; all

farmer cooperative sales were $19 billion v. General Motors' $28 billion; equity capital for all farmer cooperatives was $3.2 billion v. General Motors' stockholder equity of $10.8 billion. Every corporation in the top 54 of the *Fortune* list had dollar sales more than double that of the largest farmer cooperative.

As a part of the study by Dr. Abrahamsen, mentioned above, a comparison was made between the ten largest farmer cooperatives and the ten largest firms engaged in business similar to the farmer cooperatives. The table below is from this study.

1970

Item	10 cooperatives (millions)	10 other business firms (millions)	Cooperatives' proportion as a percentage of that of other business firms
Total sales	4,259	33,927	13
Net margins	79	1,718	5
Total assets	1,444	25,233	6
Net worth	610	14,137	4

One of the conclusions in the study is that by any measure used cooperatives are relatively small business firms. The study finds that there has been some cooperative growth, but like farm cash receipts and expenditures, there is a lag behind the growth of the economy as a whole (GNP).

The study also made eleven selected comparisons between types of farmer cooperatives and their for-profit competitors. While all eleven studies are informative, we will briefly examine the three cooperative activities of greatest current interest: dairy marketing, fertilizer supply, and petroleum supply.

Dairy Marketing.—The Department of Justice has mounted a full scale attack on dairy cooperatives, arguing that they have used merger growth and market power to restrain trade. While ignoring the charges and counter-charges of the litigants, we can look at the magnitude of growth and market power increases realized by the largest dairy cooperatives and their for-profit competitors.

Total sales of all products for the four largest dairy cooperatives and the four largest for-profit dairy businesses during 1960, 1965 and 1970 were:

Year	4 cooperatives (millions)	4 other businesses (millions)	Cooperatives' proportion as a percent of that of other business firms
1960	584	3,484	16.8
1965	750	4,624	16.2
1970	2,049	7,208	28.4

While dairy cooperative sales increased 251% from 1960 through 1970 compared to 107% by other dairy firms, the absolute increases were about $1.5 billion for the four cooperatives and $3.7 billion by the other four dairy firms.

Fertilizer Supply—The world-wide shortage of fertilizers, particularly phosphates, coupled with domestic price controls, places ever-increasing responsibility on those concerns willing to sell fertilizer to American farmers. Trends in total sales of the four cooperatives having the largest fertilizer business with the four other businesses having the largest fertilizer sales were:

Year	4 cooperatives (millions)	4 other businesses (millions)	Cooperatives' proportion as a percent of that of other business firms
1960	471	3,855	12
1965	769	6,081	13
1970	1,269	10,019	13

In absolute terms, cooperative sales volume increased $798 million compared with $7.2 billion by the other businesses.

Petroleum Supply—With the advent of petroleum shortages and the resulting struggles between various outlets to secure enough gasoline, distillate and other fuels to satisfy their needs, adequate supplies of fuel for farmers are an absolute necessity if crops are to be harvested. The trends in total sales of the four largest cooperatives in the petroleum field with the four largest for-profit petroleum companies are:

Year	4 cooperatives (millions)	4 largest oil companies (millions)	Cooperatives' proportion of sales as a percentage of other oil company sales
1960	304	16,900	1.8
1965	566	23,500	2.4
1970	1,205	37,100	3.4

While sales of the four cooperatives increased 297% from 1960 to 1970 compared to 120% for the oil companies, the amount of increase was $901 million for the cooperatives compared to $20.2 billion for the oil companies.

Cooperatives are growing, but the results of their growth in terms of market power is miniscule when compared to that of the giant, investor-owned businesses with whom they compete.

COOPERATIVES AND COMPETITION

Farmer-owned, farmer-controlled and farmer-operated cooperatives are by their very nature pro-competition in farm products and farm supply markets. They are not formed or operated to provide a return on investor capital. Their purpose is to provide products or services to their patrons at the lowest possible cost.

Joint action among farmers originated largely as a defensive mechanism to combat exploitation and abuse from their buyers and suppliers. The so-called changed conditions of farming—increased farm size, mechanization, improved managerial and operational skills of farmers—have not altered the basic market structure of agriculture. The way in which this structure affects farmers and the pricing process and the level of prices for farm products is the arena the Justice Department has ignored. The key issue is whether or not farmer cooperatives have achieved sufficient market power to raise the industrywide level of market prices for specific commodities. Even if they have, the second issue, as to whether this action "unduly enhanced prices," is the only stage at which government agencies should be concerned about cooperatives and food prices.

The economic heart of the farmers' difficulty in markets which determine prices of farm products and prices of farm production supplies arises from two separate sets of contrasting conditions:

(1) Farmers operate at full output without due regard to demand and sell at free market prices, whereas non-farm corporations in agriculture operate at controlled levels of output closely geared to demand and sell at administered (i.e., self-determined) prices; and

(2) Thousands of small scale farm firms sell to and buy from only a few large scale non-farm firms, resulting in marked inequality in bargaining power between them.

These two conditions result in two severe economic and competitive handicaps for farmers. The first is called the surplus or excess production handicap, and the second is the market structure handicap.

As a part of their efforts to earn fair income, farmers have made limited use of government price support and acreage control programs to attack the surplus production problem, and have used cooperative business operations as their private program to attack the market structure problem.

Without government programs or private group action, the farming sector of our economy closely fits the purely competitive model of classical economic theory of the firm. The major conditions of easy exit and entry, uniformity of product,

and fixed price regardless of output are met. Each farmer as a seller is a completely helpless price-taker, with no influence on the price of the products he offers or buys on the market. Such atomistic competition means complete absence of market power for any single farmer. The Food Marketing Commission referred to this situation several times, summarizing it in these words:

"Two groups in the food industry appear to have substantial market power: retailers, including many of the small chains, and large manufacturers, usually diversified with strong national brands . . . unorganized farmers have no positive market power at all." [p. 95 & p. 97]

Should there be any doubt about the reality and harm done to the weak by the present inequality in bargaining power, ample evidence and proof is available. One of the most recent is the hearing of the Senate Agriculture Committee on June 14, 15 & 16, 1966 on the bill S. 109, which later was enacted as the Agricultural Fair Practices Act of 1967.

Any group action which enables farmers to overcome this state of helplessness and which has some influence on services performed or on the prices of his products or his supplies can be said to represent constructive countervailing market power and be in the public interest. Cooperatives are the main instrument to raise farm income and to improve farmers' well-being by correcting or alleviating their market or competitive weaknesses.

It is the structural imbalance referred to above which impelled and justifies the Capper-Volstead Act and which stimulates the kind of statement made by Dr. Don Paarlberg, Director of Agricultural Economics, U.S. Department of Agriculture, on January 11, 1970, as follows:

"The right of farm people to organize, to be recognized and to negotiate with a handler rests in my judgment on the fundamental principle of equity: That the bargaining power of the two negotiating parties should be approximately equal. Without an association, a farmer selling to a food processor has almost no bargaining power."

When 20, or 2,000, or 20,000 or more farmers join together and agree to designate one agent to sell their products or buy their supplies, they obviously reduce competition among *themselves*. Simultaneously, they increase competition at a more critical point. By group action, they develop more market alternatives for themselves or offset an economic inequality so they inject competition into markets off the farm and alleviate the market structure imbalance.

The main significance of farmer cooperative effort is the injection of a new interest or a new force into markets for farm products and farm supplies. This user orientation *creates* competition for and with other corporations in the same industry rather than insulating them further from competition, which would occur if all firms of the industry had identical investor orientation. Such intensification of competition for the fruits of economic progress impels greater efficiency of operations and hence is in the public interest. The statement of the Supreme Court of the U.S. in the 1963 Philadelphia Bank Case is especially relevant here: "Competition is a fundamental national economic policy, offering as it does the *only alternative* to the cartelization or government regimentation of large portions of the economy." [Emphasis added]

It is indeed surprising that the Department of Justice does not recognize and encourage the pro-competitive impact which farmer cooperatives have in markets for farm products and farm production supplies. Cooperatives express countervailing economic power to that of the profit-oriented corporation. If the Department of Justice were truly and sincerely interested in fostering effective competition in food marketing, it would encourage farmers to use cooperation more, since that would inject more competition to the benefit of producers and consumers alike. Instead, Justice seems to be attacking corporatives because it receives a distorted vision from its limited exposure rather than sound economic reasons.

COOPERATIVES AND THE PUBLIC INTEREST

The true value of farmer cooperatives as inflation fighters is becoming more evident as inflation increases. The following specific examples are good illustrations of this fact.

There has been a shortage of fertilizers, particularly phosphates, for two years. Two farmer-owned ond farmer-controlled cooperatives, CF Industries and Farmland Industries, own and operate phosphate fertilizer manufacturing facili-

ties. In 1972, under Phase II of the Economic Stabilization Program, export sales of fertilizer were not subject to price control, yet domestic sales were.

Profit-seeking corporations were able to sell triple superphosphate and diammonium phosphate fertilizer for $50.82 (TSP) and $75.77 (DAP) per ton on the export market. CF Industries, on the other hand, was selling its product to its farmer cooperative members for $42.35 (TSP) and $58.30 (DAP) per ton. Farmland prices were comparable. The differential between the domestic and export prices was approximately 20 percent for triple superphosphate and nearly 30 percent for diammonium phosphate.

If CF and Farmland had contributed to this artificial shortage of fertilizer phosphates by selling on the export market, they each would have made millions of dollars on export sales. However, CF and Farmland allocated its entire production of phosphate materials to its cooperative members. Without these cooperatives, American farmers would have been without a basic ingredient to increase their production to the levels necessary to achieve the goals outlined by the Administration in increasing food supply.

Another area where cooperatives have demonstrated their anti-inflationary influence is petroleum refining and distribution. A number of farmer cooperatives are engaged in the refining of petroleum and the distribution of petroleum products. In some areas, particularly in the Midwest, over 40 percent of the farmers' fuel needs are supplied by farmer cooperatives. With the present energy crisis and the scarcity of gasoline and other fuels used in considerable quantities in modern day farming, many tractors and combines would be idle today without these cooperatives who restrict themselves to supplying their member-farmer needs.

Several oil companies, Gulf Oil and D–X Sunray in particular, have announced their withdrawal from the Midwest fuel market, a strong indication that the larger petroleum companies are looking to marketing areas which promise a greater return on their invested capital. It is essential that the farmer cooperatives have sufficient flexibility to serve the needs of the agricultural producers. Any government action that would hinder the farmers' fuel distribution system would seriously impair their ability to provide food for this nation.

This area of cooperative effort, which is constructive pro-consumer work to improve farmer productivity, offsets rising farm food prices because it holds down costs of farm inputs. Such action serves to offset or refute the charge that cooperatives have unduly raised farm prices. Yet, the Justice Department statement completely ignores it.

CONCLUSION

Although the National Council has not seen the transcript of the hearings before this Subcommittee on Monopolistic Practices and Concentration in the Food Industry, we have had a chance to read some of the statements submitted by various witnesses. In view of the submitted statements, we think it significant that only the Department of Justice urged the Subcommittee to examine farmer cooperatives and marketing orders as a possible source of anticompetitive practices and concentration in the food industry.

Public interest witnesses representing consumers showed a *far greater awareness of the legitimate causes of high food prices* than did the Justice Department. (See for example the testimony and statements of Ms. Zawel, Ms. DeMent, Mr. Hightower and Dr. Mueller.)

These witnesses urged the Subcommittee to examine the profits of the large grain companies and to probe into the concentration in the food industry as posed by the conglomerate processors and the food retailers. The consumer-concerned witnesses who actually did considerable research on the problem of high food costs found no fault with farmers or their cooperative associations. Justice—in the vaguest possible charges predicated on no facts whatsoever—sought out farmers and their cooperatives as possible culprits of high food costs. The consumer groups pointed to the interests which have the real power in the marketing of food.

The conclusion or implication made by the Department of Justice that farmer cooperatives were in any significant way responsible for rising food prices in 1972 is simply absurd. One point challenges its validity: Farm prices in 1972 rose most in those products for which cooperatives are weakest (pork and beef processing), and least in those areas where cooperatives are strong (Florida

citrus concentrate and dairy). It was world and domestic demand, as well as some reduction in supply—not cooperative marketing power—that rose suddenly.

It should be noted that although Justice appears to be unwilling or unable to control the effective oligopolies in food processing and retailing, it continues its vendetta against the incomparably smaller and financially weak farmers and farmer cooperatives. It is a fair and reasonable conclusion that Justice was motivated in this attitude and testimony by political motives rather than sound economic analysis and protection of the public interest. It is seeking to exploit and inflame Congressional and consumer concern over rising food prices.

Capper-Volstead is vitally necessary today if consumers are to have the benefit of action which farmer cooperatives can provide as a partial countervailing effect on big agribusiness firms. It is the farmer purchasing cooperatives that restrain consumer food costs by reducing farm supply costs, and it is the farmer marketing cooperatives which provide the only significant competition to investor-oriented agribusiness marketing firms.

APPENDIX 10

Statement on Anticompetitive Elements in Milk Marketing

(By C. Jack Pearce, attorney, Washington, D.C.)

INTRODUCTION

I am pleased to have an opportunity to attempt to contribute to the record of the Subcommittee's hearings on antitrust and food prices.

In this statement I will confine myself to the area of marketing orders and cooperatives operating under farm bills, particularly milk cooperatives and milk marketing orders. I have done more work in this area recently than in others.

My background in the area is as follows. For several years I worked in the Public Counsel Section of the Justice Department's Antitrust Division, a section responsible for reports to Congress on the competitive effects of legislative proposals, and for Antitrust Division involvement in government activities in "regulated" economic sectors. I considered farm legislation several times during the period. I thereafter served one year as a Deputy General Counsel in the White House Office of Consumer Affairs. My responsibilities at the Consumer office frequently involved farm programs and farm bills.

Since November of 1971 I have been in private practice. During recent Congressional consideration of farm legislation I was retained by some independent dairy interests to help defeat aspects of proposals which, in my opinion, would have extended farm cooperatives' control over milk price and supply. I worked with a number of groups who were interested in the issue, including consumer groups.

I offer this statement in my individual capacity. I am not retained for the purpose of making the statement by any industry interest or consumer body.

Information and experience acquired over a ten year period convinced me that in some areas, particularly in the milk area, farm cooperative and marketing order legislation, as administered, has substantially and unnecessarily reduced supply and raised prices of foodstuffs. I believe this subtracts from our national welfare. I hope briefly to summarize some of the information for the Subcommittee.

ANTICOMPETITIVE BEHAVIOR AND PRICE CONSEQUENCES

First, milk cooperatives have obtained a degree of control over milk supply in the eastern, southeastern, and midwestern portions of the United States which, under antitrust tests, must be considered so nearly complete as to be of monopolistic proportions.

Appendix 1 shows the percentage of farmers belonging to cooperatives in major market regions as of 1970. In six of the nine regions the percentages exceeded 90.

Appendix 2 shows that as of 1970 over half the milk supplied under federal market orders came from areas in which the largest cooperative had over half the total number of producers.

Appendix 3, an excerpt from a speech by a farm economist, shows that as of 1969 forty-five coperatives serving local markets had combined to form eight cooperatives, or "supercooperatives," accounting for over eleven billion pounds of milk per year.

Appendix 4, a map, shows geographic areas in which the major supercooperatives and cooperative coordinating entities operate.

The map, as maps often do, depicts the situation most starkly. If an industrial company, or, say, a food chain, had 70% or more of the output in geographic areas of the sizes depicted on this map, we would long ago have recognized a monopoly problem.

The basic strategy in restraint or trade, or monopolizing, is to control supply and price. If a producer or group of producers can control supply and price, they can maximize their share of the total value added in the production and distribu-

tion process. Consumers find that their share of the total value of the production is minimized, by reason of limitations on supply and relatively high prices. Both economists and courts measure whether conduct amounts to a restraint of trade or monopolizing by judging whether there is attempted or actual control over supply and price.

Appendix 5 contains, in excerpts from a speech by a farm economist, a succinct summary of the major objectives and some of the major strategies of the supercooperatives. Stated briefly, the objective is to control all alternative sources of supply for a given set of dairy processors (and thus consumers) so as to obtain the maximum price for milk. This is done by aligning milk prices among markets so that a milk processor (and the consumers) can't find lower-cost sources of supply; paying producers who have extra fluid milk to offer at any given time to withhold that fluid milk from the market (the "standby pool" arrangement); and making milk processors dependent upon a single source of supply through "full supply" or exclusive dealing contracts.

Government and private suits have alleged that the large cooperatives have also attempted to assure control of milk by preventing milk processors from reselling milk to other processors, preventing milk haulers from hauling the milk of small non-controlled suppliers, making it difficult for cooperative members to leave the cooperative, and forcing non-members to join by engaging them in selective, severe, intentional price wars with the conscious purpose of forcing them out of independent existence.

In addition, numerous persons and groups have alleged that cooperatives' purchases of dairies add to their market power, by reducing the number of occasions in which milk moves in open, competitive markets, beginning to acquire a measure of control over a second level of production, and raising the possibility of a "price squeeze" on independent dairies who purchase from them.

Cooperative organization restraints on supply and price have been bolstered by the Department of Agriculture's marketing order system, in several ways. For example, under that system, a federal milk price establishes a floor on prices. Marketing orders inhibit milk movement between regions, thus bolstering cooperatives' control of milk supply in each region. The orders sanction "base plans," which tend to give each producer a vested interest in staying within an overall supply constraint, and tend to make entry of new producers more difficult.

In recent years, the market power obtained by the supercooperatives has increasingly lifted prices over federally-set base prices.

Effects of this elaborate, extensive, massive private-government supply and price control system can be outlined as follows:

Between 1959 and 1969, the total population of the U.S. increased 12–13%; milk supply increased not at all. Wholesale prices generally rose about 12%; wholesale prices for farm products rose a similar amount; farmers' milk prices increased 34%.[1]

The rapid inflation and various price control attempts of the 1972–3 period make comparisons between price rises for different products more difficult. Available evidence indicates that milk price increases have tended to keep pace with other agricultural products price increases, and exceeded increases in most other markets. For example, the average farm producer price for fluid milk increased nine percent between May 1972 and May 1973.[2] Prices under Phase IV are going up.

Appendix 7 summarizes milk supply and price history over the last fourteen years.

The price "premiums" which milk cooperatives obtain over the federally-specified base price are an indicator of increasing milk cooperative price control. Appendix 8 shows that cooperatives were able to get price premiums in four percent of federally designated milk markets in 1958; 32 percent in 1965; and 61 percent in 1971. Average "over-order" premiums have exceeded 25 cents per hundredweight in recent years (Appendix 9), and some recently reported price premiums run in the range of 60–70 cents per hundredweight (Appendix 10).

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[1] For the price and production history of milk products in the 1959–1969 period, see Appendix 6. Milk substitutes had something to do with decreased per capita milk consumption. Usually, when a product encounters competition, the tendency is for price to drop. The faster-than-average increase in milk price, together with documented, conscious efforts at supply restraint, indicates that in this case milk substitutes were invited, or facilitated, by supply limitation and price increase, rather than a milk supply decrease being forced by competing products.

[2] "Milk Price Highlights," U.S. Department of Agriculture, May 21, 1973.

A large portion of the "premium" dollars have gone toward the expenses of the supercooperatives organizations, and political contributions intended to secure changes in federal laws and in their administration designed to yield still higher prices.

This has illustrated to me something of what judges, economists, legislators, government officials and others have meant when stating that one of the purposes of the antitrust laws has been to prevent excessive concentrations of both economic and *political* power. I have found, working in this area, that leaders associated with non-milk cooperatives and other food enterprises have felt embarrassed and tainted by the political uses of money gained by monopoly supply and price control. Frequent newspaper stories and a public interest law suit devoted to the political activities of the milk cooperatives attest to widespread concern and disapprobation.

There is a very good chance that the reported price premiums understate by a substantial margin the total price enhancement resulting from the supercooperative-marketing order system. Typically, where price is enhanced and supply restricted, producers are able to reflect the value of the above-normal gains in the price of their business when they wish to trade assets or retire from the market. The purchaser of the business pays the selling owner for the expected revenues, including the supernormal revenues. Henceforth the new producer has this payment reflected in his cost of production as a capital cost. We can expect that Agriculture Department calculations of producer costs for minimum price purposes will take these "capital costs" into account. Hence the federal minimum price may be set above what a competitive market price would be.

I do not know just how much milk prices have been inflated over the last 15 years by the various effects of production and price constraints I have mentioned thus far. I am hesitant to use numbers that cannot be firmly based. I would expect that if a thorough pricing study were undertaken, or a competitive market were allowed to demonstrate the competitive price, we would see that the milk bill has been enhanced hundreds of millions of dollars per year.[3] An estimate in this range would be consistent with estimates of the economic wastes associated with anticompetitive restraints in other areas, such as surface transportation ($4–9 billions per year on about $25–30 billions gross revenue),[4] and air transport (over $1 billion per year).[5]

Consumers pay very high prices for major exemptions from the antitrust laws.

RECOMMENDATIONS

I proceed on the premise that the milk cooperatives have been allowed entirely too much market power; and that marketing order and farm cooperative legislation generally should not give farm producers substantial control over price and supply in national markets. If cooperatives are to earn their way, it should be by activities which add to national welfare rather than subtract from it.

I would like to divide my recommendation into two levels of generality. The broader level immediately follows.

First, we should not allow extensions of price and supply control mechanisms in federal marketing order legislation, whether with respect to milk or other commodities. Similarly, we should prevent any future aggregations of cooperatives designed to achieve major market power.

Second, we should disassemble the aggregations of milk cooperatives, or remove their ability to control supply and price. If cooperatives in any other commodity area have a major degree of market power, these assemblages should also be broken down into smaller units and/or have their price and supply control functions removed

Third, we should alter marketing order practices so as to remove the marketing order as an effective means of price control, and as a complement to farm cooperative control of price.

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[3] If, for example, we were to assume that under competitive conditions milk prices would have risen in the period 1959–1969 only as much as prices generally, the excess cost carried forward from 1969 would amount to about 770 millions of dollars per year. Adjusted for inflation since 1969 this would be about 940 millions in 1973 dollars (not including any gains in producer price control since 1969).

[4] *Freight Transportation Regulation*, T. G. Moore, American Enterprise Institute, November 1972.

[5] *Airline Regulation in America*, Wm. A. Jordan, Johns Hopkins Press, 1970.

To do these things requires reversing the momentum of history in farm legislation. Increasing urban representation in Congress, increasing organization by consumer groups, and increased economic understanding are basic elements upon which to draw in any such effort. Enlightened food processor and food distribution groups could also provide assistance.

I would recommend consideration of a variety of actions to do the three things set out above.

Conscious, deliberate statements of an intent to discourage the spread of coop and marketing order supply and price control by various involved groups would help to head off future attempts to expand existing legislation and administrative practice. Members of Congress, Congressional committees, the Administration and particular Executive Branch agencies, political parties, consumer groups, citizen action groups, economists' groups, and various commercial, civic, and industrial groups could formulate declarations of policy which signal opposition to further attempts to gain supply and price control over foodstuffs. These statements could serve as organizational triggers for opposition when any such attempt is made.

Extant milk "supercooperatives" could be disassembled by various means: legislation directing this result, *a la* the Public Utility Holding Company Act; legislation removing any question of antitrust exemption for the creation or continued existence of cooperatives operating over a multistate area and using supply and price control techniques; legislation directing the Agriculture Department and the Administration to "show cause" why the Secretary of Agriculture should not use his power under Section 2 of the Capper Volstead Act to order the break-up of milk supercooperatives; legislation authorizing direct consumer suit under the antitrust laws for recoveries for price enhancement resulting from cooperative formation and/or antitrust law violations; and voluntary action by the Executive Branch to dismantle the supercooperatives. Any legislation cutting back on extant concentrations of cooperative market power could limit future aggregations likely to have substantial control of price and supply.

The scope of supply and price control under existing marketing orders might be addressed by studies; by amendments to farm legislation directing the Secretary of Agriculture to remove supply restraints and price enhancing devices from marketing orders and promote competitive markets in which various sources of supply realize their comparative advantages; by a Justice Department audit of the anticompetitive consequences of current cooperative structures and Department of Agriculture cooperative and marketing order practices (by means of public advice to the Secretary of Agriculture in the manner of Attorney General advices to the Atomic Energy Commission on licensing decisions, or a report to Congress); and by voluntary Executive Branch action to implement a program of removing price and supply constraints subject to Congressional oversight.

Imports of milk and milk products may have relatively limited effect in curtailing domestic market power. Import limitations could be relaxed or abolished, to allow such measure of competition as foreign producers can add to our domestic markets.

Whatever might be done pursuant to these recommendations, and in addition to these actions, federal, state, and private actions to enforce the antitrust laws should be explored and prosecuted where adequate grounds exist.

I am aware that these recommendations are general and a number of devices could be used to implement each. Experience leads me to think that initiatives with the objectives I describe may come from any of a number of different quarters and circumstances, with a resultant number of different possible configurations. I sketch out a variety of possible approaches to accord with this situation.

Experience also teaches, I believe, that the best course is to make a start, and then to refine the attempt. If there is need for a definite starting point, I would suggest that the Subcommittee consider:[6]

(1) Introducing a bill to break up the supercooperatives in the milk area, with hearings to be held by the Subcommittee or the Judiciary and Agriculture Committees jointly, or in parallel;

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[6] The Subcommittee might also consider whether consumer actions through private attorneys or public entities such as states are an appropriate means of suppressing antitrust violations by milk and other cooperatives. (The Subcommittee will note that I could gain from the recommendation, as an attorney in private practice. Accordingly, it should probably explore this question with consumer groups and informed persons other than myself. I would recommend action under the above paragraphs ahead of this action, since they directly address restraints caused by federal law and administrative practice.)

(2) Introducing amendments to marketing order legislation removing elements of supply and price control, and directing the Secretary of Agriculture to administer his authority so as to minimize market restraints, promote competition, and accord with the purposes of the antitrust laws; and

(3) Requiring Executive Branch agencies, including the Department of Justice, a detailed accounting of price and supply consequences of current practices (securing at the same time an independent critique of this accounting by competent outside economists): and if initiatives of the first two sort were enacted, an accounting of federal actions and market results of those actions (also independently critiqued).

The Subcommittee has major responsibilities across a very wide range. Food problems should compete with others in priority. Congressional committee jurisdictions may complicate any legislative initiative. Results would probably take years and much hard work to achieve. I can recommend undertakings of the sort outlined here only because food is basic among commodities, the milk market has become very expensive and badly constrained, and the vote on whether to change the laws is cast by the lawmakers; yourselves.

APPENDIX 1

TABLE 5.—PROPORTION OF COOPERATIVE MEMBERSHIP BY FEDERAL ORDER MARKET REGIONS, DECEMBER 1970

Federal order region:	Percent cooperative membership
New England	94.7
Middle Atlantic	72.5
South Atlantic	99.1
East north central	88.7
West north central	94.6
East south central	95.3
West south central	92.5
Mountain	97.0
Pacific	72.5
All Federal order markets	86.5

Source: Milk Pricing Policy and Procedures: "Pt. 1: The Milk Pricing Problem." Report of the Milk Pricing Advisory Committee, U.S. Department of Agriculture, March 1972.

APPENDIX 2

TABLE 6.—FREQUENCY DISTRIBUTION OF MARKETS AND PRODUCER DELIVERIES ACCORDING TO THE PERCENT OF PRODUCERS BELONGING TO THE LARGEST COOPERATIVE SERVING THE FEDERAL ORDER MARKET, DECEMBER 1970

Members of largest cooperative (percent)	Number of Federal order markets		Percentage of total Federal order deliveries	
	Number	Cumulative number	Percent	Cumulative percent
100.0	9	9	2.5	2.5
90.0 to 99.9	12	21	8.0	10.5
80.0 to 89.9	11	32	10.9	21.4
70.0 to 79.9	9	41	7.4	28.8
60.0 to 69.9	4	45	9.2	38.0
50.0 to 59.9	7	52	13.8	51.8
40.0 to 49.9	2	54	12.4	64.2
30.0 to 39.9	3	57	12.5	76.7
20.0 to 29.9	5	62	23.3	100.0
10.0 to 19.9	0	62	----	100.0
0 to 9.9	0	62	----	100.0

Source: Milk Pricing Policy and Procedures Pt. 1: The Milk Pricing Problem Report of the Milk Pricing Advisory Committee, U.S. Department of Agriculture, March 1972.

APPENDIX 3

EXCERPTS FROM NEW FORCES IN MILK MARKETING—COOPERATIVE CONSOLIDATIONS AND MERGERS

(Ronald D. Knutson, Assistant Professor, Purdue University)

A paper presented at convention of the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, New Orleans, La., November 2, 1969.

THE MERGER MOVEMENT

The Federation activities in the dairy industry has led to merger activity. Federation has led to merger because:

1. Discussions in federations have led to a realization of the extent to which cooperatives have common problems.

2. Mergers result in a smaller number of cooperatives which make the coordinating job of the federation easier.

3. Merged organizations can more effectively enforce their price policies upon the processor.

4. Merged organizations can tackle problems of operational efficiency including procurement and processing overlap with which federations cannot effectively deal.

As in the rest of the economy, the mergers which are occurring among cooperatives today are of a different nature than the single market mergers of the 1950's and early '60's. Today's mergers are primarily multimarket mergers—legalistically speaking they are market extension conglomerate mergers. The magnitude of this merger movement is indicated by the fact that during 1967 and 1968, 31 local cooperatives, 29,000 milk producers, and 11.3 billion pounds of milk per year were combined into three large multimarket cooperative organizations. For the United States as a whole 45 cooperatives serving local markets combined to form eight cooperatives. This group includes:

Cooperative	Producers	Coops	Billion pounds of milk per year
1. Northwest Dairymen's Association	6,000	3	2.0
2. Dairymen Cry. Association	3,000	3	.5
3. Milk Producer's, Inc	8,500	14	4.6
4. Mid-America Dairy Inc	15,000	10	4.5
5. Tennessee Valley Milk Producers	1,200	2	.5
6. Central Ohio Milk Producers	1,700	3	.5
7. Dairymen, Inc	6,000	7	2.2
8. Consolidated Milk Producers	2,000	3	1.1

ACTIVITIES

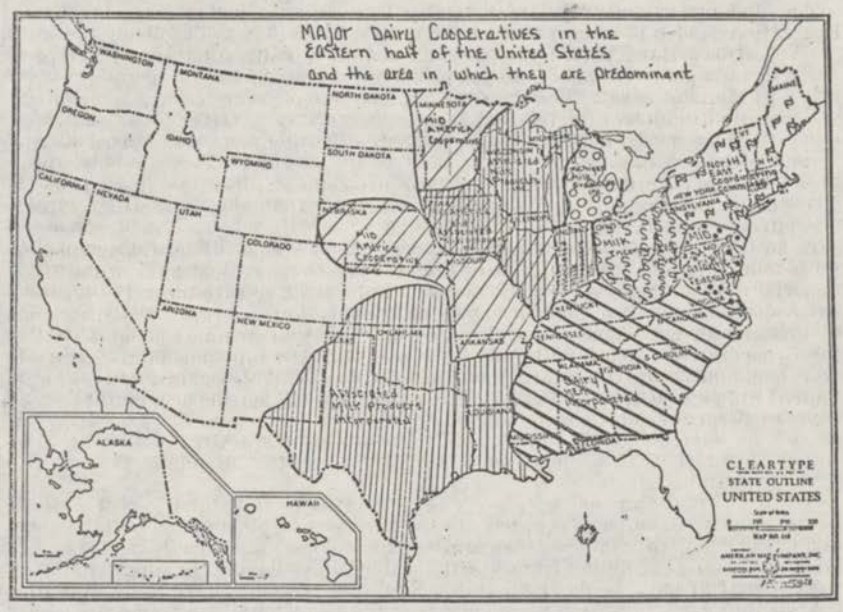
My discussion of the activities of the federated and merged producer groups is restricted to midwest coperatives. It is based upon interviews with cooperatives and handlers in 20 midwestern fluid milk markets.

The activities of the midwestern cooperatives fall into five groups—pricing, testifying, lobbying, promoting, and operation.

One of the major activities of the midwest cooperatives is that of bargaining for higher milk prices. Phrased differently, this function is one of pricing milk in accordance with the cooperatives' desire to increase farmer returns. The multimarket scope of these cooperative organizations provides them with a number of bargaining tools which will be discussed separately later.

A second major activity of these new cooperative groups is that of testifying in federal order hearings. Federations of cooperatives have hammered out their differences in private sessions, and presented a united front.

APPENDIX 4



APPENDIX 5

EXCERPTS FROM NEW FORCES IN MILK MARKETING—COOPERATIVE CONSOLIDATIONS AND MERGERS

(Ronald D. Knutson Assistant Professor Purdue University)

A paper presented at convention of the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, New Orleans, La., November 2, 1969.

BARGAINING TOOLS

Bargaining power is the ability of one party to influence the terms of trade in a market. The ability of a firm to obtain bargaining power is determined largely by the seller's ability to control alternative sources of supply available to the buyer. When markets for milk were isolated from one another, handlers' only alternative source of supply was to buy milk directly from producers. If in an isolated market a cooperative demands a premium over federal order prices, a high utilization handled could obtain a price advantage. It, of course, must also bear the costs involved in the operation of procurement facilities.

Through time, as technology made intermarket milk movement feasible, handlers had the alternative of going outside their immediate market area to purchase supplies of milk. This ability to go outside for alternative milk supplies combined with the ability to buy milk directly from producers, made it very difficult for the cooperatives to effectively negotiate premiums with handlers.

The multimarket cooperative organizations placed some important bargaining tools in the cooperatives' hands. The main bargaining tools which multimarket cooperatives have at their disposal to influence prices are price alignment, the standby pool, and full supply arrangements. These tools could be used to make it economically undesirable for the milk processor to go outside the local market for milk supplies.

A single cooperative operating in a single market has difficulty establishing premiums because if he raises price, his handler will seek out alternative sources of supply. Whenever price differences among markets are greater than the differences in the cost of moving milk among markets, there is an incentive for milk

to move. This incentive can be removed by aligning or adjusting prices such that price differences among markets are identical to differences in transportation costs. Multimarket cooperatives can effectively align prices among markets so that there is no economic incentive for processors to buy milk outside the local market area. Improved price alignment makes it possible for the cooperative to raise the general prive level across markets because when all cooperatives move prices at the same time no handler can obtain milk at a lower price.

Price alignment works well for those cooperatives involved in the midwest federations; there is, however, a large supply of Grade A milk in Minnesota and Wisconsin which has no or a very small Grade A outlet. There is substantial incentive for these cooperatives to supply handlers in other markets with milk anytime they can secure a price which is greater than the Class II or surplus price. If handlers were going to effectively bargain with cooperatives, it was necessary that they bring this milk supply under their control. This was accomplished by forming the standby pool. Under the standby pool arrangement producers in Associated Dairymen and Great Lakes-Southern make contributions to the standby pool of less than 2 cents per hundredweight. These contributions are then distributed among 12 reserve pool plants in Minnesota and Wisconsin. Distributions to producers for these plants have generally been in the range of from 10 to 20 cents per hundredweight. In return for this distribution, the cooperatives in Associated and Great Lakes receive the right to call on the use of these milk supplies when they are needed. The effect of the program is to limit the access of outside handlers to these milk supplies except through a Great Lakes or Associated cooperative. This limitation has played a substantial role in the cooperatives' bargaining efforts.

A third bargaining tool which is closely related to the standby pool concept, is the increased emphasis which the cooperative is placing upon full supply arrangements with handlers. Cooperatives have come to realize that if they are going to obtain premiums from handlers, they must be able to supply handlers with their full milk needs at all times. Similarly handlers have come to realize that as they grow in size to the point where the 10 to 20 million pound per month plant is the rule rather than the exception, full supply arrangements are virtually essential for effective plant and marketing operations. The full supply concept provides cooperatives with a reciprocal bargaining tool which aids the plant in its day-to-day operation and aids the cooperative in its bargaining effort.

EFFECT UPON PRODUCER PRICES AND RETURNS

An analysis of what effects bargaining groups are having upon producer prices and returns is of considerable interest to producers, cooperatives, and handlers of milk. Producers and their cooperatives are concerned because they are interested in the size of the return they are receiving for the dollars they spend in bargaining. Handlers are interested because every price increase must be passed on to consumers which in turn, affects the demand for their products.

As time passes more information becomes available on the costs and returns from bargaining. Yet, the effects of bargaining on prices are difficult to sort out from the effects of decreased milk production on milk prices.

To fully analyze bargaining effects, is is necessary to look at price effects all the way from the Class I price to the actual blend price received by producers for milk. These prices must, in addition, be considered relative to some base period. In my study, I chose 1960 as the base period. For purposes of this discussion, I have chosen to compare October 1960 prices with prices in October 1968. Complete data on prices were available for seven Associated Dairymen and six Great Lakes markets. The data were obtained from issues of the *Federal Order Statistics and Fluid Milk and Cream Report.*

APPENDIX 6

TABLE 1.—MILK COWS AND PRODUCTION OF MILK, MILKFAT, AND BUTTER ON FARMS, UNITED STATES, 1959–69 [1]

Year	Number of milk cows on farms (thousands) [3]	Production of milk and milkfat [2]					Butter churned on farms (1,000 pounds)
		Per milk cow (pounds)		Percentage of fat in all milk produced	Total (million pounds)		
		Milk	Milkfat		Milk	Milkfat	
1959	17,901	6,815	256	3.76	121,989	4,588	76,307
1960	17,515	7,029	264	3.76	123,109	4,628	62,895
1961	17,243	7,290	273	3.75	125,707	4,715	51,750
1962	16,842	7,496	280	3.74	126,251	4,718	42,100
1963	16,260	7,700	286	3.71	125,202	4,649	34,100
1964	15,677	8,099	300	3.70	126,967	4,699	27,085
1965	14,954	8,304	307	3.70	124,173	4,597	21,395
1966	14,093	8,507	314	3.69	119,892	4,425	16,265
1967	13,501	8,797	325	3.69	118,769	4,384	13,220
1968	13,038	8,992	330	3.67	117,234	4,305	10,500
1969	12,689	9,158	337	3.68	116,200	4,275	8,201

[1] Includes Alaska and Hawaii beginning 1960.
[2] Average number on farms during year, excluding heifers not yet fresh.
[3] Excludes milk sucked by calves.

TABLE 2.—MILK USED AND MARKETED BY FARMERS, UNITED STATES, 1959–69 [1]

[In millions of pounds]

Year	Milk used on farms where produced				Milk marketed by farmers			
					Sold to plants and dealers [3]			
	Fed to calves [2]	Consumed as fluid milk and cream	Used for farm-churned butter	Total	As whole milk	As farm-separated cream	Sold directly to consumers [4]	Total
1959	2,658	5,776	1,602	10,036	100,809	9,073	2,071	111,953
1960	2,548	5,273	1,337	9,158	103,927	7,839	2,086	113,951
1961	2,432	4,835	1,115	8,382	108,353	6,918	2,054	117,325
1962	2,330	4,419	915	7,664	110,678	5,943	1,966	118,587
1963	2,245	4,070	743	7,058	111,195	5,060	1,889	118,144
1964	2,152	3,742	595	6,489	114,176	4,439	1,863	120,478
1965	2,061	3,443	472	5,976	112,716	3,650	1,831	118,197
1966	1,973	3,146	362	5,481	109,675	2,993	1,743	114,411
1967	1,893	2,882	292	[5] 5,205	109,420	2,831	1,764	113,565
1968	1,823	2,656	235	4,714	108,767	1,973	1,780	112,520
1969	1,769	2,447	183	4,399	108,442	1,636	1,723	111,801

[1] Includes Alaska and Hawaii beginning 1960.
[2] Excludes milk sucked by calves.
[3] Includes milk produced by dealers' own herds.
[4] Sales directly to consumers by producers who sell only milk from their own herds. Also includes milk produced by institutional herds.
[5] Includes some milk used for other purposes on farms or not utilized.

TABLE 3.—MILK AND CREAM MARKETED BY FARMERS: QUANTITY, PRICE, AND CASH RECEIPTS, UNITED STATES, 1959–69 [1]

Year	Milk sold to plants and dealers			Cream sold to plants and dealers			Milk sold directly to consumers		
	Quantity (million pounds)	Price per 100 pounds	Cash receipts (thousands)	Quantity milkfat (thousand pounds)	Price per pound, fat (cents)	Cash receipts (thousands)	Quantity (million quarts)	Price per quart (cents)	Cash receipts (thousands)
1959	100,809	$4.16	$4,195,492	335,560	60.1	$201,769	961	21.5	$206,242
1960	103,927	4.21	4,373,174	292,490	60.5	176,860	969	21.7	209,923
1961	108,353	4.22	4,568,016	254,720	61.5	156,607	957	21.7	207,667
1962	110,678	4.09	4,529,454	218,470	59.4	129,814	914	21.9	200,368
1963	111,195	4.10	4,556,278	184,530	59.5	109,886	878	22.2	194,727
1964	114,176	4.15	4,737,507	160,650	60.2	96,660	865	22.3	192,666
1965	112,716	4.23	4,766,470	132,090	61.1	80,674	851	22.3	189,903
1966	109,675	4.81	5,271,099	107,830	67.2	72,509	813	23.2	188,368
1967	109,420	5.01	5,486,449	86,290	68.2	58,829	820	24.0	197,147
1968	108,767	5.24	5,701,114	71,190	68.7	48,936	826	24.7	203,989
1969	108,442	5.46	5,923,193	59,010	69.0	40,744	803	25.8	207,010

[1] Includes Alaska and Hawaii beginning 1960.

TABLE 4.—FARM MARKETINGS, INCOME, AND VALUE OF DAIRY PRODUCTS, UNITED STATES, 1959–69 [1]

Year	Combined marketings of milk and cream				Used for milk, cream and butter on farms where produced		Gross farm income from dairy products [4]	Farm value of all milk produced (thousands) [3] [5]
	Milk utilized (million pounds)	Average returns [2]		Cash receipts from marketings (thousands)	Milk utilized (million pounds)	Value (thousands) [3]		
		Per 100 pounds milk	Per pound milkfat					
1959	111,953	$4.11	$1.09	$4,603,503	7,378	$328,718	$4,932,221	$5,037,223
1960	113,951	4.18	1.11	4,759,957	6,610	296,529	5,056,486	5,158,116
1961	117,325	4.20	1.12	4,932,290	5,950	265,275	5,197,565	5,296,024
1962	118,587	4.10	1.10	4,859,636	5,334	231,515	5,091,151	5,182,148
1963	118,144	4.11	1.11	4,860,891	4,813	210,287	5,071,178	5,159,474
1964	120,478	4.17	1.13	5,026,833	4,337	192,053	5,218,886	5,304,899
1965	118,197	4.26	1.15	5,037,047	3,915	174,999	5,212,046	5,296,432
1966	114,411	4.84	1.31	5,531,976	3,508	175,885	5,707,861	5,800,216
1967	113,565	5.06	1.37	5,742,425	3,174	166,108	5,908,533	6,008,175
1968	112,520	5.29	1.44	5,954,039	2,891	157,733	6,111,772	6,205,610
1969	111,801	5.52	1.50	6,170,947	2,630	149,258	6,320,205	6,413,237

[1] Includes Alaska and Hawaii beginning 1960.
[2] Cash receipts divided by milk or milkfat represented in combined marketings.
[3] Valued at average returns per 100 pounds of milk in combined marketings of milk and cream.
[4] Cash receipts from marketings of milk and cream plus value of milk used for home consumption and farm-churned butter.
[5] Includes value of milk fed to calves. For 1967, also includes value of milk used for other purposes of farms or not utilized.

APPENDIX 7

SUPPLY AND PRICE HISTORY: MILK

Year	Supply		Price (price farmers received)		Wholesale price indices (rounded off)	
	Amount (million pounds)	Percent increase in supply	Amount (per hundredweight)	Percent increase	All goods	Farm products
1972	116.7	4.4	[1] $6.13	49.1	[1] 124	[1] 125
1969	111.7	0	5.54	34.5	112	115
1965	118.2	6.0	4.26	3.5	102	104
1959	111.8	Base	4.11	Base	100	100

[1] May 1972.

Sources: Milk, April 1970 and May 1973, Crop Reporting Board, SRS, USDA; Economic Report of the President, January 1973, p. 248.

APPENDIX 8

TABLE 7.—FREQUENCY DISTRIBUTION OF PREMIUMS PAID ON CLASS I MILK IN FEDERAL ORDER MARKETS, 1956–71

	Number of markets in June—							
	1956	1957	1958	1959	1960	1961	1962	1963
Cents per hundredweight:								
1 to 10	1	1	0	0	0	5	2	3
11 to 20	0	3	2	3	3	5	3	4
21 to 30	0	0	8	4	8	1	4	7
31 to 40	2	1	2	1	5	3	5	3
41 to 50	0	4	1	2	9	4	2	5
51 and over	0	3	0	2	4	6	12	8
Total number of Federal order markets reporting premiums	3	12	13	12	29	24	28	30
Total number of Federal order markets	68	68	74	77	80	81	83	82
Percentage of Federal order markets reporting premiums	4	18	18	16	36	30	34	3

	Number of markets in June—							
	1964	1965	1966	1967	1968	1969	1970	1971
Cents per hundredweight:								
1 to 10	2	2	5	8	2	0	2	2
11 to 20	4	5	8	6	2	8	1	1
21 to 30	4	2	8	4	9	9	6	5
31 to 40	2	1	1	4	2	2	9	7
41 to 50	5	2	1	5	23	18	10	8
51 and over	11	11	1	3	2	3	12	15
Total number of Federal order markets reporting premiums	28	23	24	30	40	40	40	38
Total number of Federal order markets	77	73	71	73	73	67	62	62
Percentage of Federal order markets reporting premiums	36	32	34	41	55	60	65	61

Source: Milk Pricing Policy and Procedures, Pt. 1: The Milk Pricing Problem, Report of the Milk Pricing Advisory Committee, U.S. Department of Agriculture, March 1972.

APPENDIX 9

TABLE 8.—WEIGHTED ANNUAL AVERAGE FEDERAL ORDER CLASS I PRICE, NEGOTIATED CLASS I PRICE AND PREMIUM BY REGION, 1966-71

[Dollars per hundredweight]

Region and price	Year— 1966	1967	1968	1969	1970	January–August 1971 [1]
North Central: [2]						
Negotiated	4.98	5.23	5.68	5.91	6.10	6.39
Federal order	4.94	5.03	5.41	5.72	5.97	6.11
Premium	.04	.20	.27	.19	.13	.28
Premium range	.00–.08	.05–.35	.00–.42	.00–.30	.00–.42	.00–.33
Southwest: [3]						
Negotiated	6.03	6.48	6.97	7.15	7.37	7.43
Federal order	6.02	6.28	6.47	5.66	6.88	6.99
Premium	.01	.20	.50	.50	.49	.44
Premium range	.00–.04	.17–.23	.50–.50	.50–.50	.49–.50	.39–.48
Southeast: [4]						
Negotiated	5.86	6.26	6.53	6.73	7.02	7.15
Federal order	5.76	5.97	6.25	6.37	6.62	6.82
Premium	.12	.29	.28	.36	.42	.33
Premium range	.00–.38	.16–.66	.05–.68	.06–.66	.03–.69	.00–.67
Great Lakes: [5]						
Negotiated	5.54	6.29	6.32	6.41	6.61	6.80
Federal order	5.12	5.44	5.85	6.10	6.32	6.48
Premium	.42	.85	.47	.31	.29	.32
Premium range	.00–.77	.26–1.00	.20–.69	.18–.51	.21–.43	.24–.44
Four group average:						
Negotiated	5.47	5.93	6.16	6.34	6.55	6.71
Federal order	5.27	5.47	5.79	6.05	6.29	6.40
Premium	.20	.46	.37	.29	.26	.31

[1] 1971 includes a weighted average price for the months of January to August only.
[2] Includes Minneapolis-St. Paul, Des Moines, Kansas City, St. Louis, and Chicago Federal order markets.
[3] Includes Oklahoma north Texas, central Arkansas, San Antonio, and south Texas Federal order markets.
[4] Includes New Orleans, Louisville-Lexington-Evansville, Nashville, and Mississippi Federal order markets.
[5] Includes southern Michigan, eastern Ohio-western Pennsylvania, Ohio Valley, and Indiana Federal order markets.

Source: Milk Pricing Policy and Procedures, Part 1: The Milk Pricing Problem. Report of the Milk Pricing Advisory Committee, U.S. Department of Agriculture. March 1972.

APPENDIX 10

TABLE 3.—PRICES PAID BY DEALERS AND BY CONSUMERS, JUNE 1973

Market [1]	Class I price paid by dealers for milk used in fluid products (f.o.b. city—basis 3.5 percent fat) (dollars per hundredweight)				Prevailing prices paid by consumers for the most common grade sold at stores [4] (cents per container)			
					Whole milk		Low-fat, paper half gallon	Skim milk, paper half gallon
	Federal order minimum	Over-order payments [2]	Prevailing price [3]	Fat difference per 0.1 percent	Paper half gallon	Paper gallon		
NEW ENGLAND								
Maine:								
Augusta-Portland [6]			8.61	(10)	67	134	67	70
Caribou-Presque Isle [6]			8.61	(10)	67	134	67	58-60
New Hampshire:								
Concord	8.61		8.61	(10)	58	111	65	67
Manchester	8.61		8.61	(10)				
Vermont:								
Bellows Falls [6]	8.61		8.61	(10)	62	119	60	58
Burlington [6]			8.61	(10)	60-63	P122-123	59-63	61
Massachusetts:								
Boston	8.61		8.61	(10)	62-64	123-125		67-68
Springfield	8.61		8.61	(10)	61-69	111-129		
Worcester	8.61		8.61	(10)	61-66	119-127		
Rhode Island: All areas	8.61		8.61	(10)				
Connecticut:								
Hartford	8.61		8.61	(10)	59	111		
New Haven	8.61		8.61	(10)	68	127		66

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					Whole milk		Low-fat, paper half gallon	Skim milk, paper half gallon
	Federal order minimum	Over-order payments [2]	Prevailing price [3]	Fat difference per 0.1 percent	Paper half gallon	Paper gallon		
MIDDLE ATLANTIC								
New York:								
Albany	8.11		8.11	(10)	59	117	59	56
Binghamton	8.09		8.09	(10)	59	113	59	59
Buffalo [7]			8.49	(10)	65	117	62	55
Nassau and Suffolk	8.27		8.27	(10)	68	121	67	61
New York City	8.27		8.27	(10)	70	125	70	61
Rochester [7]			8.49	(10)	63	P125	64	55
Syracuse	7.99		7.99	(10)	59	110	59	49
Westchester County	8.27		8.27	(10)	69	129	65	59
New Jersey:								
Atlantic City [8]	8.41		8.47	(10)	57	110	57	48
Camden [8]	8.41		8.47	(10)	62	108	59	55
Northern New Jersey [8]	8.27		8.27	(10)	58–66	110–118	52–67	50–60
Trenton [8]	8.41		8.47	(10)	59–63	109–113	62–65	58–62
Pennsylvania:								
Erie [8]	7.48		7.51	(10)	62–68	P116–135	58–64	54–60
Harrisburg [6]			7.27	0.070	64–68	P131–136	60–64	58–62
Johnstown [6]			6.98	.070	60	P124	56	54
Philadelphia [8]	8.41	[14] 0.02	8.49	(10)	66	126	62–65	60
Pittsburgh [8]	7.58		7.61	(10)	62–65	P120–126	63–66	63–64
Reading [6]			7.35	.070	64	P130–132	62–64	58–60
Scranton [6]			7.20	.070	66	P131	66	55
EAST NORTH CENTRAL								
Ohio:								
Cincinnati	7.33	.17	7.50	.073	60	114	46	58
Cleveland	7.56	.10	7.66	(10)	55–58	108	52–59	55–65
Columbus	7.33	.17	7.50	.073	58–61	115	59	55–57
Dayton	7.33	.17	7.50	.073	57–60	109–115	49–58	53–56
Toledo	7.28	.10	7.38	.073	57–59	105–109	53–55	49
Indiana:								
Evansville	7.12	.46	7.58	.073	[18] 57–63	109–117	49–59	57–66
Fort Wayne	7.06	.31	[18] 7.37	.073	64	110	57	56
Gary	6.98	.33	[18] 7.31	.073	63	114	61	60
Indianapolis	7.10	.31	7.41	.073	55–61	103–113	55	53–57
South Bend	7.02	.31	[18] 7.33	.073	59	108	57	54
Illinois:								
Alton	7.16	.01	7.17	.073	53	105	51	50
Chicago	6.89	.25	[17] 7.14	.073	63	111	61	59
Peoria	7.02		7.02	.073	52–57	103–113	51–55	46–55
Rockford	6.83	.25	7.08	.073	56	109	55	53
Rock Island	6.96	.08	7.04	.076	53–55	104–110	55	53
Springfield	7.09	.17	7.26	.073	56–61	110–114	53–57	46
Michigan:								
Detroit	7.23	.27	[16] 7.50	(11)	49–55	101–103	49–54	51–52
Grand Rapids	7.16	.27	7.43	(10)	47–55	93–103	41–51	42–49
Kalamazoo	7.16	.27	7.43	(10)	59–63	113–115	59–64	53
Lansing	7.20	.27	7.47	(10)	56–58	105–109	54–56	49–54
Marquette	6.98	.23	7.21	.076	59–63	109–124	59–61	57–59
Saginaw-Bay City-Midland	7.23	.27	7.50	(10)	60	113	50	55
Wisconsin:								
Eau Claire [9]			(10)	(10)	57	110	56	53
Green Bay	6.73	.25	6.98	.073	57	110	56	52
Madison	6.81		6.81	.073	52	101	50	47
Milwaukee	6.83	.31	7.14	.073	55	103	54	51
Superior	6.73	.50	7.23	.079	64	109	62	61
WEST NORTH CENTRAL								
Minnesota:								
Bemidji	6.88		6.88	.073	49	97	48	46
Duluth	6.73	.50	7.23	.079	64	109	62	61
Minneapolis-St. Paul	6.69	.28	6.97	.073	53	99	52	49
Rochester	6.69	.18	6.87	.074	55	109	53	50
Iowa:								
Burlington [9]			(10)	(10)	51	P100	48	46
Des Moines	7.03		7.03	.073	58–61	114–119	53–55	53–55
Fort Dodge	6.88	.08	6.96	.073	54	107	52–53	51
Sioux City	7.23		7.23	.076	57–58	113–114	55–56	54
Missouri:								
Kansas City	7.37	.10	7.47	.073	63–66	121–131	63–65	57–60
St. Louis	7.23	.01	7.24	.073	60–62	106–119	54–61	51–57
Springfield	7.23	.10	7.33	.073	66–68	133	66	

TABLE 3.—PRICES PAID BY DEALERS AND BY CONSUMERS, JUNE 1973

Market [1]	Class I price paid by dealers for milk used in fluid products (f.o.b. city—basis 3.5 percent fat) (dollars per hundredweight)				Prevailing prices paid by consumers for the most common grade sold at stores [4] (cents per container)			
					Whole milk		Low-fat, paper half gallon	Skim milk, paper half gallon
	Federal order minimum	Over-order payments [2]	Prevailing price [3]	Fat difference per 0.1 percent	Paper half gallon	Paper gallon		
North Dakota:								
Bismarck-Mandan [6]			6.99	.073	64	128	61	56
Fargo [6]	6.93		[5] 6.99	.073	62	124	59	54
Grand Forks [6]	6.93		[5] 6.99	.073	64	128	61	56
South Dakota:								
Aberdeen	7.13	.02	7.15	.073	63	124	61	60
Rapid City	7.58		7.58	.073	65	130	61	59
Sioux Falls	7.13	.08	7.21	.073	64		62	60
Nebraska:								
Lincoln	7.23		7.23	.076	48-61	93-114	47-57	46-52
Omaha	7.23		7.23	.076	52-57	101-111	51-57	50-55
Scottsbluff	7.38		7.38	.076				
Kansas:								
Kansas City	7.37	.10	7.47	.073	63-66	121-131	63-65	57-60
Topeka	7.37	.10	7.47	.073	59-69	105-117	57-65	54-59
Wichita	7.43	.10	7.53	.073	63	P117	62	59
SOUTH ATLANTIC								
Delaware: Wilmington	8.41	[14]	8.47	[10]	59	99	63	54
Maryland: Baltimore	8.41	.10	8.51	[10]	68-73	P135-145	65-73	65-75
District of Columbia: Including Maryland and Virginia suburbs.	8.41	.10	8.51	[10]	65-73	P117-133	64-73	63-71
Virginia:								
Bristol	7.76	.30	8.06	.073	68-70	P132-136	65-67	62-66
Norfolk-Portsmouth [6]			8.15	.070	64-66	P126-127	62-64	56-60
Richmond [6]			8.15	.070	64-72	P126-129	62-72	56-57
Roanoke [6]			8.15	.070	64	P126	62	58
West Virginia:								
Charleston	7.38	.17	7.55	.073	64	116	63	61
Huntington	7.38	.17	7.55	.073	59-69	105-119	59-68	60-65
Wheeling	7.53	.10	7.63	[10]	59-67	115-130	57-66	55-59
North Carolina:								
Asheville [7]			8.41	.060	68-69	P138	68-69	64-65
Charlotte [7]			8.41	.060	65-70	P99-140	64-69	64-67
Durham [7]			8.41	.060	67-70	P119-136	67-70	63-67
Winston-Salem [7]			8.41	.060	68-71	P125-135	66-69	64-67
South Carolina:								
Charleston [6]			8.22	.070	68	P136	66-68	65-66
Columbia [6]			8.22	.070	68	P136	66-68	64
Greenville [6]			8.22	.070	68	P136	66	64
Georgia:								
Columbus	7.93	.20	8.13	.073	74-77	P115-143	74-77	72-76
Atlanta	7.93	.20	8.13	.073	74-79	P134-145	71-77	73
Savannah	7.93	.20	8.13	.073	74	141-144	74	
Florida:								
Jacksonville	8.48	.27	8.75	.075	61-66	P129-133	66-74	74
Miami	8.78	.27	9.05	.075	70	P139	71	69
Tampa	8.58	.27	8.85	.075	66-75	P128-129	66-75	75
EAST SOUTH CENTRAL								
Kentucky:								
Lexington	7.12	.46	7.58	.073	68-74	122-132	63-72	61-68
Louisville	7.12	.46	7.58	.073	66-68	126-129	65-69	62-66
Paducah	7.33	.25	7.58	.073	65-73	129-133	64-71	63-71
Tennessee:								
Chattanooga	7.78	.20	7.98	.073	63-66	125	57-60	52-59
Knoxville	7.33	.65	7.08	.073	58-66	115-128	53-60	49-59
Memphis	7.57	.13	7.70	.073	65-55	P130	61-64	58-60
Nashville	7.21	.57	7.78	.073	59-60	112-117	56-60	55-58
Alabama:								
Birmingham [6]			8.09	.067	66-68	132-138	66-69	57-64
Mobile [6]			8.09	.067	66-67	132-138	66-69	57-60
Montgomery [6]			8.09	.067	66-69	132-138	66-69	57-60
Mississippi:								
Gulfport-Biloxi [9]			8.10	[10]	65	130	68	67
Jackson [9]			7.94	[10]	70-72	129-135	69	65
Oxford [9]			7.51	[10]	69	P135	67	68
Tupelo [9]			[10]	[10]	69	P135	67	67

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					Whole milk		Low-fat, paper half gallon	Skim milk, paper half gallon
	Federal order minimum	Over-order payments [2]	Prevailing price [3]	Fat difference per 0.1 percent	Paper half gallon	Paper gallon		
WEST SOUTH CENTRAL								
Arkansas:								
Fort Smith	7.58	.10	7.68	.076	54-61	65-118	54-61	54-61
Little Rock	7.57	.13	7.70	.073	64	129	62	62
Louisiana:								
Baton Rouge [6]			8.24	.073	68	g128	66	60
New Orleans [6]	8.48		[5] 8.22	.073	63	130	67	
Shreveport [6]	8.10		[5] 8.23	.073	68	139	68	62
Oklahoma:								
Lawton	7.71	.10	7.81	076	61-69	115-131	62-67	
Oklahoma City	7.61	.10	7.71	.076	61-69	95-129	57-69	57-63
Tulsa	7.51	.10	7.61	.076	60-63	117-125	59-62	58-61
Texas:								
Abilene	8.20	.10	8.30	.076	70	133	65	64-66
Amarillo	7.88	.10	7.98	.073	66	129	64	64
Austin	8.26	.10	8.36	.073	70	134	65	66
Corpus Christi	8.61	.10	8.71	.073	66-70	131-135	67	67
Dallas	7.95	.10	8.05	.076	59-68	103-111	51-67	55-69
El Paso	7.98	.10	8.08	.076	65	129	61-63	61
Houston	8.31	.13	8.44	.076	59-67	99-103	48-67	59-67
Lubbock	8.05	.10	8.15	.076	59-64	117-125	55-59	55-63
San Antonio	8.37	.10	8.47	.076	49-65	97-135	69	69
MOUNTAIN								
Montana: Great Falls [6]			7.76	.075	69	132	67	63
Idaho:								
Boise [6]			6.55	.085	63	129	61	
Idaho Falls [6]			7.30	.083	63	119	59	
Wyoming: Cheyenne [6]			7.83	.083	68		63	59
Colorado:								
Colorado Springs	7.93		7.93	.079	63-57	126-133	61-63	58
Denver	7.93		7.93	.079	62-64	122-124	57-59	51
Pueblo	7.93		7.93	.079	62-64	120-122	57-59	50-52

WHO WILL CONTROL U.S. AGRICULTURE?

A Dispersed, Open Market Agriculture

(By Harold F. Breimyer, University of Missouri, Columbia and Barry L. Flinchbaugh, Kansas State University)

A dispersed, independent farmer, open market system of agriculture could prevail but major changes in present policies will be necessary. In a dispersed system, large numbers of individual farmers must be able to make management decisions. Open markets are essential to allow the farmer to freely buy the supplies he needs and sell what he produces. The operating farmer plays a composite role of laborer, manager, financier, and landholder. Farmers could be somewhat better off, in terms of the distribution and absolute level of income, than if they were contractees or laborers. But they would lack enough power in the market place to gain substantially higher incomes.

A dispersed, independent farmer, open market agriculture is indeed a possibility for the future, but it will have to accept some modifications from the past. And it will not be uniform by region and by commodity. This possible choice is neither stereotyped nor static. But neither is it loose or formless.

DISPERSED SYSTEM DEFINED

Just what is a dispersed system? The basic features are modest size, freedom of the operator to make decisions, and the existence of an open market. Details of the definition, and comparisons with other farming systems, are explained in

the paragraphs below. Central to a dispersed system is the freedom of the operating farmer to make management decisions.

Markets

Open markets are essential. Only if the farmer can freely buy the supplies he needs and sell the products he produces can he be a part of a dispersed system. If he must instead have a production contract or obtain a marketing quota, he is a part of another system.

The old picture of an open market system is of a local or terminal wholesale market, or a mercantile exchange, available to all comers. Next closest is direct trading where many sellers or buyers actively compete for the farmer's business. A market system something like one or the other of these, well serviced with price and other information, is a minimum requirement.

However, it is not necessary that all markets be cash. There can be sale for future delivery. It is only necessary that future sale be free of production control terms.

Is cooperative marketing acceptable? Yes, if it is a part of an open system. It is possible that dispersed farming, in order to survive, might have to make greater use than before of open-membership, voluntary cooperatives. On the other hand, a compulsory closed cooperative would be another matter—really, part of another kind of farming (see Leaflet 4).

Landholding

In the dispersed system, landholding is indeed dispersed. Farm land is broken up into modest-sized units. How modest? One test is that no farm be big enough to hold any market power in either buying supplies or selling products.

It is hard to define dispersed farms by number of acres, but they are small compared with industrial-type farms. Limits are sometimes expressed in terms of amount of labor hired. By one definition, no more labor could be hired than is put in by the farmer and his family. By another definition, the limit is one and one-half man years. (Two-farmer partnerships without extensive hired labor fall within this definition, but large, multiple-family farms do not.)

Must land be owned by operating farmers themselves? Not necessarily. But a great many of the landowners will be operating farmers rather than distant absentee landlords. In other words, operating farmers will usually own at least a part of the land they farm. And though some farmers may be full tenants, widespread tenancy will not prevail.

Some ownership by nonfarmers would be possible, but their holdings would only be of "dispersed" size. There would not be enough nonfarm landlords to constitute a nonfarm landlord class.

Dispersed farms should not be poverty-small. Instead, individual farms should be large enough to make it possible for the farmer to use efficient production methods and earn an income in line with his ability. This does not exclude part-time farming, but the off-farm work ought to be voluntary and not forced by an inefficient farming setup.

Still, the basic definition relates to size. All "superfarms," whether held by big corporations, wealthy nonfarmers, or large operating farmers, are excluded from the definition of a dispersed farming system. Very large size violates terms of that system, irrespective of who the landholder may be.

Finance capital

In dispersed farming, finance capital is, by definition, provided by the operating farmer, either from his own assets or from borrowings that do not transfer his managerial authority.

Does capital stock have a place in this system? The joint stock system, so adapted to manufacturing and commerce, has not proved especially useful to dispersed farming. If financing were to be raised in that way, the stock would have to be nonvoting in order to keep management in farmers' hands.

Miscellaneous sources such as credit granted by sellers of inputs (such as fertilizer, seed, or tractors) are acceptable, provided the farmer is not unduly restricted in his choice as to where or when to buy.

Various new policies for financing are conceivable. For example, it would be ideal if credit could be advanced more readily to capable young farmers, to enable them to enter farming. Another policy could aim at avoiding transfer of land to nonfarmers upon a farmer's death.

Labor and management

In dispersed farming, the operating farmer and his family do much of the work. Definitions of limits to hired labor, though somewhat arbitrary, were named above. A dispersed farming system does not depend heavily on hired labor.

In a dispersed farming system, *most managerial decisions rest with the operating farmer.* This is the way it has been with the traditional family farmer, who has taken pride in his managerial responsibility.

This definition does not rule out all contracting, but it excludes those contracts that remove management from the hands of the farmer. Likewise, it permits government assistance programs. But compulsory programs that transfer the decision-making prerogative to the government are ruled out. Income maintenance and family assistance programs available to all sectors of society and not just to agriculture are allowable.

Technical information

In modern farming, knowledge is power. For the last century, technical information about farming has been developed continuously and broadcast widely.

A dispersed farming system requires that up-to-date and reliable information be, if not entirely free, then readily available. The individual farmer has limited capacity to develop new technical information.

To sketch the contrast, if the flow of technical information were to be cut off, farmers would be deprived of it but industrial corporations interested in farming would be able to develop it themselves. Their size and financial resources for research would often enable them to serve their own informational needs, thereby giving them a competitive advantage.

Public concerns

General public attitudes affect the system of farming primarily through public policy. The public, however, has several personalities: It is taxpayer, consumer, and interested citizen.

As taxpayer, the public is concerned for public costs associated with a farming system. It is likely that a dispersed system would require more access to government financing than other systems.

As consumer, the public asks about the effect of the system on prices of farm products and food.

As citizen, the public is sensitive to the effect on environment, and it holds a mental image of the sturdy, independent farmer. Obviously, insofar as the public cherishes that image, only a dispersed farming system meets the test.

DISPERSED FARMING SUMMED UP

In summary, dispersed farming requires that (1) open market trading or its equivalent be possible in both procurement of supplies and sale of product; (2) all farm land be in modest-sized units, and a substantial fraction of landholders be operating farmers; (3) finance capital be provided by the farmer, and if he obtains it from others, no control strings be attached; (4) half or more of all labor be performed by operating farmers and their families; (5) management likewise be in the hands of the farmer; (6) technical information be readily available from public and other sources; and (7) public support be provided for minimum necessary public services.

Throughout, management choices remain in the hands of the operating farmer, and no external agent can deny a farmer access to resources or markets.

THE COMPOSITE FARMER

A distinctive feature of the dispersed farming system is the multiple role played by the operating farmer. He is a composite person: laborer, manager, financier. He may own land. He seeks out the technical information he needs.

It follows that such a farmer belongs to a distinctive socio-economic class. He is a modest-sized independent proprietor. By the same token, in dispersed farming there is no other class of major size—no large hired worker class, no wholly separate landholding class, no corps of professional managers.

All this merely sets forth how any truly competitive economy functions. Actual instances in the United States are becoming rarer. Part of agriculture still oper-

ates in this way—but only a *part. The policy question is to what extent farm production and marketing will hold to a dispersed system in the future—and what action will guide it.*

CONSEQUENCES TO AFFECTED GROUPS

Farmers: Owner operators

A dispersed farming system allows the operating farmer considerable freedom of opportunity, managerial independence, and proprietary status. In the farming of the future, it would add to the responsibilities and risks he assumes.

In a dispersed system, operating farmers would themselves carry all the responsibilities that go with an ever more technologically complex and more commercial agriculture. A high fraction of income would be paid out as cash operating expenses, while both natural factors and fluctuating markets would create uncertainty. Hence, risk would be high.

Would financial rewards to farmers be higher in a dispersed farming system than in other systems? *Probably, on the whole, farmers would be somewhat better off in terms of both the distribution and the absolute level of income in a dispersed system compared with systems in which farmers are contractees or laborers.* Their advantage would come from receiving a return not just for labor, but for land, capital, and management. On the other hand, dispersed farmers do not have enough power in the market place to gain substantially higher incomes.

However, the differences among alternate systems, and the basis on which farmers and others may choose among them, are by no means confined to income. Independence and status enter in, as does the job security of having land to farm.

In fact, one reason for caution in predicting higher incomes under dispersed farming is that independent farmers are willing to trade off some income for noneconomic benefits, including freedom from tight production control (imposed either by government or by farmers themselves) that would add to incomes.

Moreover, income comparisons are suspect because in other systems the present body of farmers would be scrambled. Particularly in corporate farming, some farmers of today would become managers and others laborers, while still others might be forced out altogether. Their incomes would vary widely, even though unionized farm workers might be able to protect their wage incomes fairly well.

Alternate systems of farming would likely have more effect on reallocation of jobs and distribution of income among persons engaged in farming than on overall average level of income.

Farmers: Tenants and wage-laborers

Tenancy carries its special hazards. In the past, the economic position of tenants has varied widely by region and commodity and from year to year. A dispersed farming system in the future would likely continue this highly variable situation. On the other hand, the tenant's position might be even more precarious in a centralized (corporate or cooperative) system. Those systems have more power of selection over who is to be included and excluded.

Wage workers in farming have not enjoyed notably great benefits of security or income. They have particularly been subject to gradual loss of jobs as mechanization replaced hand labor. The situation would change little if dispersed farming were to be the future pattern. Farm workers scattered one or two to a farm, and perhaps aspiring to farm tenancy or ownership, would find it hard to unionize. On the other hand, it is likely that various kinds of social security protections would be extended to them.

Supply and market firms

The majority of local market firms—those hometown businesses selling supplies to farmers and buying and processing farm products—would have much to gain by keeping a dispersed farming system, and much to lose in any other system. This is because dispersed farming, more than any other kind, makes use of private agribusiness firms, many of which are located in the rural community.

To be sure, in a corporate system a select few firms might not only survive but reap great rewards. But the rest would be forced out of business.

If farming were to be of dispersed form, local market firms, even though surviving, would not escape all pressures for change. They could not preserve the status quo. The drift toward larger, more efficient market firms probably would continue, for instance.

Rural community and the general public

Evidence seems unchallengable that a *dispersed farming system*, by preserving both independent farm operators and more local farm-connected businesses, *would have a more favorable effect on rural communities* than would, for example, a corporate system.

This does not mean that dispersed farming assures viability of all communities. In fact, the problems of rural communities that are now so evident would remain to be solved.

What does the public at large have to lose or gain in the choice of a farming system for the future? The answer offered here may surprise: The public will gain little materially, but a great deal philosophically.

The public as taxpayers could have more to lose in a dispersed system than in other systems. The steps required to insure and protect a dispersed farming system, as listed below, could require substantial funding from the U.S. treasury.

The public as consumers might be as well or better off under dispersed than under other systems. More centralized systems could correct some of the weaknesses in dispersed farming, such as inefficiency in use of machinery investment. On the other hand, dispersed farming's record of productivity has been good. It avoids the cost of bureaucratic management, which would be sizable in a corporate or other system. And its inability to control its production effectively helps to keep production up and food prices down.

By contrast, the chances are high that any centralized system would generate market power. It might even attain a degree of monopoly in land. These are the principal reasons for believing that consumers would fare comparatively well in dispersed farming.

Most opinion polls show that the public generally, urban as well as rural, favors a dispersed agriculture for reasons that are less economic than social or sociological.

STEPS TO ASSURE A DISPERSED AGRICULTURE

If it were national policy to foster a dispersed farming system, certain actions would have to be taken, including the following:

1. *Maintain a public market information and retrieval system* which would provide all buyers and sellers with production and transaction data, including prices in direct trading for both spot and future delivery.

2. *Take more vigorous antitrust and similar action* to guarantee an open, competitive market system. No individual concern, agribusiness, or even giant farmer can be allowed to dominate or get exclusive benefits in procurement or marketing. Nor can any discrimination at any stage in the marketing process be allowed.

3. *Assure an open market* for farm products. To do this, require by law that every buyer purchase a certain percentage of his volume through an open market system. The figure might be 30 percent, as an illustrative example. Review by an auditing agency would be necessary.

4. *End volume discounts* to large buyers when such discounts are not warranted by actual savings in handling costs.

5. *Develop research information continuously* and disseminate it widely among all producers. This is necessary in order to avoid giving undue advantage to any individual or group. The Land Grant universities and U.S. Department of Agriculture would have an even greater research-extension obligation than at the present.

6. *Develop a flexible and competitive credit system* for all producers. As technology increases and agriculture requires greater capital investments, a plentiful supply of credit funnelled through a readily accessible system is an absolute necessity.

7. *Apply any new family assistance or income maintenance programs to farmers.*

8. *Eliminate all tax advantages to nonfarm investors*, to large-scale land owners, and to agribusiness integrators.

9. *Design regulations*—such as those for environmental protection and zoning of farm land—*to accommodate the average-sized farm* rather than the very large farm. Some regulations now in force or proposed are virtually prohibitive to smaller farmers; these would have to be modified or dropped.

10. To absolutely *assure dispersed farming policies*, (a) Prohibit agribusiness corporations from engaging in agricultural production. This does not apply to the family farm that is incorporated, but it does exclude the conglomerate or con-

tractually integrated operation that has farming as one of its activities. (b) Put strict limits on amount and terms of land ownership by nonfarmers.

In conclusion, *in a dispersed system large numbers of individual farmers must be able to make management decisions and not have them taken over by land owners, creditors, input suppliers, or purchasers of raw commodities.* Giantism and market control must be prohibited in any form. The system would discriminate in favor of large numbers of individual farmers, in terms of credit and access to input and output markets and technical information. If such a system is truly preferred, some major changes in present policies and some drastic measures will be necessary to support it.

A Corporate Agriculture

V. James Rhodes, University of Missouri, Columbia and Leonard R. Kyle, Michigan State University

If nothing is done to arrest the forces already in motion, commercial agriculture will likely be increasingly concentrated in larger, more industrialized units. A corporate system of agriculture has much in common with the giant industrial corporation in its organization, financing, and management. Control of men and assets is in the hands of a group called management. If agricultural production were controlled by a few large corporations, the open market for agricultural products would virtually disappear. Land ownership could take several patterns. Financing could be supplied as in any other large corporation. Unionization of farm workers would be encouraged and higher labor costs could result. Production costs might be reduced, however, through large-scale production and improved coordination.

In a corporate system, most agricultural production would be controlled by a small number (fewer than 500) of very large industrial-type corporations. Where technology permits, much of the farming would be conducted directly through factories in the field or in large feedlots, and the rest by tight production contracts with so-called farmers, as now occurs in production of broilers and some specialty crops. (Such giant enterprises have nothing in common with the family-held farm that incorporates; the two should not be confused.)

Competition among large firms in much of the economy is less a matter of price and more a matter of nonprice elements, such as service and product differences. A similar reluctance toward head-on price competition is assumed for a corporate agriculture. Examples at hand are the cautious price competition found among oil or full-line farm implement companies. A more price-competitive corporate agriculture is possible, but less likely over a long-run period. Some corporations will probably engage only in farming, marketing, and processing while others will be conglomerates, engaged in many activities unrelated to agriculture.

The corporate system

How can one describe fairly a system that doesn't exist? There are problems, of course, but there are many guidelines. *Parts of the corporate system are already here.* While they play little or no role in many parts of agriculture, conglomerate corporations now farm huge acreages of specialty crops, manage great ranch spreads, and feed hundreds of thousands of cattle.

Almost all broilers, and many turkeys and eggs are produced under contractual vertical integration, and some of these integrators are among our largest agribusiness corporations. (Vertical integration means that one firm controls more than one step in the production and marketing process.) These two types of corporate agriculture—factories in the field and contractual integration—are sufficiently different to warrant special discussion of each at various points in this leaflet.

To understand a corporate system of agriculture we must understand the nature of the giant industrial corporation—how it is organized, financed, and managed. Control of a great collection of men and assets is in the hands of a group called management.

Those giant industrial corporations now in agriculture function as in any other enterprise. Management decisions are made at many levels—all the way from the strategic long-range investment decisions at the corporate headquarters down to detailed operating decisions by the feedlot manager or the ranch foreman.

Is corporate takeover possible? Many farmers still do not take the possibility of a corporate agriculture seriously because they don't believe that it can happen. Twenty years ago, almost no one believed it could happen; *today the corporations themselves, and growing numbers of integrated or displaced farmers know that corporations can succeed in various parts of both field crop and livestock production.*

Those farmers miss the point who laugh at certain operating errors made by corporate farmers. For example, while the errors made by Penn Central appear to have been tremendous, that huge railroad system *still exists.* As another example, I. T. & T. grew so fast and so large, not because of any exceptional operating efficiency, but rather, because it had a deliberate and successful strategy of growth via acquisition and merger.

The capacity of the giant corporation to grow and grow, despite the lack of any real competitive edge over individual farmers in a traditional accounting sense, is the crucial difference between the corporate and the individual competitor. The authors are not predicting that this version of corporate agriculture is coming, but rather they argue that major inroads by large corporations are a possibility.

MARKETS

If agricultural production were to be controlled by a relatively few very large corporations, the "open market" aspect of agriculture would virtually disappear for most products, and many of the present agricultural marketing institutions and firms would be replaced. Major corporations do not gear their operations to marketing livestock at the local auction or procuring equipment at the local dealer.

Modern merchandising methods are one way in which corporations carry out their plans for security and controlled growth. A notable casualty would be public market news, grades, and other public marketing services which would have little place on such a stage. Product differentiation, promotion, and advertising would be even more commonplace under corporate agriculture.

What would happen to the market for the services of farmer *contractees?* It is presently quite imperfect and would remain so. The contractee's access to alternative buyers is limited because his services are tied physically to his farm; they cannot be loaded onto a truck, like hogs or corn, to be sent to the best alternative market in the region.

Midwest producers of canning vegetables frequently have had the alternative of putting their land in soybeans or corn. The marketing climate has been less favorable for southern poultry producers who have often lacked workable alternatives. It has been charged that the few prospective contractors have sometimes operated in ways that limited competition among themselves. Public market news in this "market" is non-existent. Presumably, as discussed later under "labor," contractee organizations would develop to offset some of these existing market disadvantages.

LANDHOLDING

In a corporate system of agriculture, the ownership of farm land could take several patterns. Undoubtedly many corporations would choose to own large tracts of land; some do already. This would be especially attractive to conglomerate corporations which might want to hold land for eventual nonagricultural use. Ownership would also be desirable to control sites and soil types that might be unusually suitable for production of specific products or that have a locational advantage.

Corporate operation of leased land is another possible pattern. Such land might be owned in various-sized tracts by ex-farmers, urban investors, and other corporations.

Corporate contractural control of production on farms owned by others is a third pattern that is already widely used in poultry and vegetables for processing. While broiler and vegetable producers own their land and facilities, the contracting corporation control all important aspects of broiler and vegetable production.

In summary, corporations must have access to farm land but they need not own it to control agriculture. Conversely, land ownership, by itself, does not give an individual the power to be a "farmer" when production, processing, and marketing are a corporate system.

CAPITAL

The United States has a large and well-developed capital market, which transmits investment capital from investors to users—by various instruments such as common and preferred stocks, bonds, loans, mutual funds, limited partnerships, and so on—in such a manner as to regulate the amount of risk acceptable to both parties. *The large capital needs of agricultural corporations* and of "agricultural divisions" of industrial conglomerates *would be financed in this immense capital market in much the same manner as in any other large corporation.* The capital market nicely serves the needs of the large corporation.

To the extent that some production is supplied by contractees who furnish the land and facilities, they may still obtain intermediate credit from country bankers and the remnants of the Farm Credit System. It is unlikely that this cooperative credit system could be so changed in nature as to service the credit needs of large agricultural and agribusiness corporations.

The necessary agricultural credit could likely be "wholesaled" more efficiently to, say, 500 corporations than it can be "retailed" to 1,000,000 farmers. However, corporations typically insist on a much higher return on their equity capital than do farmers; so, there is no evidence that the *total cost* of agricultural capital—credit and equity—would be materially changed.

LABOR

The corporate structure tends to separate labor, management, and capital. In corporate factories in the field, the labor would be provided by hired workers. Some of them would be skilled enough to operate the big sophisticated machines and handle the highly technical aspects of industrialized livestock operations. Considerable specialization would be possible, allowing advancement with job training and experience. A worker would not be called a "farmer" but would be specifically designated as a "tractor driver," "herdsman," or "mechanic."

Corporate agriculture would help bring about the unionization of workers. Unions would probably win for farm workers most of the same protections and benefits now generally provided in industry. Labor legislation would probably be changed to omit many of the current exemptions for farming.

Farmer contractees in broiler and other contractual production might be organized for collective bargaining in "farm organizations" or in unions. Their currently ambiguous status somewhere between farmer and hired laborer complicates efforts to remedy their unequal bargaining power.

MANAGEMENT

Corporate agriculture would radically change decision-making in agriculture. The strategic, long-range planning and financing decisions would be made in corporate headquarters. The managers, not the many small stockholders, would generally control the corporations. Each individual production unit would be controlled by a resident manager who operated with a plan that included a budget for operations and investments. Under him would be suitable levels of foremen, supervisors, and technical advisors as required by the production unit.

Managers would work their way up in the system and be subject to continuous training at different levels. Stock options and profit sharing might be used to provide incentives in addition to wages and fringe benefits. Some managers would come from the ranks of the present owner-operators who now make the decisions in a dispersed agriculture.

TECHNICAL INFORMATION

Modern, commercial agriculture is a product of science and technology. Corporate agriculture, like industrial production, would require large annual investments in research and development to provide for possible increases in efficiency. In fact, the continuous development of new technology is a major force that makes corporate agriculture more feasible each year.

Much new technology comes from corporate sources already operating in the production and distribution of the inputs used in farming, or involved in the processing and distribution of the products produced on farms. Also, the USDA-Land Grant university system of research provides much new technology which the very large farms often find easier to use effectively. Some of this technology has already helped to create a new form of agriculture that resembles a factory more than a traditional land-based farm.

A corporate agriculture would do most of its own applied research. *Most of the agricultural extension system would be eliminated as would much of the public research of the Land Grant universities and USDA.*

PUBLIC CONCERNS

In most rural areas large conglomerate corporations are not particularly popular, especially if they engage in agricultural production. This attitude is behind the current interest of farm organizations and the attempts of some state legislatures to control, prohibit, or expel the real large corporations from farm production and the ownership of land. The Family Farm Act introduced in the 92nd Congress in 1972 is a visible example.

National policies toward agriculture partially depend upon the attitudes of urban voters. Predictions are hazardous. Consumers might be more concerned about low-cost, high-quality food than about who produces it. Moreover, most of the nonagricultural sector of the economy is dominated by giant firms, so why should agriculture be an exception?

But there is another side. Opinion polls indicate the family farm has a much higher standing with urban folk than does the large corporate farm. Moreover, today's youth and many of their elders are re-thinking their previous acceptance of corporate dominance in industry. This mounting concern would hit head-on any corporate takeover of farming.

Consequences to Rural Communities and Local Agribusiness

Those concerned about rural development are likely to oppose corporate farming. While situations will vary most replacements of an existing agriculture with factories in the field, or even with contractual farming (such as broilers), will injure the many rural supply and marketing firms whose owners and managers are the economic backbone and the leadership core of many rural communities. Leadership and community participation would be further hurt by a replacement of farmer-capitalists with corporate employees lacking the assets and the local community ties of farm owner-operators.

Consequences to Farmers

The status of the group known as "commercial farmers" would be drastically altered. Efficient farmers and small-town businessmen have enjoyed a special niche in the power structure of rural communities. Some have enjoyed a sizable net income and asset accumulation. It would be a drastic change for these groups to be absorbed into the corporate structure as hired managers and employees because, in the past, they competed more favorably with the less efficient farmers in the surrounding community.

Some hired workers and farmers who are struggling within the current competive system could find it a relief to change to the payroll of a large corporation and be protected by government regulations and union contracts.

Costs of Government

A change to a corporate agriculture would alter government costs for agriculture, but the net impact is quite uncertain. Undoubtedly, less would be spent for direct government support of farm income, research, and education. However, the tendency of corporations to obtain other types of government subsidies suggests that the savings to taxpayers might be easily overestimated.

Consequences to Consumers

Retail prices of food would be higher because more of the production costs must be paid in the market place as less are paid through farm programs. The net impact of this change in financing upon food costs (retail prices plus taxes) would be increased costs for lower-income consumers and reduced costs for higher-income consumers, as the latter are presently hit harder by taxes to finance farm programs.

Three other factors that would raise food costs are:

1. Merchandising and marketing costs would probably rise because of greater product differentiation and advertising. (Consider the example of breakfast cereals.)

2. Aggressive unionization of agricultural and agribusiness workers would increase labor costs.

3. Lack of effective price competition would push up food prices.

On the other hand, production costs might be reduced through large-scale production and improved coordination. All factors considered, the net effect

upon food costs would likely be a significant increase for lower-income consumers and a small increase for other consumers.

Even more important than the impact on food prices would be the new threat of interrupted food supplies because of labor disputes and strikes. The disputes over lettuce and grapes in the early 1970's are only a mild foretaste of what would likely occur.

ACTION TO INSURE CORPORATE FARMING

No action may be really necessary to bring about corporate agriculture. *If nothing is done now to arrest the forces already in motion, commercial agriculture will likely be increasingly concentrated in larger, more industrialized units.* Relatively large units controlled by sole proprietorships or family partnerships and corporations might compete quite effectively for another generation or two. Then the trend could accelerate toward more control of agricultural production by very large corporations.

As giant corporations become important in an area, there would be an erosion of open market; of public market information, public research, and education; of independent suppliers and market and credit agencies; and of all those institutions that constitute the fabric of present agriculture. This erosion would contribute to the switch to the new economic system.

The trend to corporate control might be accelerated by the policy actions with opposite effects from those listed in Leaflet 2, on the dispersed system:

1. Instead of putting a low maximum on farm payments, the present $55,000 limit could be raised or even eliminated.
2. All attempts at pollution control could be oriented to the relative advantage of the big feedlot rather than the small feeder.
3. ACP and ASC payments could be designed to discriminate severely against the small- and medium-sized farmers.
4. The Farm Credit System could be redirected to discriminate against small and medium-sized farmers.
5. Public research and education could be oriented to the needs of the very large operator.
6. Even more tax shelters could be built into agriculture to attract urban risk capital.
7. The minimum wage could be kept low and all attempts at unionization of farm labor could be vigorously opposed.

If corporate control of agriculture does develop, some policy actions seem quite likely. As mentioned previously, farm labor will likely receive the same legal protections and regulations as urban labor. Corporate concentration may lead to much more scrutiny under antitrust laws to maintain a workable competition. A government that is now often concerned about undue fluctuations of certain farm commodity prices may find itself more concerned about quasi-monopolistic pricing and overly rigid food prices.

Issues in Concentration Versus Dispersion

(Harold F. Breimyer, University of Missouri-Columbia and Wallace Barr, Ohio State University)

Questions affecting a policy choice between a concentrated versus dispersed farming system are not new. Criteria for the choice begin with the ideals, values, and goals of all who are affected—farm operators, tenants and laborers, marketers, and consumers. The authors test the two systems against these criteria while reminding that other, intermediate systems also are possible. Further, any preference for dispersed farming does not exonerate that system from its faults or excuse it from all need to change. Overall, purely economic factors in the policy choice are not more important than "our ideas of the kind of world we want to live in."

The ultimate value of a free economy is not production, but freedom, and freedom comes not at a profit, but a cost.—Henry Wallich

Had it been merely the liberal spirit alone which inspired the American farmer to become capitalistically oriented . . . the difficulties he encountered would have been greater than they were. But where land was abundant and the voyage to the New World itself a claim to independence, the spirit which repudiated peasantry and tenantry flourished with remarkable ease.—Louis Hartz

Each generation exaggerates its own place in history. It sees its accomplishments as original, its problems as unusual. United States agriculture today is no

exception. It overexalts its achievements and overrebukes itself for its deficiencies. It overstates its problems as new and unprecedented.

A pressing policy problem for the foreseeable future is how farm production and marketing is to be organized and who is going to control it. Thrust upon us after 40 years of preoccupation with acreage controls and price supports, this organizational issue appears strange and new. It is not new at all; it is ancient.

From the time primitive man divided the tasks in providing food and skins until the day of modern commercial farming, the organizational system has been a subject of deep importance to farmers. Also, it is important to those associated with farm production or marketing, and to those dependent on it for sustenance—that is, to everyone.

Historically farming has been organized in many ways and it is organized differently in various parts of the world today. Farms range from the minifundia to the semifeudal estates in Latin America and from the scattered hereditary private plots of western Europe to large corporate farms of the western United States and the large state farms of the Soviet Union.

In most of the United States a single kind of organizational system has prevailed. Best known as the family farm, it is more accurately designated as a small-unit proprietorship. The term used in this publication is a "dispersed" or traditional system of farm production and marketing, which contrasts with its extreme opposite, a "concentrated" system. By using the general term of dispersed farming, we avoid being bound to a particular system of the past or present.

The policy question is not whether things will be kept just as they are; it is neither desirable nor possible to do so. Rather the basic question is whether some version of a dispersed farm production and marketing organization is to prevail or whether the control of U.S. farm production and marketing will be concentrated in a relatively small number of large farms. A key word is *control.* It has little relation to the form or location of operating units. In a dispersed farming system decision-making power is dispersed. In a concentrated system the control rests in a few hands. Also, the issue involves the degree of dispersion or concentration that will develop.

The opening chapter sketched some current developments in U.S. farming. This chapter will outline some of the criteria by which policy should be considered, name some of the causal forces that account for the trends, and list a few alternatives and some consequences to various segments of society.

The criteria particularly concern the values and goals that ought to enter into policy decisions of such vital importance.

VALUES AND GOALS

First we consider the desires, the ideals, the values, and the goals of persons affected by the future organization of farm production and marketing. What indeed are the aspirations of farmers? This includes not only the owner-operators, but also the tenants and the wage workers. In addition, what do suppliers and marketers expect? What does the consuming public ask? Is there any common ground among the groups named above? Do all hold the same values and share similar goals? Although unanimity is neither necessary nor possible, a consensus must exist.

Operating Farmers

Attitudes and aspirations of operating farmers, whether part or full owners, have been pulse-counted often (*1, 3, 4, 5, 6,* 7). The findings are mixed; not only do individual farmers disagree but many persons are inconsistent in their viewpoints.

The following points probably approximate the findings of most farmer-attitude studies.

Farmers eagerly seek new technology or are technologically progressive. No longer are most farmers hidebounds as to practices in production.

Farmers are willing to go into debt. The older intense resistance to indebtedness has waned. However, this has not extended to acceptance of permanent heavy indebtedness on land. Farmers aspire to a sizable equity in land. This has become harder to achieve.

Farmers are of mixed mind about assuming high risk versus entering into either contractual arrangements or governmental programs to reduce uncertainty. Generally, however, as farming risks increase, farmers are more willing to accept measures to reduce them.

The vast majority of farmers declare they prefer to remain independent proprietors buying and selling in the open market, rather than enter into production

contracts. This has not stopped the steady growth of contracting in various products.

In principle farmers favor, or at least accept, the benefits of group action, as in cooperatives or bargaining. On the other hand, they are reluctant to become involved in it. This contradiction is reported by several studies showing that farmers approve collective action in marketing and pricing but are unwilling individually to join in it.

Farmers want financial security for themselves, particularly for their retirement years, but hesitate to grant equivalent protections to hired farm workers, as by social security, unemployment insurance, workmen's compensation, or unionization. Farmers tend to take a paternalistic view toward hired workers.

Farmers have a genuine love of the land, a respect for it, and a desire to protect and preserve it. This attitude is not mercenary; it has roots that are almost religious. It extends to an acceptance of measures relating to what is now called "ecology," which includes the older idea of conservation but extends beyond it to environmental protection and preservation.

Farmers' attitudes toward earning an acceptable income, to which they of course give much emphasis, may be put in terms of their favoring "commutative justice" while objecting to the principle of "distributive justice." These terms describe two different concepts of social justice that are derived from the ancient Greeks. Commutative justice refers to equality in private relationships. Distributive justice calls for more direct action to share wealth and income. It justifies policies to give direct help to persons suffering low incomes. Farmers generally accept the principle of distributive justice only for handicapped persons, the elderly, and similar disadvantaged groups and others with whom they are personally acquainted or can personally identify.

Among examples of commutative justice, farmers have supported measures to bring honesty and fair trading in marketing, and even to seek price parity for farm products. They have hesitated to accept income redistribution through direct treasury payments, a form of distributive justice. When direct payments gained wider use in farm programs they were made more acceptable by cloaking them under the concept of land rental, which classifies as commutative justice. In reality, only a portion of direct payments pays for voluntary retirement of land and thereby conforms to commutative justice. The remainder is income supplement and fits the idea of distributive justice.

Tenants

Traditionally, the farm tenant has been regarded as a potential owner trying to accumulate enough capital to climb the agricultural ladder. As land becomes scarcer and more costly, the ladder becomes harder to climb.

Little evidence is available as to tenants' hopes and plans. Some want to buy land for a base of operations. Others find it more promising to put their funds into operating capital and into education for their children, as they till ever larger acreages rented from as many as five or six or even more landlords.

The relationships with landlords involving farm program rules, security, income, and level of living are presumably of primary importance to career tenants. With regard to technology, risk, group action, and attitude toward land, tenants probably hold many of the same values as owner-operators.

Hired farmworkers

Some workers are neighbors or other farmers with few alternatives who are "helping out," but there also is a hired labor class. The hired farm labor group ranges from permanent skilled labor as on large dairy farms to temporary seasonal labor with little attachment to agriculture.

The interests of these hired persons appear to be identical with those of industrial labor: wage rates, working conditions, stability of employment, and fringe benefits including workmen's compensation, unemployment compensation, health insurance, and social security. More farmworkers are turning toward the union form of organization as a vehicle to express and press their wishes.

Marketers

Firms that buy from farmers are usually margin-takers and are affected more by the volume of business done than by the price level of farm products. They want the volume large. Marketers have frequently opposed programs by which farmers might limit their output.

Market firms are concerned not only with the price and volume of farm products available to them but also with the dependability of timing and quality—the

more so as they become part of the "industrialization" of the food and fiber industry referred to in Chapter 1.

Input suppliers

Suppliers of inputs, like market firms, are usually margin-takers and therefore emphasize a large volume of business. In contrast to marketers, however, the input suppliers usually show more concern for farmers' incomes because they know that farmers buy more fertilizer, tractors, and other production inputs when their incomes are favorable.

Input suppliers, particularly of products such as feed and fertilizer, find it advantageous to establish secure outlets. They resist both sharp fluctuations in volume and a high cost of selling. These objectives explain why they sometimes seek contractual outlets.

Agribusiness firms located in rural areas, both marketers and suppliers, appear to feel a closer tie to farm affairs than do those farther removed.

The consuming public

The public at large, which both consumes farm products and finances farm programs through its taxes, has much at stake. *U.S. consumers have recently declared their wishes with some emphasis. Wholesome, nutritious, safe food at a moderately low cost seems to be their major objective.*

Nevertheless, it is unfair to charge consumers with purely sectarian or selfish attitudes. They frequently express concern for long-term goals such as conservation of land, and respect farmers' aspirations for both acceptable income and proprietary status. Consumer protests over high food prices have been directed almost exclusively toward processors and retailers and not toward farmers. Farmers enjoy considerable good will among the consuming public.

DISPERSION VERSUS CONCENTRATION

Features of dispersed farming

A dispersed system of farm production and marketing by definition has many proprietary units. On each unit the operator combines in himself two or more economic roles such as laborer, manager, capital supplier, and often a landholder. The proprietary status of farmers in a dispersed system is usually related closely to an open market system. This does not rule out all contractual marketing, but it excludes contractual arrangements that seriously compromise the managerial independence of the farmer.[1]

A dispersed system of farm production and marketing does not as a general rule result in sharply divided economic-social classes for those who work the land, for those who manage it, and for those who own it. This is an important feature.

A dispersed system puts little if any economic power in the hands of each farm or farmer. The farmer can manage his own resources as he sees fit, but he possesses no economic power beyond his farm gate. This is a basic characteristic.

This definition is more general than precise. It does not rule out all absentee landlords and it allows for some hired labor. But it excludes concentrated power. It fits the kind of farming that has prevailed in the North and East and in part, but not all, of the South and West. Typically most landlords have been closely involved with farming, often being retired farmers or farmers' widows.

In the U.S. this kind of farming came into being rather readily. During the first 150 years of our national existence land was abundant. Land disposal policies of the government encouraged small holdings by many people. But the system was also adopted because farmers wanted it and because the public—which always holds a potential veto power over policies for agriculture—either favored it or acquiesced in it. Further adding to dispersed landholdings was the wish of many persons to keep a tract of land as a hedge against inflation.

In no sense is the form or organization of farming purely economic in nature—it has social and political connotations as well. Historically, the men who tilled the soil and tended the herds were sometimes subservient—slaves, bondsmen, and

[1] A more complete definition is: "1) Land is privately owned and cultivated. 2) Much of the land is owned by persons within agriculture, rather than by a nonfarm propertied class. 3) The individual proprietor is manager and laborer and provides most of all of his operating capital; he may also own his land. 4) Consistent with 3), the individual proprietorship is comparatively small. 5) The farm buys its supplies and sells its products in market exchange." (*2, pp. 60–61.*)

serfs. Even today farmers voice their concerns in the language of their opportunities, occupational status, security, independence, freedom.

The kind of dispersed organizational system that has survived has not done so unaided. On the contrary, it has benefited from much national policy undertaken in its behalf. Measures have included public support for research and dissemination of new technology, an agricultural credit system, a subsidized transportation system, land-use policies, authority for farmers to work together in cooperatives and associations for purchasing, marketing or bargaining purposes, supporting incomes to farmers by means of price support or acreage control programs, and others.

Assessing the effectiveness of these measures is less important than recognizing that a choice of an organizational structure has historically been a public policy matter. It will probably continue to be so in the future.

Features of a concentrated agriculture

U.S. farming is being transformed into a new and strange pattern. (See Chapter 1.) Some farms have grown to a size that exceeds the dispersed system for farm production and marketing. More often, large nonfarm interests have moved into ownership or control of farm production. The overall term for a system of farm production and marketing controlled by a relatively few firms is a "concentrated" system.

A concentrated organizational system would typically include both farming operations and firms that formerly supplied inputs or marketed products in a single management complex. Each such complex would establish a "systems approach" to its internal management. This is the opposite of the open market system that in the past generated price signals to guide each stage of farm production and marketing.

Concentration, like dispersion, can take several forms. A concentrated organizational system could consist of huge industrial corporate "horizontally structured" farms. Or it could take the form of contractual integration dominated by agribusiness "vertically structured" firms. A concentrated system would leave little room for the proprietary owner-operated farm of the dispersed system. A few such farms might operate in fringe areas, as those near cities that sell directly to small stores or consumers.

Any kind of concentrated farming would differ from a displaced system—differ for producers, for firms supplying production inputs, for firms marketing and processing products, for rural communities, and for consumers.

Both the corporate-farm and contractual versions of a concentrated farm production and marketing system are described more fully in Chapter 4.

A range of choices

Various intermediate systems can be found between dispersed and concentrated systems of farm production and marketing. These depend heavily on some form of group action by farmers or on government programs. The total range of choices—dispersion, concentration, and intermediate—can be classified as follows:

1. Dispersion of control
   - (*a*) Open markets
   - (*b*) Variations upon open markets
2. Intermediate systems
   - (*a*) Group control
     - (1) Cooperatives
     - (2) Bargaining
   - (*b*) Government involvement
     - (1) Marketing orders
     - (2) Marketing boards
3. Concentrated control
   - (*a*) Horizontally structured
   - (*b*) Vertically structured

ORIGIN OF PRESSURES FOR CHANGE

If issues concerning the organizational system for farm production and marketing are as old as the process of getting food from land, why have they suddenly exploded upon the U.S. farm policy scene? Why is the traditional dispersed organizational system changing? There are at least six reasons:

1. The increasing technical complexity of farming. Farming is more complex than before in the knowledge and skills required of each farmer, especially those

of a technical nature. It is more complex with regard to the resources, including financing, that must be employed on an economic unit—many of them obtained from industrial sources.

Some critics feel farming will be manned by specialists—one person a technician, another a manager, and several working as laborers—with financing (and risk-bearing) provided almost entirely from nonagricultural sources.

Within the traditional dispersed farming system, increased complexity in production has led to shifting to more commodity specialization, to drawing on specialized sources of technical knowledge, to "buying" such knowledge along with purchased inputs, to using cooperatives to help meet financial needs, and to relying on government programs for protection against price and weather risks. Questions arise as to whether these or other actions can adequately meet the needs that technical complexity brings about.

The other response has been to move toward a new, concentrated organization of farm production and marketing.

2. The persistent pressure and tendency to take advantage of volume operations. If net unit margins may be widened through volume discount buying of inputs or volume selling, the incentive to expand volume is very strong. The pressure to increase total net income in this way is widely felt.

This is different from the question of how large a farm should be to achieve highest efficiency. Maximum operating efficiency has generally been reached with modest two- or three-man units. These units can have substantial "staying power" in competition with more concentrated systems if the survival test be confined to operating efficiency.

The higher net incomes from volume output have played a role in the increasing size of dispersed farm operations. If an individual farm is big enough to influence the terms of procuring its inputs including hired labor, or for marketing its products, it can command favorable differentials. For example, access to low-wage labor can make a large farm appear profitable, but this does not prove that it is more efficient than the two- or three-man farm.

Likewise, advantages from large volume are important in the development of industrialized and concentrated systems of farm production for certain enterprises in some regions. Concentrated systems particularly gain where financing and tax advantages are realized by combining farm and nonfarming activities (see item 4 below).

3. The scarcity of highly productive farmland coupled with growing needs for land for purposes other than farming. A major effect is to make land ownership attractive as a speculative investment and as a hedge against inflation.

Of the four resources of production, only land is relatively fixed in its supply. Until two generations ago, we had a frontier of unoccupied land. This is no longer true. Even though technology expands the land's productivity, land is scarce and becoming scarcer. It is increasingly difficult to retain a strong foothold on the land resource.

4. Closely related to land scarcity are the effects of tax laws. The rules make it relatively easy for nonfarm investors to outbid farmers for land. It is ironic that several of the tax rules were sought by farmers but have been more helpful to nonfarm investors. The Tax Reform Act of 1969 closed a few loopholes and reduced some attractions to nonfarm investors, but by no means ended all of them. (See Chapter 6 for further discussion.)

5. Minority position of farmers. Cultivators and herdsmen have never been so widely outnumbered by others in the economic system. In the U.S., 5 percent of the population lives on farms, 4 percent is gainfully employed in farming, and 3 percent of the Gross National Product is credited to farm production.

Within the food and fiber system, Shaffer (*8*) estimates the efforts and investments of operating farmers contribute only 15 percent of the final retail value of output. The rest goes to suppliers of purchased inputs and to the marketing system.

Their minority status makes it more difficult for farmers to retain their identity in the midst of so big a nonfarm world.

6. Pressure put upon farmers to become a subsidiary unit in large business organizations that are often built upon merchandising strategy. This force affecting the organization of farming may be the least familiar, at least to farmers, yet the most powerful. Most of the pressure toward a concentrated farming does not originate internally. It usually comes from outside sources.

Pursuit of power is a driving force in all economies. The center of power has changed from time to time. Once it was in land. Later the economic efficiency of large-scale manufacturing brought power. Now, power is sought more often in the

strategies employed in merchandising consumer products. These strategies involve product development, mass advertising, and promotion of brand names.

More and more, the control gained through merchandising is reinforced by extending it backward to access to raw products. This leads to "vertical systems" in production and marketing. It is possible that vertical systems hinging on aggressive merchandising will become more common in processing and retailing of food and that attempts will be made to bring farming operations into the combines.

CONCENTRATION VERSUS DISPERSION: CONSEQUENCES FOR PRODUCERS

The basic question is worth repeating: What difference does it make as to how farm production and marketing is organized? An accompanying question is: What would be the consequences of alternate forms of organization?

Present-day farmers would find their situation vastly changed if a concentrated farm production and marketing system were to prevail throughout the United States. The change would be sharper if corporate farms would take over than if contractual integration were the choice.

The meaning will be made clear by treating the two kinds of concentration separately.

Corporate farms

A corporation farming system would put almost all land in the hands of giant industrial-type corporations. It should not be confused with family farms that are incorporated.

Such a system, once it became widespread, would dominate all farming. A few small proprietorships would remain and there would be some landholding by persons who earn most of their income in nonfarm occupations. The latter might hold their own against corporate farms, especially if income tax rules continue being favorable to them.

A farming corporation might be confined to a single commodity like cattle ranching or cattle feeding. Or it could include several commodities. The corporation itself would normally own most or all of the land, livestock, and facilities.

Former farm operators would find themselves either fitting into a niche in the corporate hierarchy or excluded from farming. A very few might become top farm managers. A large number, but only a fraction of our present farmers, would move into middle management. All others employed on farms would be either supervisors—foremen, "straw bosses," and such—or skilled and unskilled workers. The vast majority would be of the two latter categories.

A relevant question is whether corporate farming would pattern itself after corporate industry in all respects. It might. Yet farming is subject to some biological limits. This is particularly true of livestock farming.

The Soviet Union, which shifted to a corporate-type farming, found it necessary to establish a complicated system of incentives and rewards in order to encourage farm workers to show greater responsibility toward crops and especially the care of livestock.

In any event, corporate managers would try to encourage a sense of *esprit de corps* among all employees. Employees, on the other hand, would likely sense compatibity of interest with each other. They probably would combine into unions to express those interests.

Whether farm workers' unions in a corporate farming system would be granted the same legal privileges, protections, and prohibitions as now prevail in industrial unions is highly uncertain. But union organization and activity could be expected to follow if farming goes the giant-corporation route.

Contractual Integration

If contracted integration as it now exists in poultry and in the processing of horticultural crops is a model, integrated farming of the future would allow "farmers" to own land and buildings and possibly machinery but would sharply restrict their proprietorial rights.

This is a kind of farming in which some or all of the risk—price risk, production risk, or both—is transferred from farmers to agribusiness firms. Also shifted is much of the right or responsibility of management. The contracting firm generally decides who shall produce the product, how it shall be produced, and how much production shall be allotted to each contractee.

A contractual farm production and marketing system is a hybrid between the traditional "dispersed" system and a corporate "concentrated" structure. It could

take many forms. The exact situation that would prevail as to farmers' income, status, and managerial prerogatives would depend on the bargaining relationship between farmers and the agribusiness firms. *If farmers retained enough negotiating strength, the terms of contracts might approximate the values and goals they have long cherished. If they lacked such strength, they would fall short of those objectives.*

To date, neither private nor public services such as market regulations have been applied to contractual negotiations in the same way as to buying and selling products in the market.

Dispersed Farming

If farming remains dispersed among many independent producers, it will retain many of its present strengths and weaknesses. Farmers would have managerial independence but would bear considerable risk and they would be subject to the vagaries of government programs as well as of the market.

Farms probably will get larger and become fewer in number. Rising land costs will deny land ownership to an increasing number of farmers.

Farmers probably will see many of their open markets continue to disappear. Open markets that remain will be subject to increasing pressure for specification production and orderly marketing. Farmers are perplexed as to what steps to take—to re-establish markets, or to turn to cooperatives, bargaining, or other group action.

In all probability, a dispersed agriculture of the future would materially modify its sources of credit, technical knowledge, and perhaps capital inputs.

CONCENTRATION VERSUS DISPERSION: CONSEQUENCES FOR INPUT SUPPLIERS AND MARKETING FIRMS

A concentrated system of farm production and marketing would eliminate many firms now supplying inputs to farmers or marketing their products. The relatively few who survive would find the quality of competition to be changed drastically from the day of the individual proprietary farmer.

On the other hand, dispersed agriculture would more nearly retain the conventional relationships between farmers and suppliers or farmers and marketers. Not all change is ruled out, however.

Corporate Farms

Corporate farms producing on vast acreages or feeding large numbers of livestock or poultry would probably set up supply or marketing subsidiaries. Less often would the firm buy inputs from, or sell products to, independent companies.

In the most extreme case, independent supply or market firms would simply disappear. Even in the less drastically changed system, where the corporate farm still actually buys inputs or sells products, the practices would be different from those that are now so familiar in much of the country. Supplies would probably be purchased under carefully negotiated longer-term, large-volume contracts. Products would likewise be sold under contractual arrangements entered into by bid-and-offer.

Among present supply and market firms, the ones affected most would be those now located in rural communities. The chances are that corporate farms would do most of their business with large firms in central cities. The smaller businessman now serving the independent farmer would probably find himself displaced.

Contractual integration

In a contractually integrated farming system, input supply or market firms would, by definition, be contractually linked with farming operations. They would usually be the most important part of the combined undertaking. There is no universal pattern as to whether the supplier or the marketer would dominate. However, in view of the growing emphasis on merchandising, it is likely that market firms will gain the ascendancy. Suppliers will often be brought into the vertical complex in a subordinate role.

In general, agribusiness firms now in business have little choice between the contractual or corporate farm variety of a concentrated agriculture. Most of the smaller firms would vanish in either case. However, the survivors would probably have more stability and power under a contractual than under a corporate farming system.

Dispersed farming

If farming remains dispersed, the number of farmers will continue to decrease. The larger commercial farmers will seek the advantages of volume purchases and

some might engage in joint selling. Many others would continue to buy and sell independently. The total volume of business that farmers conduct with suppliers and market firms would be greater than now.

Even a dispersed farm production and marketing system would not keep all present supply houses or marketing firms alive. Attrition among those firms will continue, particularly in more remote communities. Nevertheless, the outcome would be substantially more favorable toward those firms than if all U.S. farming were to be concentrated in a few hands.

CONCENTRATION VERSUS DISPERSION: CONSEQUENCES FOR CONSUMERS

Less is known about the effects of a concentrated versus a dispersed farming system upon consumers than upon any other affected group.

Advocates of concentration claim savings in cost of producing farm products. They promise that savings would be passed forward to consumers. Spokesmen for a dispersed agricultural organization system are skeptical.

Differences in food costs would probably be minor. A concentrated system may bring some economies but it may also have some added costs, as in management or possibly in hired labor. Spokesmen for a dispersed agricultural system point out the performance of traditional proprietary agriculture is not bad and that agriculture has adopted new technology and provided an abundant supply of high-quality food at reasonable prices.

Economics of size in production

Farming offers no great operating efficiency from large-size units. Scale economy in crop production is handicapped by space and distance—there are cost disadvantages in farming acreages located far from headquarters. Cost advantages for large-scale livestock and poultry production are partly offset by incidence of disease. The problems have been handled better in poultry and in cattle feeding than in hog production.

Corporate farming requires a sizable administrative staff. It leads to bureaucratic organization and the inefficiencies that accompany bureaucracy. Furthermore, if low wages have previously made some large farms look good, unionized labor in corporate farming would reverse that situation quickly.

Economics of size in merchandising

If farming were to become so highly concentrated that production and marketing of some farm commodities would be confined to a few firms, any economies of size in production would be partly or wholly denied to the consumer.

If production efficiency is to benefit the consumer, the marketing and mechandising system must itself by efficient and competitive. Our present farm economy serves consumers reasonably well because most of its products move through a competitive marketing system in which price competition is keen and promotion and merchandising costs are modest.

In a concentrated farming, costly merchandising and promotional techniques might offset production efficiencies. If that were to happen it might be necessary to resort to governmental regulation.

CONCENTRATION VERSUS DISPERSION: CONSEQUENCES FOR INCOME DISTRIBUTION

A summary measure of the advantages or disadvantages of a new organizational structure—or for that matter the old structure—is its effect upon distribution of wealth and income.

Would a concentrated system of farm production and marketing improve the opportunities and the incomes of persons who now earn inadequate incomes from farming?

Short-term adjustments

If farm production were changed over to a concentrated form, the first effect would be to distribute the income of farmers more inequitably than before. The conversion process would exact a price.

The initial change would improve the incomes of a select few farm operators who moved into high administrative or middle management posts, or became skilled technicians. But it would disrupt the lives of many farmers who would be displaced. Evidence is that many displaced farmers are not absorbed readily into other employment. Even though they may not have earned high incomes in proprietary agriculture, on the average they would not improve their situation following voluntary or involuntary evacuation.

A change in the cost structure would occur as a concentrated farming system developed. The costs that are now fixed for the existing farms would become variable costs for the new firms.

Longer prospects

Adjustments will be made over time. What will happen to distribution of income? Will differences be widened or narrowed?

To shift from any established system to a new one always imposes a heavy monetary and psychic cost on the persons directly involved. Past adjustments in farming have imposed a cost. If farming were to be wholly restructured, the pains of the past would be repeated and perhaps made more piercing.

Traditional farming has had its successful and unsuccessful farmers as measured by income and capital accumulation. Findings of the President's Commission on Rural Poverty and other inquiries have forcefully pointed out that farming has its own very large sector of poverty.

It is difficult to forecast the distribution of income in a concentrated farming system because distribution is concerned with *people* whereas income is concerned with return to individual *factors of production*. That is, income is received for land, for labor, for capital, and for management.

Traditionally the farmer has received income from two, three, or four factors of production. The differences in the income individual farmers have earned from farming are accounted for by (a) the rate of return generally prevailing for each factor, and (b) the amount and quality of each factor each farmer contributed or possessed. A farm operator owning a large acreage of land debt-free has a considerably larger income, as a rule, than a farmer who owns little land and provides mostly labor. Likewise, in concentrated farming the distribution of income would be determined by the two separate considerations. However, most "*farmers*" would get income from one or at most two factors rather than from all four.

In any transition to fewer owners of land there will be differential income impacts. The owners of average- and above-average-quality land will benefit as the price of land is bid up. In marginal farming areas there will be little interest in purchases for farming purposes and present owners may suffer unless there is an alternate use for the land.

Land income and distribution

As just noted, a basic feature of a concentrated farming would be that, to a large extent, it would separate the possession of the four factors of production. Land and much of the physical capital would generally be owned by stockholders of corporations. Management would be in the hands of professional managers. Labor would be performed by salaried employees in the case of corporate farms and by contractual farmers in agribusiness integration.

This feature of a concentrated farming would tend to widen the distribution of income among individuals in it. This is likely because the return to ownership of land would go to a separate class of the population in contrast with the present system in which return to land is primarily received by operating farmers and becomes a part of their total income from farming. Even much of the land rent paid to landlords has gone to ex-farmers or their families, and not to a separate, permanent landholding class.

As mentioned earlier, land scarcity in our nation dates from only a couple of generations ago. Now that land is becoming scarce, it is important to national policy who is to own it and receive the income from it. Combining ownership of land and labor in the operating farmer has been one of the key characteristics of our dispersed agriculture. A corporate or contractual agriculture dividing ownership of land and labor would concentrate the income received from land ownership. Inequity of income from land has been a source of social unrest through past centuries and could prove difficult again.

Group action for wages and contracts

Another consequence of a concentrated farming could be an opposite effect on distribution of income. It could even out the income distribution. Specifically, the returns to farm labor might improve. This probably would be brought about by wage workers forming unions and contractual farmers joining into bargaining associations. Both would be interested in negotiating higher rates for their labor or their resources.

Industry provides a lesson. The industrial revolution created sweatshops and held workers in poverty. When the disadvantaged groups won protection by law,

including the right to form organizations, their situation began to improve. Similarly, a farm economy concentrated in relatively few hands might have the economic power to depress wage rates for hired labor or contract terms for integrated farmers if they had few alternatives. But as workers and contractual farmers turned to group action, probably condoned by legislation, the situation would change.

Challenge to dispersed farming

The question of the kind of farm production we want is not simply one of turning to a concentrated structure or keeping the present system. A dispersed system will itself change. The structure of the farms will change. The marketing system will change and new organizational forms will appear. Special problems will arise that a dispersed farming will have to face in the years ahead. One such problem is that income distribution within present-day farming seems to be becoming less equitable, and the situation could get worse.

The pattern of land ownership, the design of farm programs, the policies toward wage labor in farming, and income tax rules are policy matters that can influence the equity of income distribution in a dispersed system of farm production and marketing.

SUMMARY

Our traditional dispersed system of farm production and marketing is being subjected to pressures that could result in a much more concentrated system.

A concentrated farming extending itself throughout the United States would bring material changes to the farms, farmers, and rural communities of the nation. It would have some effect upon consumers.

In the long run this kind of development would convert farming to the organizational structure now found in nonfarm industry and business. In particular, a corporate farming would resemble industrial manufacturing and a contractually integrated system would have some features in common with franchise merchandising.

The merits of a concentrated versus a dispersed farming system are to be judged by comparing the consequences with the goals for our farm economy.

Farm operators

A concentrated system of farm production and marketing would conform to farmers' desires for more security and less risk. On the other hand, such a system would conflict with their wishes for proprietary independence. Farmers who are adverse to group action would not welcome the pressure to form bargaining associations or unions.

But the farmers' sharpest conflict relative to a concentrated farming is summed up in the damage done to a cherished principle that farmers can earn a fair reward within a dispersed system given equality of opportunity and a competitive market system. Farmers have been willing to use the powers of government to establish and protect that principle.

Already that image of the "best of all worlds" (by farmers' standards) has taken heavy blows. Our dispersed proprietary farming has suffered considerable loss of opportunity. For example, costs of entering farming have risen while systems of finance have been slow to change. Farmers may be less than candid with themselves about the present situation. On the other hand, a concentrated farming system would almost certainly adduce equality of opportunity further.

Tenants and wage workers

A dispersed proprietary farming system affords more opportunities and rewards to owner-operators than to tenants and hired workers. A concentrated system would probably present fewer disadvantages to the two later groups. Moreover, they would benefit from various new protections such as unemployment insurance. As a result, tenants and hired workers are more likely to look with favor on a concentrated system than are owner-operators.

Suppliers and marketers

The position of input suppliers and marketers toward a new kind of farming concentrated in a few hands would depend entirely on whether a given firm were a part of the new complex or excluded. For those included, benefits could be substantial. For those excluded, the loss of access to individual farmers would be a serious, if not fatal, blow.

It is nevertheless fair to ask some questions irrespective of the good or bad effects on any one firm. Would it be in the national interest to convert the food

and fiber economy to the conglomerate-firm structure that is coming to mark so much of nonfarm industry? Or would it be better, even from the point of view of agribusiness, to keep farming dispersed? The conglomerate-firm structure has its critics, and the questions they raise can be applied to converting a once dispersed farming to the same concentrated control system. These questions relate to economic power, to prolix bureaucracy, and to making the economic system a contest among giants.

Consumers

Consumers would be affected much less than other affected groups. Some economies of scale might be realized if farming were concentrated. But savings would probably be offset as the merchandising of food was transformed further toward promotional instead of price-based competition. On balance, consumers probably would pay food prices similar to or slightly higher than those prevailing if agriculture were dispersed.

But let us assume that consumers would be no worse off under a new system of farm production and marketing. Certainly a concentrated system would be more orderly than a dispersed one and most of the time it would operate with more precision. Occasionally the opposite would be the case, as when power struggles between contending groups—firm management versus organized farm workers or contractees, for example—disrupted operations.

U.S. farming, which has enjoyed a degree of isolation from the economic structure, life styles, and pressures of urban industry, will come face to face with them. An emerging question is: How much to yield, and how much to preserve? The question must be answered not only by economic criteria but also according to our ideas of the kind of world we want to live in. And the question must be answered in the arena of national policy.

Production of corn, cotton, soybeans, wheat, or other crops responds to supply and demand but the desired kind of agriculture, whatever it may be, is brought about through the painful process of forging a national policy.

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STATEMENT OF THE AGRIBUSINESS ACCOUNTABILITY PROJECT

CORPORATE SECRECY—AGRIBUSINESS

Mr. Chairman, the Agribusiness Accountability Project appreciates your invitation to present testimony today on a fundamental issue in our society—corporate secrecy.

My name is Philip C. Sorenson, and I appear today as the Chairman of the Advisory Committee of the Agribusiness Accountability Project. I am accompanied by Jim Hightower, Director of the Project, and by Martha McNeil Hamilton, who is Director of Government Research for the Project.

The Agribusiness Accountability Project is a public interest research organization that is sponsored by the Center for Community Change and by the Project on Corporate Responsibility. We are funded by the Field Foundation. For over a year now, we have been attempting to document the nature and extent of the role of big business in rural America. Because of corporate and governmental secrecy, this has not been an easy effort.

AN OVERVIEW OF AGRIBUSINESS IN RURAL AMERICA

One thing we do know is that agribusiness corporations generally have become the dominant force in rural America. Their concentration of agricultural markets and their power over rural people is increasing every day. It is our finding that American agriculture has moved from the fields to the cities—the critical decisions today are made in the board rooms in New York, Washington, Chicago, Atlanta, Kansas City, Houston, Los Angeles and other centers of big business.

There is no doubt that agriculture *is* big business. In 1970, Americans paid $114 billion for food. Fiber, tobacco and other agricultural products add billions more to make agriculture the biggest business of all—bigger than automobiles, bigger than defense hardware, bigger than electronics. Agriculture is the biggest contributor to our balance of payments and a major source of employment. Three out of every ten jobs in private employment are related to agriculture.

But it is not the average rural American who is pocketing the billions generated by agriculture. Instead, it is agribusiness that enjoys the profits—a complex of huge seed and feed companies, chemical and fertilizer producers, farm machinery manufacturers, processors, canners and packagers, marketers and distributors who increasingly are moving into production.

On the surface, agriculture appears to be a highly dispersed industry that would not lend itself to takeover. A majority (56.5 per cent) of all farms in the country are classified as "small." In fact, their impact is "small," in spite of their numbers. They accounted for only 7.8 per cent of farm sales, according to the 1964 Census of Agriculture.

On the other hand, a mere nine-tenths of one per cent of this country's farms accounted for 24.3 per cent of all farm sales. These giant producers averaged sales of $272,000 that year. The U.S. Department of Agriculture estimates that by 1969 these "largest" farms "accounted for at least one third of total sales by all farms." The Department projects that by 1980 these super farms will account for more than half of all farm marketing.

USDA attempts to minimize the importance of corporate agriculture by pointing out that corporations account for only one percent of all farms and seven percent of the land in farms. It says nothing about the real power agribusiness exerts in the market place and through contracts. Campbell's Soup, for example, owns no farm land, nor does it lease any, but through contracts with producers it effectively controls thousands of acres and hundreds of farmers. USDA does not bother to report that.

Thanksgiving is only two days away. This traditional celebration offers a dramatic insight into the corporate invasion of agriculture. Pilgrims and Indians provided their homegrown food for the first feast, but corporate America has prepackaged the dinner this year. The Smithfield ham comes from IT&T. The turkey is a product of Greyhound Corporation. The lettuce comes from Dow Chemical Company, the potatoes are provided by the Boeing Company, and Tenneco, Incorporated brought the fresh fruits and vegetables. The apple sauce is made available by American Brands, while both Coca Cola and Royal Crown Cola have provided the fruit juices. For desert, there are strawberries by Purex.

But we should hesitate before bowing to give thanks to the corporate providers. This Subcommittee has pioneered in the investigation of corporate agriculture. You know from your 1968 hearings that it is an unproven myth that corporations inherently are more efficient than family agriculture. You know from your investigations in the field that corporations do not make good neighbors and that they change more than the pattern of farming when they move into an area. You know that there are serious questions about the quality of food that comes off the assembly line of corporate agriculture. And your hearings raised the fundamental and still unanswered questions about corporate monopolization of agricultural products which may lead to price fixing.

Mr. Chairman, we are not suggesting a return to the old homestead. It is obvious that the answer is not to give everybody forty acres and a mule. It should be just as obvious that the answer is not to continue stumbling along blindly, allowing corporate agribusiness to re-make rural America in its own peculiar image.

It is one thing to buy Thanksgiving dinner from corporate America rather than a family farmer, but it is quite another thing to add on the staggering social and cultural costs that come with the shift in the make-up of agriculture.

1.5 million farm workers averaged an income of $1,083 in 1970, while another million workers averaged $2,461 by doing some non-farm work too;

Some 12 million rural Americans exist in poverty, with millions more existing just on the edge;

More than 2,000 farms a week fold—more than 3 million have folded since 1940;

For every six farms that fold, a small-town businessman boards up his store; and

Whole rural communities and small towns are being abandoned.

The very character of our country is changing—farmers are being reduced from free enterprisers to corporate cogs, small towns are being abandoned for urban and suburban concentrations, and rural America is becoming a factory. Our national leadership has yet to question whether these radical changes are desirable. If we want more in rural America than corporate profitability, then we must have a national rural policy. But before we can develop any rural policy, we must strip away the myths and understand in detail the reality. That means asking agribusiness corporations to tell us more about themselves, and asking the federal government for enough information about agriculture to analyze the trends.

Mr. Chairman, the conventional argument for corporate disclosure has been the right of the investing public to know. As explained below, that right is not being protected adequately, and corporations should be asked to reveal more to investors about their agricultural involvements.

But corporate agriculture today affects far more than the investing public, and it is essential that we expand the traditional rationale for disclosure. Corporate agribusinesses are making private decisions that are having an enormous—maybe devastating—public impact. Putting aside the questions of whether we can control those decisions, at least the American public and their policy makers have a right to know about them.

The public has a double investment in agribusiness—both as consumers and as taxpayers. The federal government alone spends billions of tax dollars to subsidize agriculture. Invariably, these subsidies work primarily to the benefit of agribusinesses—subsidies including farm program payments, research at land-grant colleges, water from federal reclamation projects and loopholes in the federal tax structures.

But the fact is that the public cannot now know much at all about agribusiness corporations. Consider this basic question: Who are America's farmers? It is impossible to know even that.

In 1965, the Internal Revenue Service (IRS) reported that 3,265,382 farm income tax returns were filed. Only 17,578 of those were filed as corporations. By those figures, 99.5 per cent of the farms in this country are family or partnership endeavors, suggesting an agricultural system with strong competitive safeguards. But the IRS count includes only those corporations whose "principal business" is farming.

For giant conglomerates, the acquisition of a farming subsidiary can mean substantial capital gains, favorable depreciation rates on equipment and machinery, and tax losses written off against non-farm income—all amounting to major tax savings. But their principal line of business is not farming, and they need not bother to file a farm income tax return.

IRS does not include Tenneco in its farm count, even though this conglomerate controls close to 2 million acres of farm land. Tenneco's Kern County Land Company received a farm program payment this year of $1.3 million—the fifth largest made—and it received a $13.2 million credit on its income tax in 1969. Boeing Company has bought 100,000 acres for farming in eastern Oregon, but they will not appear as a farmer under IRS' rules. Boeing will use federally subsidized water for its potato crop. This list of "farmers" can go on and on—Goodyear Tire and Rubber, Purex, Penn Central, Alico, Standard Oil of California, Prudential Insurance, Bank of America, etc.

But these conglomerates are not the only corporate farmers missed by IRS. Del Monte, Libby McNeil and Libby, Stokely-Van Camp, Green Giant, Ralston-Purina, Coca Cola and Pillsbury are vertically-integrated agribusinesses that have expanded directly into farming without being counted as farmers by IRS. Frequently, these processors and marketers turn to farming in order to secure cost savings in their purchase of farm products that they use in other business

activities. In the process, they eliminate markets and drive down the prices for independent farmers struggling to stay in business. In spite of the huge acreage owned and the massive impact of their farming operations, they do not even have to file a farm income tax return.

Information at the Securities and Exchange Commission is not much better. Two documents filed there by public corporations provide the bulk of the information available on specific businesses. They are the Form 10–K, filed annually, and the Form S–1, filed at the time securities are registered. But these forms tell us little or nothing about the farming operations of the corporations. We can learn from these forms that a corporation is involved in farming, but not the extent of its investment in farming; we can learn that a corporation owns farm land, but not the location of that land. We have summarized the available information from the current 10–K and S–1 forms of Tenneco and Stokely-Van Camp and appended them to our testimony. SEC requires information on lines of business within multi-faceted corporations only when the division amounts to 10 percent or more of the corporation's total sales and revenues. With constantly increasing conglomerate-growth, this could allow major producers of specific commodities to omit farming from their reports.

Vertically integrated processors and distributors can avoid discussing their farming operations even if farming does account for more than 10 per cent of sales and revenues. Specifically exempted from the 10 per cent requirement are situations "where material amounts of products or services are transferred from one line of business to another . . ." These may be considered one line of business.

The conventional argument against disclosure has been competition—the right to protect business operations from the prying eyes of competitors. Yet the function of vertical integration and conglomerate growth has been to limit competition. Will processors, exporters and marketers bring to farming the concentration they have created in their own areas of business? According to the National Commission on Food Marketing in 1966,

"There is a tendency for business in the several fields of the food industry to become more concentrated in the hands of a few large firms. . . . In neither food processing nor distribution do economies of operation resulting from large size necessitate high concentration in national markets."

We can reasonably expect vertical integration to extend this trend toward concentration into farming.

SEC disclosures through expansion of already existing mechanisms can provide the information with which other agencies of the federal government, and the public, can develop an understanding of who controls or is gaining control of agricultural production in America.

For instance, the need for disclosure about contractual arrangements between agribusiness corporations and producers must be met before any complete analysis of trends in food production can be attempted. The information available now on numbers of producers of commodities is inadequate for the purpose.

In poultry production, for example, 35,126 farms produced broilers in 1964, the latest year for which figures are available. On the surface, that appears to be a highly competitive situation. In fact, since 1964, 98 percent of broiler production has been under contracts, with Ralston Purina, Swift and Pillsbury being the dominant contractors.

In the case of broiler production, the trend toward agribusiness domination is clear. In other commodities, we are left to guess.

131,650 farmers were raising vegetables in 1964, again an apparently competitive situation. But agriculture secretary-designate Earl Butz, a former member of the board of Stokely-Van Camp, said last week that of 12,000 acres producing vegetables for processing by Stokely, 9,000 are under contract. No matter how many farmers are nominally suppliers of Stokely, in fact three-quarters of the land is under Stokely's control, and those farmers are not free to compete for better prices.

RECOMMENDATIONS

I. The Securities and Exchange Commission should expand its reporting requirements to provide a clearer picture of farming operations of vertically-integrated agribusiness corporations and conglomerates. Attached as appendix 2 is our suggestion for additional requirements.

II. All farms in USDA's "largest" category, those with annual sales of more than $100,000, should be required to submit an annual registration form to USDA, supplying the same type of information as the SEC would require on

farming operations of publicly held corporations. Attached as appendix 3 is our suggestion for the requirements of this registration.

III. The Federal Trade Commission or the Justice Department should be required by Congress to issue an annual public report on vertical integration and the movement of conglomerates into farming, with the purpose of assessing the impact of increasing concentration in agriculture. Expanded disclosures such as those suggested above would help in compiling this report.

IV. We particularly endorse Ralph Nadar's November 9th recommendation before this Subcommittee that corporate income tax returns should be public information.

So far we have talked about the major issues involved in corporate secrecy, information about corporate activity that is not available for public inspection because no federal agency requires its disclosure.

For the industry analyst, the muckraker, or the interested stockholder, the roadblocks set in his way by those who oversee access to public information can be just as important and twice as frustrating.

Our task of analyzing what is going on in agriculture and who is behind what is going on in agriculture has been complicated in a variety of ways, ranging from petty harassment to perverted interpretations of the public's right to know.

We have several letters that reflect difficulties we have encountered in gathering allegedly "public" information. Let me summarize three cases, briefly.

Ms. Kathryn Seddon is a corporate researcher for the Project. As part of her job, she spends hour after hour at SEC pouring over material that has been filed with the commission by agribusiness corporations. Because of the volume of material she has to deal with, it is frequently expedient to photocopy pages from annual reports or proxy statements rather than laboriously copying information by hand.

Ms. Seddon isn't lazy. She simply has a large volume of material to handle in a short time.

A LEASCO machine in the public reference room of the SEC makes copies for 25 cents a page, a high price in comparison to other photocopying machines. Ms. Seddon wrote the commission, questioning the high prices and asking what benefits the SEC receives from LEASCO's operations. As it turns out, "The Commission's reward for entering into this contract is the public service it performs through encouraging the dissemination of public information . . ." According to their answer, a rather esoteric reward for a business arrangement. SEC does not lease space to the company for the machines or derive any monetary benefits from the operation.

Ms. Sue DeMarco is actively working on a study of land-grant colleges for the project. As a result, she has needed to go to USDA occasionally to interview agriculture department staff. On a recent occasion, she was told that she could not park her car in a visitor's parking lot. If you are familiar with the location of USDA's main offices, you know there is no nearby available parking after 9 a.m.

A USDA official explained to Ms. DeMarco that "visitors" meant people on "official business that is of benefit to USDA." Apparently, he believed that an analysis of the activities of land-grant colleges would not be of benefit to USDA.

Ms. DeMarco has made a formal request for permission to park in the visitors lot on subsequent visits to USDA.

Shortly after I went to work for the Project, USDA released its list of recipients of farm program payments of more than $5,000. Since there is a substantial history of legitimate congressional and public concern over how public funds are distributed and who farm program payments benefit, I was disappointed to learn how limited USDA's concept of "public" is.

USDA did not take issue with whether the names of recipients should be made public, but it did see to it that access to the information was limited. It made one copy available to the general public in a small room in a back hall of its Washington office; another copy available to 535 Senators and Representatives through the Senate Appropriations Subcommittee on Agriculture.

For those who found it inconvenient to spend hours at USDA squinting at the figures in six inch-thick volumes of computer printouts—or for those who don't live here, USDA had another alternative: for $150, an individual can have his own printouts; or for $75, an individual with a computer can have a magnetic tape to use to run off his own list.

In other words, the public's right to know is often limited by the public's ability to pay.

These examples, not critical in themselves, suggest that providing for wider disclosure of corporate information is not enough. There must be a change in the attitudes of the custodians of public information, a change that reflects the fact that government employees are at the service of all of us.

Appendix I

Two documents filed with the Securities Exchange Commission provide most of the information used in assessing the nature of a corporation's business, particularly its agricultural activities. These are Form 10–K—filed annually under requirements of the Securities Exchange Act of 1934—and Form S–1—filed at the time securities are registered under the provisions of the Securities Act of 1933. Requirements for completing these forms are attached.

We have chosen two examples to indicate the type of information regarding agriculture which is available from these forms. The amount of detail in reporting varies considerably from corporation to corporation. Some descriptions of a business' agricultural activities are far more comprehensive than others. Our examples are neither the best nor the worst.

Tenneco Corporation

Form 10–K for Fiscal Year ended December 31, 1970.
Filed with Securities Exchange Commission on March 31, 1970.

Item 1: Business.

The description of business includes three categories directly related to agriculture. They are "Packaging", "Land Use and Development", and "Manufacturing". Introductory paragraphs reveal the number of employees engaged in all lines of business in a lump sum. The following types of information are given for each category:

Packaging.—A general description of the type of containers produced and their uses. For example . . . "cartons are used principally in the packaging of soap and detergents, food products and beverages and a wide range of consumer goods. Molded pulp products are supplied for packaging of applies, other fruits and eggs, for use as transfer plates in the baking industry and for use as prepackaging trays for meats, fruits, and vegetables used in self service markets".

A percentage breakdown of sales according to type of container (for instance, paperboard).

Number of plants according to type of container produced and the number of plant locations.

Aggregate amount of shipments for each category of container except for plastic products.

The source of raw materials—described as "independent logging contractors", the operation of reclaimed paper stock collecting plants, and "other sources".

Acres of land used in the operation are described as follows: "Packaging owns, leases, or has cutting rights over approximately 206,000 acres of Michigan forest land and over approximately 285,000 acres of timberland in Alabama, Mississippi, and Tennessee".

Competition within the industry is described as "intense".

Land Use and Development

A chart lists total number of acres owned and total number leased in each of two states.

Total number of acres devoted to irrigated farm lands (no locations listed).

Total number of acres farmed by Tenneco West and number farmed by independent farmers under lease.

A statement that "Most of these irrigated farm lands have been upgraded from grazing lands".

A vague statement that Tenneco West has "substantial water rights on the Kern River in California and an extensive canal system which serves Tenneco West's lands and certain lands of others".

A statement that Tenneco is also engaged in development of commercial land in Bakersfield, California.

The name of the subsidiary which acts as "sales agent" for growers and shippers in four named states.

MANUFACTURING

A listing of divisions including J. I. Case. Under J. I. Case.

A list of the types of agricultural machines and "other items" produced.

Per cent of J. I. Case's total sales accounted for by agricultural equipment.

The statement that "markets are highly competitive."

The total number of independent dealers and retail outlets in the United States and Canada which market J. I. Case products.

The number of domestic manufacturing plants and a list of five states—but not cities—in which they are located, but no information about how many are in each state.

Names of foreign countries in which subsidiary plants are located.

J. I. Case Credit Corporation, an unconsolidated subsidiary of J. I. Case, is simply described as financing "purchases and lease of Case products by dealers and their customers."

The share of Tenneco's business during the last four years is reported in dollar amounts for "Packaging", "Agriculture, Land Development", and J. I. Case according to "operating and non-operating revenue" and "income" before interest, taxes and extraordinary expenses. Net sales for the years 1966–1970 are reported according to broad categories:

Machinery, equipment and shipbuilding
Packaging
Land Use

Item 2: Summary of Operations.

In the notes to the Financial Statement, Tenneco lists recent mergers and acquisitions and describes briefly the terms (cash and stock) of the transaction.

Item 3: Properties.

(The guidelines ask for location, general character, whether or not leased, etc.)

"The company believes that the plants and equipment of its subsidiaries, substantially all of which are fully utilized in their operations, are in general well maintained and in good operating condition."

Item 4: Parents and Subsidiaries.

Lists of names of subsidiaries include subsidiaries of subsidiaries, place of incorporation and percentage of voting securities owned by parent company. At the end of the list appears the statement that "certain other subsidiaries which Tenneco West, Inc., and Tenneco International Inc., own, either directly or indirectly through totally held subsidiaries, . . . names . . . are omitted since in the aggregate as a single subsidiary they do not constitute a significant subsidiary."

Item 5: Pending Legal Proceedings.

Tenneco provides a brief description of pending legislation identifying the court and the principal parties involved. The date of filing is not included.

Items VI–IX are omitted as they do not bear directly on agricultural activities.

Item 10: Financial Statements and Exhibits Filed.

Schedule V of the financial statement is entitled "Plant and Property". Tenneco attaches a dollar figure to the property used in the three divisions:—packaging; machinery, equipment and shipbuilding; and land use and other.

A separate financial statement is filed for J.I. Case Credit Corporation.

At the end of the report, Tenneco lists other exhibits on file with the Securities Exchange Commission. The list includes the type of exhibit, date filed, and registration number.

TENNECO CORPORATION

S–1 Statement, Filed October 21, 1970.

Amendment Filed November 23, 1970.

The S–1 statement occasionally provides information which supplements that available from the 10–K reports. The most recent Tenneco statement yields the following:

Report of use to which proceeds of the sale of stock will be put—a specified dollar amount is to be used to pay in full "short term notes". The "balance" will be added to general funds and "used for the expansion of the business and its subsidiaries. The proceeds of such short term notes were used . . . by the

Company for the expansion of its operations, and by Tenneco Corporation for the expansion of the businesses of its subsidiaries".

Description of business—the description of the three categories of agricultural-related business is almost identical to that which appears in the 10–K form. Additional information is reported regarding "packaging" activities:

The name of a subsidiary and the location of its plant and its output.

The number of forested acres owned, leased, or on which the subsidiary has cutting rights and the names of the three states in which the land is located.

STOKELY-VAN CAMP, INC.

10–K Form for Fiscal Year ended May 31, 1971.
Filed, August 30, 1971.

Item 1. Business.

Described as "processing foods for human consumption."

Principal products listed are canned and frozen vegetables and fruits, edible oils and non-carbonated drinks.

Principal markets are described as "food wholesalers" and "other processors."

The industry as a whole is described as "highly competitive without a dominant leader." Stokely considers itself a "larger processor of seasonal and non-seasonal vegetables and fruits."

Sources of raw materials. Vegetable and fruit are grown on contract. Dry beans and oils are purchased on the "open market."

Item 2. Summary of Operations.

Dollar figures for sales, cost of products, taxes etc., are reported for the last five years. There is no breakdown according to product.

Item 3. Properties.

Stokely provides a summary description of types of plants "owned and operated" . . . throughout the United States and Canada." The location of an edible oil refinery is given.

Item 4. Parents and Subsidiaries.

The names of subsidiaries, place of incorporation, and the percent of voting securities owned by Stokely are listed. "All significant subsidiaries are included in the consolidated statements."

Item 5. Pending Legal Proceedings.

Stokely briefly describes a suit pending against it and names the party to the suit and the date of which it was filed.

Items 6–9 omitted.

Item 10. Financial Statements and Exhibits Filed.

Schedule V—"Property, plant, and equipment."

Aggregate figures for "additions at cost" and retirements or sales" appear for 1971 and 1970. Details regarding these changes in property are not provided because "neither the total additions nor total deductions for 1970 and 1971 were more than 10% of the balances at the end of the respective years."

APPENDIX II

PROPOSED SEC DISCLOSURE REQUIREMENTS FOR PUBLIC CORPORATIONS IN FARMING

I. *Farm Land Owned*

A. Acreage
   1. Locations.
      By property taxing jurisdiction.
      Addresses.
   2. When acquired.
   3. Acquisition cost of land purchased during reporting year.

B. Crops Produced
   1. By conventional measure (bushels, car lots, pounds, etc.)
   2. Subsidies received.

II. *Farm Land Leased*

A. Acreage
1. Locations.
By property taxing jurisdiction.
Addresses.
2. When acquired.
3. Acquisition cost of land purchased during reporting year.

B. Crops Produced.
1. By conventional measure (bushels, car lots, pounds, etc.)
2. Subsidies received.

III. *Suppliers of Crops*

A. Under contract
1. By crop.
Number of contractors.
Volume.

B. Other suppliers
1. Number.
2. Volume.

IV. *Employees*

A. By Division (annually)
1. Number.
2. Volume.

B. Agribusiness employees (reported quarterly)
1. By activity (farming, processing, marketing, packing, etc.)
2. Number.
3. Volume.

Appendix III

Annual Agribusiness Registration

I. *Producers*[1]

A. Acreage owned
1. Locations
a. By taxing jurisdictions
b. Addresses
2. When acquired
3. Acquisition cost
4. Food and fiber produced
a. By convensional measure
b. Subsidies received

B. Land leased
1. Locations
a. By taxing jurisdictions
b. Addresses
2. When acquired
3. Acquisition cost
4. Food and fiber produced
a. By convensional measure
b. Subsidies received

C. Employees
1. Number
2. Wage
3. Producers: name, type of ownership
a. Sole proprietorship (names of owners).
b. Partnership (names of owners).
c. Corporation (name of corporation and names of all shareholders owning 10% or more of corporation stock).

D. Itemization of other agricultural businesses and/or activities (packing, shipping, in-put companies, processing, etc.)
1. For those activities accounting for 5% or more of the cost of production.
2. Itemize sales figures for any activity producing $50,000 or more in sales.

[1] Producers with agricultural sales of $100,000 or more in the reporting year.

Counting Out Farmers

(Background Material and Comments on Proposals to Eliminate the 1947 Census of Agriculture and to Alter the Census Definition of a Farm)

(By Jim Hightower and Susan Sechler)

What is the Census of Agriculture?

Every five years, the U.S. Census Bureau conducts and publishes a special census to provide a county by county profile of American agriculture. This data offers the clearest, national picture available of farmers and their products. It is far from a complete picture of American agriculture, but nothing is available that is more complete. Data is collected and reported on the number of farms, acres in farms, value of farmland and cropland harvested, as well as details on specific crops and livestock produced. Also, there is information on farm structure and farm techniques, including data on such production expenses as chemicals, machinery and hired labor.

But the Census is demographic as well as economic, grounded in the concept that information about the people of agriculture is as important as a count of the products of agriculture. From the data, one can gain some insight into who is farming and how they are doing. There is information on the age and race of farmers, their income, whether or not they live on the farm and whether they engage in non-farm work.

The agricultural census is required by law to be taken by the Census Bureau for every fifth year, covering those years ending in four and nine, and it is to count places on which agricultural operations were conducted at any time during the census year. The last Census of Agriculture was for the year 1969, and two categories of farms were counted:

1. Places of ten or more acres were counted as farms if the sales of agricultural products for the year amounted, or normally would amount, to at least $50. Farms in this category were 100% surveyed. The margin of omission was estimated at 3%.

2. Places of less than ten acres were counted as farms if the sales of agricultural products for the year amounted, or normally would amount, to at least $250. Farms in this category were 50% sampled. Bureau of Census estimates that they missed around 30% of these farms in 1969.

The mailing list for the Census of Agriculture is assembled from various administrative sources, including past censuses, Social Security Administration, payment records of the Agricultural Stabilization and Conservation Service, and records of the Internal Revenue Service.

Why is the Census of Agriculture Important?

A relatively accurate picture of the structure, population and products of agriculture is necessary for those who make agricultural policy. There is nothing currently produced that is more accurate or more comprehensive than the Census of Agriculture. It is the only national undertaking that attempts to relate farm production to the farm population. It is, simply put, the data base for rural America.

Census data is the only consistent and comprehensive statistical history that exists to show changes and trends in agricultural production and farm population. If agricultural policy is either to keep up with or to challenge those changes, it must be well informed about them. For example, vertical integration and contract farming are widely considered the most important trends in agriculture today, but they are the most un-reported trends. Although Census data on these trends are seriously incomplete, they remain the only national indicator available to policy makers.

Many federal and state programs affecting agriculture and rural America are based on survey data that is available only from the Census. Federal allocations to states for such programs as revenue sharing, agricultural research and extension activities are based in part on rural and farm population totals in each state. State planners, concerned with specific population and economic characteristics within specific rural communities must also rely on Census's county-by-county profiles.

Census statistics also serve as a baseline source of information for the many other smaller statistical samples that are taken in agriculture by state governments, land grant colleges, private institutions and the Department of Agriculture's own Division of Economics. For example, the Divisions' Statistical Report-

ing Service is responsible for livestock and crop production estimates whose accuracy is of critical importance to the agricultural industry. In this context, Census statistics are at once a benchmark, an accuracy check and the only public monitor of national agricultural statistics outside of the Department itself.

The biggest user of statistics produced from the Census is the Department of Agriculture. Next is the Congress, followed by farm groups. Other users range from corporate investors in agricultural commodities, to individual farm families. For all who make decisions concerning agriculture, the fundamental point of reference is the Census of Agriculture.

What changes are being proposed for the Census of Agriculture?

Among many Census Bureau and U.S. Department of Agriculture (USDA) administrators, there has developed an attitude that has threatened the comprehensiveness, integrity, usefulness and ultimately the very existence of the Census of Agriculture. These administrators, buttressed by the views of some agricultural economists, want to consider farms as factories, dropping the demographic aspects of the Census. It is an effort to separate the people of agriculture from the production of agriculture.

In 1970, the Economic Research Service for USDA issued a report entitled "Concepts Involved in Defining and Identifying Farms." Written by a professor of agricultural economics at Texas Tech University, the report quotes approvingly from this vision of agriculture:

"The typical farm, as of 2000, will be a huge conglomerate of machines, equipment, and technical processes, mostly operated automatically and watched over by a few skilled workers; the farm of 2000 may be comparable to the fuel-cracking plant of today—miles of pipe, technical production processes, tanks and gauges, with a few skilled workers supervising the whole operation."

The author of this USDA report, apparently willing to accept this vision, suggests that farms would be indistinguishable from any other factory and would not warrant any special attention from census takers. "Instead," writes the professor, "farming should be treated like a manufacturing industry, and data should be collected for farming as for any other manufacturing industry."

This is not just another report that will collect dust until the year 2000. The attitudes and proposals contained there have adherents who would implement these views right away. Mr. J. Thomas Breen is chief of Census Bureau's Agriculture Division. Last September, he stated that:

"The Bureau felt that the Census of Agriculture should be a vehicle which is related to agriculture production and agricultural services. In its transition from the demographic area to the economic area, you might say that we are agri-business rather than rural sociological in nature."

Mr. Breen and others have proposed two steps that effectively would achieve their goal of eliminating the demographic aspects of the Census, statistically separating farm families from the business of farming. First is an effort to eliminate the 1974 Census of Agriculture and to integrate it into the 1977 Economic Censuses. This recommendation by the Bureau of the Census leaves unanswered such questions as: (a) would the Census of Agriculture be done away with entirely, integrating its business aspects into the Economic Censuses? (b) would there be a separate Census of Agriculture, but a scaled-down version that is taken along with other Economic Censuses? and, (c) if the Census of Agriculture is moved to 1977, would there be an interim sampling in 1974?

The second step proposed by the Bureau of the Census and others is a drastic alteration in the census definition of a farm. The recommendation is to define a farm in terms of gross sales of agricultural products, with a minimum level of sales required to qualify. Three different minimums are suggested—$2500, $5000 or $10,000.

Both of these steps are being submitted for consideration at the next meeting of the Census Advisory Committee on Agricultural Statistics, to be held Friday, February 23, 1973, at the Census Bureau (see Appendix A for the agenda of this meeting, and see Appendix B for the membership of the Advisory Committee).

What are the impacts of the proposed changes in the Census of Agriculture?

1. Integrating the 1974 Census of Agriculture into the 1977 Economic Censuses. The ultimate impact of this recommendation will be to eliminate the Census of Agriculture entirely, leaving only data on the manufacturing aspects of agriculture. This proposal has power behind it. President Nixon's 1974 budget supports this shift, asking for no funds to conduct a 1974 Census of Agriculture. That budget states:

"As the distinction between agricultural and non-agricultural business have become more difficult to make, both because of enterprise diversification and the increasingly industrial nature of agricultural production, the rationale for integration between the census of agriculture and the other economic censuses has become more compelling. Although the degree of integration desirable has not yet been determined, the advantages of a common year for the censuses of manufacturing, business services, trade and agriculture *seem clearly desirable* in order to have a common benchmark year useful in production indexes and in the construction of the national accounts." (emphasis supplied)

"Clearly desirable" to whom? This zero budget for the 1974 Census was a unilateral decision made by the Bureau of the Census in consultation only with a handful of USDA officials and with the fast endorsement of budget writers eager to find easy cuts in federal spending. Congress, the second major user of Census of Agriculture statistics, was not consulted on whether it wants the Census of Agriculture integrated. Senator Herman Talmadge (D-Ga.), Chairman of the Senate Agriculture Committee, said: "I personally feel this would be detrimental for a number of reasons . . . I will do what I can to see that it is not postponed." Certainly farm groups were not consulted. The Census Bureau's own advisory committee on agricultural statistics was not consulted. The Federal Statistics Users' Conference (FSUC), an organization representing governments, industry, labor and other users, said that this section "represents another instance of a Federal agency decision regarding a major statistical program where other governmental agencies and statistics users are informed of the decision 'after the fact.' "

It does not matter whether an agricultural census is taken in years ending in four and nine or in seven and two. The shift in dates, which requires Congressional authorization, merely is a tactic to achieve what already has been decided on by Bureau of Census and Department of Agriculture officials—namely, the integration of the Census of Agriculture into the Census of Manufacturing. That is the key decision and that must be the focus of attention.

To integrate the Census of Agriculture, dropping the demographic aspects and treating farming as manufacturing, is to collect *less* information on the nature and structure of American agriculture. That is a step 180 degrees in the wrong direction. It might be a proper step if farming was, in fact, "a huge conglomerate of machines, equipment, and technical processes, mostly operated automatically and watched over by a few skilled workers." But that is not yet the reality, despite USDA's best efforts, and there are major elements of the agricultural community who do not agree with that vision of farming. The direction of agriculture has not been determined; in fact, it is the subject of a vigorous policy debate. That debate needs *more* information on the nature and structure of agriculture, not less.

If the Census of Agriculture is integrated into manufacturing, the data base of rural America is crumbled. It is suggested that, somehow, information on the people of agriculture probably would be picked up in other censuses, but there is no assurance of that and, certainly, those who suggest such a probability do not show how it would happen. The current Census collects data on the people of agriculture and relate it to the production of agriculture. That data is used and considered valuable by the users. Where is the advantage in eliminating this information? Where is the promise that such information will be obtained, without compromising usefulness, in another manner?

This move to integrate the Census of Agriculture is designed also to have a subtle but very important impact on the public's perception of agriculture. By limiting the collection of agricultural data to production economics, and by collecting that data under the banner of manufacturing, both the official statistics and rhetoric of agriculture begin to lend credence to the assembly-line vision of many agricultural economists.

2. Redefining "farm." The impact of this move could be to absolve USDA and the census takers of statistical responsibility for thousands of farm families, perhaps even absolving the Department of program responsibilties for those families. Depending on where the minimum is established, farmers making less than $2500, less than $5000 or less than $10,000 in agricultural sales would no longer be considered farmers, even if their sole occupation and sole source of income was farming!

This proposal will radically alter farm numbers. If the minimum value of sales is set at $2500, that will eliminate *42 percent* of the farms in America. At $5000, which is the cut-off level currently being suggested by the Department of Agriculture, *56 percent* of the farms would be eliminated. And at $10,000, there

would be an elimination of 72 *percent* of the farms. (See Appendix C for a state-by-state breakdown of farms eliminated at various cut-off levels). Within certain states, the elimination of farms would be even more drastic. As the $10,000 level, for example, 90 percent of the farms in Mississippi would be eliminated.

Nor is this merely eliminating gardeners and "hobby" farmers. The 1969 Census of Agriculture shows that there are nearly 200,000 full-time farmers making less than $2500 a year in farm sales.

This redefinition is much more than a simple reclassification for statistical purposes. These people literally are being counted out. The Department of Agriculture is proposing that these smaller-scale farmers be denied the title of their occupation and that they no longer be included in farm statistics. Aside from the sheer bureaucratic arrogance of such a proposal, there exists the likelihood of real harm to these farm families. If these people are abandoned for purposes of farm statistics, are they also abandoned for purposes of farm programs? It appears to be an effort by the Department of Agriculture to put a majority of America's farmers out of sight and out of mind.

There is another impact of this redefinition that suggests a reason behind the Department's madness. That is the impact on farm income numbers. As it was put recently in *The Kiplinger Agricultural Letter*,

"This change in terms would paint a new picture of agriculture. Farm numbers would be halved—from 2.8 million to 1.4 million. And net income per farm would skyrocket—from $5500–$5700 range to over $10,000, assuming no big changes in overall farm income picture. This would make farming appear more prosperous, since subsistence farmers would be dropped from averages."

Kiplinger editors later noted that "An instant income boost such as this makes great political campaign talk."

Again, the move being made here is toward less information, when it is more that is needed. It is suggested that these people being abandoned by USDA will be taken care of in the regular, population census. But that is taken every ten years, and it is not related to agriculture. And there is the unanswered question of what these people would put down in the blank for "occupation."

Recommendations

1. There should be more, not less, information in the Census of Agriculture:
   A. Demographic data should not be eliminated; and
   B. There should be more attention to the nature and extent of corporate involvement in agriculture, specifically including information on vertical integration and contract farming.
2. If the Census of Agriculture is shifted to coincide with economic censuses (years ending in 7 and 2):
   A. The Census of Agriculture should *not* be integrated into those censuses, but should maintain its own identity and integrity, reporting both demographic and economic data related to agriculture; and,
   B. There shoud be an interim Census of Agriculture taken in 1974 to assure continuity of data.
3. The Census of Agriculture should continue to be taken, compiled and reported by the Bureau of the Census to assure the independence of the data and to serve as a check on statistics gathered by USDA.
4. While reclassification of farms is appropriate for statistical purposes, there should be no redefinition of "farm" that eliminates any place on which agricultural operations are conducted.
5. There should be a careful review of the Census of Agriculture by the appropriate committees of Congress:
   A. The review should be undertaken immediately;
   B. Testimony should be invited from all concerned; and
   C. Any changes in the Census of Agriculture should flow from this congressional review.

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Appendix A

Social and Economic Statistics Administration,
Bureau of the Census,
Washington, D.C.

AGENDA

Census Advisory Committee on Agriculture Statistics, February 23, 1973.
8:45—Bus leave Department of Commerce
9:30—Introductory Remarks; Director or Deputy Director.
10:00—Recommendation for postponement of the 1974 Census of Agriculutre to be taken next as part of the 1977 Economic Censuses. Mr. Turbitt or Mr. Breen.
10:45—Break
11:00—Interim needs and requirements for planning a 1977 Census of Agriculture. Mr. Ingram, Mr. Norell.
11:45—Status Report 1969 Census of Agriculture, Mr. Wilhite.
12:30—Lunch
1:30—Department of Agriculture's recommendations for change in classification of establishments associated with agriculture and desired data collection and tabulations. Relates to Farm Definition. Mr. Breen and U.S. Department of Agriculture representatives.
3:00—Break
3:15—Discussion and Preparation of Committee Recommendations.
4:00—Bus returns to Department of Commerce.

Note: Under a recent Executive Order, all advisory committee meetings are to be open to the general public and meetings are to be anounced in advance in the Federal Register. Because of our limited space for meetings we expect to restrict public attendance to about 15 or 20 persons.

Appendix B

CENSUS ADVISORY COMMITTEE ON AGRICULTURE STATISTICS

Name	*Organization*
Mr. W. E. Hamilton, Chairman, Director Research Division, American Farm Bureau Federation, 225 West Touhy Avenue, Park Ridge, Illinois 60068.	American Farm Bureau Federation.
Dr. James T. Bonnen, Department of Agricultural Economics, Michigan 48823.	American Agricultural Economic Association.
Dr. L. S Fife, Agricultural Economist, International Harvester Company, 401 North Michigan Avenue, Chicago, Illinois 60611.	Farm Equipment Institute.
Mr. Gordon Shafer, Chief Negotiator, National Farmers Organization, Corning, Iowa 50841.	National Farmers Organization.
Mr. Bernard A. Everett, Deere and Company, John Deere Road, Moline, Illinois 61265.	Federal Statistics Users' Conference.
Mr. Clyde Jarvis, Montana Farmers Union, Great Falls, Montana 59401.	National Farmers Union.

CENSUS ADVISORY COMMITTEE ON AGRICULTURE STATISTICS—continued

Name	*Organization*
Dr. Louis M. Thompson, Associate Dean College of Agriculture, Iowa State University, Ames, Iowa 50010.	National Association of State Universities and Land-Grant Colleges.
Dr. Allen Johnson, Associate Director of Marketing, American Meat Institute, 59 East Van Buren Street, Chicago, Illinois 60605.	American Meat Institute.
Mr. R. J. Pommrehn, Director of Research, Wallaces Farmer, 1912 Grand Avenue, Des Moines, Iowa 50305.	Agriculture Publishers Association
Mr. Richard Kennedy, Market Research, The Upjohn Company, Kalamazoo, Michigan 49000.	National Agricultural Chemicals Association. National Plant Food Institute. Animal Health Institute.
Mr. Edward Eurich, Commissioner, State Department of Agriculture, Montpelier, Vermont 05602.	National Association of State Departments of Agriculture.
Mr. Orville M. Thompson, Northrup, King and Company, 1500 Jackson Street N.E., Minneapolis, Minnesota 55413.	National Agricultural Advertising and Marketing Association.
Dr. W. Kennedy Upham, Department of Sociology, Texas A and M College Station, Texas 77840.	Rural Sociological Society.
Mr. Paul Weller, Secretary, National Council of Farmer Cooperatives, 1129 Twentieth Street, Washington, D.C. 20036.	National Council of Farmer Cooperatives.
Dr. Lawrence Van Meir, Division of Economics, National Canners Association, 1133 20th Street N.W., Washington, D.C. 20036.	National Canners Association.
Mr. Oakley M. Ray, American Feed Manufacturers, Inc., 1701 N. Ft. Myer Drive, Arlington, Virginia 22009.	American Feed Manufacturers Association.
Mr. Joseph Buder, American Petroleum Institute, 1801 K Street N.W., Washington, D.C. 20006.	American Petroleum Institute.
Mr. Robert Frederick, National Grange, 1616 H Street N.W., Washington, D.C. 20006.	National Grange.
Dr. Harry C. Trelogan, Administrator, Statistical Reporting Service, U.S. Department of Agriculture, Washington, D.C. 20250.	U.S. Department of Agriculture.
Mr. Quentin M. West, Administrator, Economic Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.	U.S. Department of Agriculture.
Mrs. Haven Smith, American Farm Bureau Women's Committee, Chappell, Nebraska 69129.	American Farm Bureau Women's Committee.

APPENDIX C

TABLE 23.—NUMBER OF FARMS AND PERCENTAGE THAT WOULD BE ELIMINATED IF THE MINIMUM VALUE OF SALES WAS RAISED TO SELECTED LEVELS, BY STATE

State	All farms (number)	Percentage of farms eliminated using cutoff of—								
		$250	$500	$1,000	$1,500	$2,000	$2,500	$5,000	$7,500	$10,000
Maine	12,875	16	25	35	40	44	46	54	58	62
New Hampshire	4,648	18	26	37	43	47	50	60	67	72
Vermont	9,247	8	13	18	22	25	27	37	46	55
Massachusetts	8,019	8	14	22	28	32	35	46	54	60
Rhode Island	1,100	11	16	25	32	36	39	49	56	62
Connecticut	6,068	12	18	26	32	35	38	46	53	58
New York	66,510	8	13	21	26	29	33	44	53	60
New Jersey	10,641	5	9	16	21	25	28	39	47	52
Pennsylvania	83,086	12	19	29	36	41	44	56	64	71
Ohio	120,381	9	15	25	32	38	42	58	68	75
Indiana	108,082	6	11	20	26	31	36	52	61	69
Illinois	132,822	3	6	11	14	18	20	31	40	49
Michigan	93,504	7	13	23	31	37	42	59	69	76
Wisconsin	118,806	4	7	12	16	20	24	41	56	68
Minnesota	131,163	3	6	11	15	19	23	39	53	65
Iowa	154,162	2	4	6	9	11	13	23	34	44
Missouri	147,315	11	17	28	36	42	47	64	74	80
North Dakota	48,835	1	2	5	7	9	12	28	44	59
South Dakota	49,703	2	3	5	8	11	14	29	44	58
Nebraska	80,163	2	4	6	9	12	15	29	43	54
Kansas	92,440	4	7	12	17	21	26	42	56	66
Delaware	4,401	5	10	16	21	25	28	39	45	52
Maryland	20,760	8	14	23	29	34	38	52	60	66
Virginia	80,354	16	25	38	48	54	59	75	83	87
West Virginia	34,504	34	48	66	75	80	83	90	93	95
North Carolina	148,202	12	19	28	35	40	44	60	72	80
South Carolina	56,248	18	27	40	48	53	58	74	82	87
Georgia	83,366	19	27	36	42	47	50	62	70	75
Florida	40,542	23	32	42	48	52	56	67	73	77
Kentucky	133,038	10	17	31	41	49	56	76	85	90
Tennessee	133,446	12	21	38	49	58	64	82	88	92
Alabama	92,530	20	31	45	54	61	66	78	84	87
Mississippi	109,141	20	31	45	54	61	67	82	87	90
Arkansas	79,898	21	30	43	50	56	60	71	76	79
Louisiana	62,466	30	41	52	60	65	68	78	83	85
Oklahoma	88,726	14	22	34	42	48	53	68	76	82
Texas	205,110	15	24	35	43	49	53	66	73	77
Montana	27,020	3	6	12	14	19	20	34	46	56
Idaho	29,661	4	10	16	22	23	30	40	52	62
Wyoming	9,038	4	7	12	16	20	23	37	48	57
Colorado	29,798	7	12	18	22	26	31	45	54	61
New Mexico	14,206	14	22	33	40	44	48	60	67	71
Arizona	6,477	11	17	25	30	33	36	44	50	54
Utah	15,759	8	16	26	34	40	45	61	70	76
Nevada	2,156	8	13	20	26	30	34	46	54	60
Washington	45,574	17	26	36	42	46	50	59	64	69
Oregon	39,759	18	27	39	46	51	55	66	72	76
California	80,852	11	17	25	30	33	36	46	52	57
Alaska	382	25	33	44	49	53	59	69	73	76
Hawaii	4,864	7	17	34	42	49	54	68	75	80
United States	3,157,857	11	17	27	33	38	42	56	66	72

Source: Compiled from U.S. Bureau of the Census (86, table 14, p. 637).

AGRIBUSINESS ACCOUNTABILITY PROJECT, 1000 WISCONSIN AVENUE NW., WASHINGTON, D.C. (202) 338-3976

A SUMMARY REPORT ON MAJOR U.S. CORPORATIONS INVOLVED IN AGRIBUSINESS PREPARED BY A. V. KREBS, CORPORATE RESEARCH—JULY 1973

PREFACE

In 1970, personal expenditures by the American people reached $615 billion. The largest single item purchased was food—some $120 billion.

Capitalizing on this basic need for food, new and powerful economic forces exert themselves in today's marketplace. The business of producing, processing and marketing food has become a highly lucrative venture, attracting many of America's largest corporations. Increasingly, the food industry is dominated by highly-capitalized, highly-integrated and highly-industrialized enterprises.

It is obvious that family farmers and farm workers are directly affected by this rise of corporate power in the food economy. But the impact goes well beyond the farm—the price and quality of the American food supply also is affected

The Agribusiness Accountability Project, as part of its continuing concern with the impact of corporate power and the failure of public policy in rural America, is publishing this directory of major U.S. corporations that are involved to varying degrees in this country's largest industry—agribusiness.

This study of the top 25 U.S. corporations involved in agricultural production, inputs and outputs does not suggest that all these corporations derive their revenues, profits, assets and profitability solely from agribusiness, but it does seek to underscore the fact that there are enormous financial reserves being invested in agriculture.

In no way is this directory a complete listing of American agribusiness, nor are these corporations to be considered sinister. Rather, the directory intends simply to point out that agribusiness is a very big business, involving the largest corporations in America.

This directory lists only public corporations, excluding all private corporations (such as Cargill, Inc., Continental Grain Company, etc.), some of which are larger and more significant in agribusiness than many of those listed in the following pages.

Also omitted are foreign corporations such as Unilever (Great Britain), which controls "Lipton Tea," "Good Humor" ice cream, and the various food products marketed in the U.S. by Lever Bros., and Nestle Alimentana, S.A., which in addition to owning 56% of the stock in Libby, McNeill and Libby, recently bought Beringer Bros., a California winery, three Stouffer restaurants, and the food divisions of Litton Industries.

While not included in this study, it should be noted that there also exists an elaborate structure of stock ownership and interconnecting directorates, extending through these and dozens of other major U.S. and foreign corporations involved in agribusiness.

The corporations listed in this directory, their 1972 national corporate rankings and their financial data, are taken from FORBES, "Dimensions of American Business: Annual Directory Issue," May 15, 1973.

In addition to the 1972 fiscal year figures on revenue, profits, and assets, this directory includes a report on profitability of corporations involved in agribusiness. A company's profitability is measured by the percentage of return on stockholder's equity and the return on total capital (debt plus equity) over a period of five years. The corporations listed in the profitability category and their national corporate rankings are taken from FORBES, "25th Annual Report on American Industry," January 1, 1973.

FORBES, in listing these corporations by their profitability, explains that they looked at the company's performance "in more than a dozen different ways. We measure profitability by the return on equity and the return on total capital (debt plus equity) . . . These are not just masses of figures, but carefully selected, refined and interpreted statistics."

The median figure for the percentage of return on stockholder's equity for 780 U.S. companies is 11.3% and the return on capital is 8.1%. No corporation listed here fell below the national return-on-equity median. These agribusiness corporations ranged from 12.3% to 40.4% return on equity.

After the name of each corporation in the "Agribusiness Involvement Directory" is listed its headquarters address, the principal lines of business of the corporation, the agribusiness categories in which it is nationally ranked, and the specific areas of agribusiness in which the corporation is engaged.

All material contained in this directory is from the files and records of the Agribusiness Accountability Project.

CORPORATIONS INVOLVED IN AGRICULTURAL PRODUCTION

[Corporations engaged in the cultivation of land for the raising and production of crops and livestock]

REVENUES

Rank—Corporation	Total corporate revenues	Rank among all U.S. corporations
1 Standard Oil of California	$5,829,487,000	14
2 Aetna Life & Casualty Co	4,184,018,000	22
3 RCA Corp	3,838,180,000	27
4 Ling-Temco-Vought (LTV)	3,442,296,000	32
5 Tenneco Inc	3,255,366,000	37
6 Esmark Inc	3,240,931,000	38
7 Greyhound Corp	2,903,607,000	42
8 Beatrice Foods	2,786,970,000	43
9 Occidental Petroleum	2,487,247,000	49
10 General Foods Corp	2,423,816,000	52
11 Dow Chemical Co	2,403,709,000	54
12 Boeing Co	2,369,580,000	55
13 Connecticut General Life Insurance Co	2,124,051,000	64
14 R. J. Reynolds Industries, Inc	2,072,312,000	69
15 Foremost McKesson Inc	1,933,383,000	77
16 Coca-Cola	1,876,192,000	81
17 Ralston Purina	1,833,432,000	86
18 Consolidated Foods Corp	1,745,959,000	97
19 American Brands	1,734,261,000	98
20 Gulf & Western Industries, Inc	1,669,671,000	103
21 United Brands	1,668,322,000	104
22 BankAmerica Corp	1,651,293,000	106
23 CPC International	1,549,582,000	118
24 Southern Pacific Co	1,449,389,000	132
25 Getty Oil Co	1,405,298,000	139

PROFITS

Rank—Corporation	Total corporate net profits	Rank Among all U.S. corporations
1 Standard Oil of California	$547,070,000	9
2 R. J. Reynolds Industries, Inc	236,417,000	20
3 Tenneco Inc	203,017,000	25
4 BankAmerica Corp	192,447,000	31
5 Coca-Cola	190,157,000	32
6 Dow Chemical Co	189,189,000	33
7 Aetna Life & Casualty Co	170,243,000	36
8 RCA Corp	158,104,000	40
9 American Brands	123,300,000	59
10 Connecticut General Life Insurance Co	120,030,000	67
11 American Cyanamid Co	108,780,000	73
12 Southern Pacific Co	108,208,000	75
13 Beatrice Foods	90,391,000	90
14 CPC International	86,662,000	96
15 Seaboard Coast Line Industries, Inc	82,396,000	105
16 Getty Oil Co	81,174,000	109
17 Gulf & Western Industries, Inc	69,411,000	142
18 Greyhound Corp	66,848,000	152
19 General Foods Corp	66,185,000	155
20 Consolidated Foods Corp	63,754,000	164
21 Campbell Soup Co	59,633,000	179
22 IU International Corp	59,383,000	183
23 Ralston Purina	58,246,000	186
24 Carnation Co	55,854,000	192
25 Jim Walter Corp	44,568,000	251

ASSETS

Rank	Corporation	Total corporate assets	Rank among all U.S. corporations
1	BankAmerica Corp	$40,888,450,000	2
2	Aetna Life & Casualty Co	12,108,050,000	14
3	Standard Oil of California	8,079,875,000	28
4	Connecticut General Life Insurance Co	7,128,623,000	33
5	Tenneco Inc	4,838,123,000	47
6	Dow Chemical Co	3,312,729,000	77
7	Southern Pacific Co	3,293,259,000	78
8	RCA Corp	3,132,761,000	85
9	Occidental Petroleum Corp	2,562,047,000	112
10	R. J. Reynolds Industries, Inc	2,365,945,000	125
11	Seaboard Coast Line Industries, Inc	2,236,239,000	137
12	Gulf & Western Industries Inc	2,230,482,000	138
13	Getty Oil Co	2,181,628,000	141
14	Boeing Co	2,127,396,000	145
15	American Brands	1,974,320,000	159
16	Reynolds Metals Corp	1,963,243,000	160
17	General Foods Corp	1,596,832,000	210
18	IU International Corp	1,528,319,000	224
19	American Cyanamid	1,388,806,000	256
20	Pacific Lighting Corp	1,357,028,000	262
21	Coca-Cola	1,231,613,000	292
22	Greyhound Corp	1,230,052,000	293
23	United Brands	1,117,839,000	310
24	Beatrice Foods	1,087,514,000	318
25	CPC International	1,083,563,000	321

PROFITABILITY

		Equity		Total capital	
Equity rank	Corporation	Percent	National corporation rank	Rank	Percent
1	Coca-Cola	27.8	16	7	25.4
2	Heublein, Inc	23.7	26	85	14.3
3	R. J. Reynolds Industries, Inc	20.3	53	56	16.0
4	Cook United, Inc	16.6	110	248	10.3
5	Carnation Co	16.3	115	137	12.5
6	Beatrice Foods	16.2	121	67	15.3
7	Southland Corp	15.9	129	318	9.2
8	ConAgra	15.5	142	230	10.7
9	Greyhound Corp	15.5	143	223	10.8
10	Missouri Beef Packers	15.3	151	97	13.4
11	Foremost McKesson, Inc	15.2	159	358	8.5
12	Ralston Purina	14.9	171	235	10.6
13	Gulf & Western Industries, Inc	14.5	189	530	6.3
14	Consolidated Foods	14.5	191	174	11.5
15	American Brands	14.4	195	240	10.5
16	Dow Chemical Co	14.2	207	307	9.3
17	CPC International	14.2	210	243	10.5
18	Times Mirror Corp	14.1	222	152	12.2
19	BankAmerica Corp	14.0	224	87	14.0
20	Tenneco, Inc	13.6	244	496	6.7
21	General Foods	13.3	265	184	11.4
22	Riviana Foods	13.1	275	275	9.8
23	Campbell Soup Co	12.8	292	130	12.6
24	American Cyanamid	12.6	303	260	11.0
25	Great Western United Corp	12.3	332	270	9.8

REVENUES

CORPORATIONS INVOLVED IN AGRICULTURAL INPUTS

[Corporations which finance agribusiness or are engaged in the manufacturing, transporting, wholesaling and distributing of farm machinery, fertilizers, pesticides, seed, feed, and packaging materials]

Rank—Corporation	Total corporate revenues	Rank among all U.S. corporations
1 General Motors Corp	$30,435,231,000	1
2 Exxon Corp	20,309,753,000	3
3 Ford Motor Co	20,194,400,000	4
4 Sears, Roebuck & Co	10,991,001,000	5
5 General Electric Co	10,239,500,000	6
6 Mobil Oil Corp	9,166,332,000	10
7 Texaco Corp	8,692,991,000	11
8 Gulf Oil Corp	6,243,000,000	12
9 Standard Oil of California	5,829,487,000	14
10 United States Steel Corp	5,401,773,000	17
11 Standard Oil of Indiana	4,503,372,000	19
12 E. I. du Pont de Nemours & Co., Inc	4,365,900,000	20
13 Aetna Life & Casualty	4,184,018,000	22
14 Shell Oil Co	4,075,898,000	23
15 Goodyear Tire & Rubber Co	4,071,523,000	24
16 Travelers Co	3,893,416,000	25
17 International Harvester Co	3,493,274,000	30
18 Eastman Kodak Co	3,477,764,000	31
19 Ling-Temco-Vought (LTV)	3,442,296,000	32
20 Continental Oil Co	3,414,894,000	33
21 Marcor	3,369,321,000	34
22 ARCO (Atlantic-Richfield Co.)	3,320,793,000	35
23 Union Carbide Corp	3,261,300,000	36
24 Tenneco Inc	3,255,366,000	37
25 Esmark	3,240,931,000	38

PROFITS

Rank—Corporation	Total corporate net profits	Rank among all U.S. corporations
1 General Motors Corp	$2,162,807,000	2
2 Exxon Corp	1,531,770,000	3
3 Texaco Corp	889,040,000	5
4 Ford Motor Co	870,000,000	6
5 Sears, Roebuck & Co	621,812,000	7
6 Mobile Oil Corp	574,199,000	8
7 Standard Oil of California	547,070,000	9
8 Eastman Kodak Co	546,250,000	10
9 General Electric Co	530,000,000	11
10 E. I. du Pont de Nemours & Co., Inc	414,500,000	13
11 Standard Oil of Indiana	374,740,000	14
12 Shell Oil Co	260,480,000	17
13 R. J. Reynolds Industries, Inc	237,471,000	20
14 Caterpillar Tractor Co	206,400,000	23
15 Union Carbide Corp	205,200,000	24
16 Tenneco, Inc	203,017,000	25
17 First National City Corp	201,844,000	26
18 Gulf Oil Co	197,000,000	28
19 ARCO (Atlantic-Richfield Co.)	195,561,000	29
20 Goodyear Tire & Rubber Co	193,159,000	30
21 BankAmerica Corp	192,447,000	31
22 Dow Chemical Co	189,189,000	33
23 American Home Products Corp	175,388,000	34
24 Aetna Life & Casualty	170,243,000	36
25 Continental Oil Co	170,181,000	37

ASSETS

Rank	Corporation	Total corporate assets	Rank among all U.S. corporations
1	BankAmerica Corp	$40,888,450,000	2
2	First National City Corp	34,386,128,000	3
3	Chase Manhattan	30,703,610,000	4
4	Exxon Corp	21,558,257,000	5
5	General Motors Corp	18,143,842,000	7
6	J. P. Morgan & Co	16,460,538,000	8
7	Manufacturers Hanover Corp	16,326,070,000	9
8	Chemical New York	15,434,896,000	10
9	Western Bancorporation	15,214,508,000	11
10	Bankers Trust—New York	13,348,937,000	12
11	Continental Illinois	12,468,964,000	13
12	Aetna Life & Casualty Co	12,108,050,000	14
13	Texaco Corp	12,032,174,000	15
14	Security Pacific National Corp	11,688,925,000	17
15	Ford Motor Co	11,614,800,000	18
16	First Chicago Corp	11,415,079,000	19
17	Marine Midlands Bank	10,683,760,000	21
18	Sears, Roebuck & Co	9,326,162,000	23
19	Gulf Oil Co	9,324,794,000	24
20	Mobil Oil Corp	9,216,713,000	25
21	Wells Fargo & Co	9,003,722,000	26
22	Travelers Companies	8,738,839,000	27
23	Standard Oil of California	8,079,875,000	28
24	Charter New York Corp	7,448,753,000	29
25	Mellon National Corp	7,404,693,000	30

PROFITABILITY

		Equity		Total capital	
Equity rank	Corporation	Percent	National corporation rank	Rank	Percent
1	Yellow Freight System	40.4	5	74	14.7
2	American Home Products Corp	31.8	8	4	27.0
3	G. D. Searle, Inc	29.9	10	11	24.5
4	Merck & Co	27.4	17	6	25.9
5	Squibb Corp	25.7	20	5	26.2
6	Smith Kline & French Laboratories	25.1	22	9	24.8
7	Schering-Plough Corp	25.1	21	10	24.7
8	Eli Lilly	24.9	23	14	22.4
9	Roadway Express, Inc	23.5	27	19	21.0
10	Leaseway Transport	22.4	34	414	7.7
11	Consolidated Freightways	21.7	39	181	11.5
12	Eastman Kodak Co	20.8	49	27	19.7
13	R. J. Reynolds Industries, Inc	20.3	53	56	16.0
14	National Service Industries, Inc	20.2	54	49	16.8
15	U.S. Industries, Inc	19.4	61	47	16.8
16	Saxon Industries	18.9	67	286	9.6
17	Williams Cos	18.6	72	393	7.9
18	Alco Standard	18.4	76	48	16.8
19	Wetterau Foods	18.3	78	63	15.6
20	Moore	17.4	94	53	16.1
21	Chromalloy American	17.4	92	272	9.8
22	Pfizer	17.3	98	65	15.3
23	Tandy	17.2	100	129	12.6
24	Delta Air Lines	16.9	106	333	8.9
25	General Motors Corp	16.7	108	61	15.7

CORPORATIONS INVOLVED IN AGRICULTURAL OUTPUTS

[Corporations engaged in the production, processing and marketing of food]

REVENUES

	Rank—Corporation	Total corporate revenues	Rank among all U.S. corporations
1	Sears, Roebuck & Co	$10,991,001,000	5
2	International Telephone & Telegraph Corp	10,236,001,000	7
3	Safeway Stores, Inc	6,057,633,000	13
4	J. C. Penney Co	5,529,622,000	15
5	Great Atlantic & Pacific Tea Co	5,508,508,000	16
6	RCA Corp	3,838,180,000	27
7	Kroger	3,798,484,000	28
8	Procter & Gamble Co	3,514,438,000	29
9	Ling-Temco-Vought (LTV)	3,442,296,000	32
10	Marcor	3,369,321,000	34
11	ARCO (Atlantic-Richfield Corp.)	3,320,793,000	35
12	Tenneco Inc	3,255,366,000	37
13	Esmark	3,240,931,000	38
14	Kraftco Corp	3,196,789,000	39
15	F. W. Woolworth Co	3,148,108,000	40
16	Greyhound Corp	2,903,607,000	42
17	Beatrice Foods	2,786,970,000	43
18	Federated Department Stores Inc	2,665,148,000	46
19	General Foods Corp	2,423,816,000	52
20	W. R. Grace & Co	2,315,144,000	57
21	Household Finance Co	2,204,869,000	60
22	Borden, Inc	2,192,919,000	61
23	Rapid-American Corp	2,088,735,000	68
24	R. J. Reynolds Industries Inc	2,072,312,000	69
25	Jewel Co	2,062,891,000	70

PROFITS

	Rank—Corporation	Total corporate net profits	Rank among all U.S. corporations
1	Sears, Roebuck & Co	$621,812,000	7
2	International Telephone & Telegraph Corp	483,303,000	12
3	Procter & Gamble Co	276,310,000	16
4	R. J. Reynolds Industries, Inc	237,471,000	20
5	Tenneco, Inc	203,017,000	25
6	ARCO (Atlantic-Richfield Co.)	195,561,000	29
7	Coca-Cola Co	190,157,000	32
8	American Home Products Corp	175,388,000	34
9	J. C. Penney Co	162,633,000	38
10	RCA Corp	158,104,000	40
11	Philip Morris, Inc	124,466,000	57
12	American Brands	123,300,000	59
13	Warner-Lambert Co	122,657,000	60
14	Federated Department Stores, Inc	108,573,000	74
15	Household Finance Corp	105,964,000	77
16	Safeway Stores, Inc	91,056,000	89
17	Beatrice Foods	90,391,000	90
18	Kraftco Corp	88,335,000	92
19	CPC International	86,622,000	96
20	F. W. Woolworth Co	79,165,000	117
21	Marcor	72,672,000	130
22	Anheuser-Busch Corp	72,307,000	131
23	Squibb Corp	72,004,000	133
24	PepsiCo	71,718,000	134
25	Loews Corps	69,621,000	141

ASSETS

	Rank—Corporation	Total corporate assets	Rank among all U.S. corporations
1	International Telephone & Telegraph Corp	$11,738,660,000	16
2	Sears, Roebuck & Co	9,326,162,000	23
3	Tenneco, Inc	4,838,123,000	47
4	ARCO (Atlantic-Richfield Co.)	4,629,013,000	50
5	RCA Corp	3,132,761,000	85
6	Household Finance Corp	3,118,599,000	86
7	Marcor	2,522,949,000	116
8	R. J. Reynolds Industries, Inc	2,365,945,000	125
9	Procter & Gamble Co	2,360,458,000	126
10	Gulf & Western Industries, Inc	2,230,482,000	138
11	J. C. Penney Co	2,153,680,000	143
12	American Brands	1,974,320,000	159
13	Ling-Temco-Vought (LTV)	1,784,924,000	175
14	W. R. Grace & Co	1,781,055,000	177
15	F. W. Woolworth Co	1,719,865,000	185
16	Philip Morris, Inc	1,701,494,000	188
17	Rapid American Corp	1,687,179,000	192
18	IC Industries, Inc	1,607,499,000	203
19	General Foods Corp	1,596,832,000	210
20	IU International Corp	1,528,319,000	224
21	Federated Department Stores, Inc	1,380,449,000	258
22	Pacific Lighting Corp	1,357,028,000	262
23	Borden, Inc	1,333,427,000	264
24	Loews Corps	1,260,378,000	281
25	Kraftco Corp	1,245,193,000	286

PROFITABILITY

		Equity		Total capital	
	Equity rank—Corporation	Percent	National corporation rank	Rank	Percent
1	McDonald's Corp	33.5	7	51	16.5
2	American Home Products Corp	31.8	8	4	27.0
3	Lucky Stores, Inc	31.7	9	53	16.1
4	Rapid-American Corp	29.6	11	275	9.8
5	Coca-Cola Co	27.8	16	7	25.4
6	Squibb Corp	25.7	20	5	26.2
7	Smith Kline & French	25.1	22	9	24.8
8	Fisher Foods	24.6	24	100	13.4
9	Heubline, Inc	23.7	26	85	14.3
10	Loews Corps	23.2	30	237	10.5
11	Kellogg Co	22.2	35	23	20.8
12	Chesebrough-Pond's	21.8	38	39	17.6
13	Philip Morris, Inc	21.6	42	115	13.0
14	Winn-Dixie Stores, Inc	21.4	43	21	20.9
15	Weis Markets	21.2	46	19	21.0
16	Petrolane, Inc	21.1	47	133	12.6
17	R. J. Reynolds Industries, Inc	20.3	53	56	16.0
18	Anheuser-Busch	19.6	59	126	12.8
19	Malone & Hyde, Inc	19.3	62	60	15.7
20	Pueblo International, Inc	19.1	64	105	13.2
21	PepsiCo	18.9	66	80	14.4
22	Williams Cos	18.6	72	393	7.9
	Dillon Cos	18.7	73	111	13.1
23	Bluebird	18.4	75	402	7.8
	Alco Standard	18.4	76	48	16.8

AGRIBUSINESS INVOLVEMENT DIRECTORY

AETNA LIFE AND CASUALTY, 151 FARMINGTON AVENUE, HARTFORD, CONN. 06115

INSURANCE AND FINANCIAL CORPORATION

Agribusiness involvement (ag production, inputs).—Kaiser-Aetna—assets in excess of $300 million; acquired 85,000 acres in 1969 in California and Arizona, two Kaiser Industries companies had previously acquired a two-thirds interest in Rancho California in 1964 for $21 million, Kaiser-Aetna acquired the remaining one-third interest held by Macco Properties for $19 million, present use of the property involves farming (Orchard Downs—unlimited agricultural syndicate), tree crops, vineyards, dairy farms, horses, home sites, country ranches, industrial and commercial complexes and recreation; now developing over 200,000 acres in California, Hawaii and Arizona (which includes the former 4,200-acre McCormick Ranch in Arizona, Warner Ranch, Rancho Ventura, Aliso Ranch, Anderson Ranch, Butte Farms, Rancho San Luis).

ALCO STANDARD, VALLEY FORGE, PA. 19481

CHEMICAL, METALLURGICAL, ELECTRICAL AND LEISURE-TIME CORPORATION

Agribusiness involvement (inputs, outputs).—Vaughn Industries (food service equipment supplying commercial and institutional mass feeding market), Andruse Company (Miller Chemical & Fertilizer Corp.—fertilizers, insecticides, pesticides and herbicides, Minerva Wax Paper Co.—industrial waxed papers and films and other converted papers for food processors), Unisource Corp. (A. E. MacAdam and Co., Inc.—food service disposables and food packaging and industrial paper products), Distilled Spirits Companies (Ed Phillips and Sons Co.—brandies, whiskies, schnapps, Wisconsin Liquor Co., Sodak Distributing Co.).

AMERICAN BRANDS, 245 PARK AVENUE, NEW YORK, N.Y. 10017

TOBACCO, DISTILLED SPIRITS, STAPLE EQUIPMENT, HAND CARE PREPARATION, LOCK, FOOD, DRINK AND VISIBLE RECORD KEEPING EQUIPMENT CORPORATION

Agribusiness involvement (ag production, outputs).—American Cigar Corp., Andrew Jergens, Inc. (Sugar Beet Products Co.), American Tobacco Co. Inc., James B. Beam Distilling Co. (Taylor Food Products, Inc.) Duffy-Mott Co. Inc. (apple sauce and juice, prunes, clamato, etc.), Sunshine Biscuits Inc.—manufactures biscuits, candy, snack food products, cakes, and flour (Bell Brand Foods, Inc., Dickey's Realty Co., Humpty Dumpty Foods, Ltd.), Hatheway-Steane Corp. (a wholly owned subsidiary) grows, sorts, packs and cures leaf tobacco in addition to owning 1622 acres of farm lands with curing barns in Connecticut and Massachusetts.

AMERICAN CYANAMID CO., WAYNE, N.J. 07470

BUILDING AND CONSUMER PRODUCTS, MEDICAL, CHEMICAL, AGRICULTURAL PRODUCTS

Agribusiness involvement (ag production).—Agricultural division: Animal industry products (medicated feed supplements), pesticides, and fertilizers (125 bulk blending fertilizer plants in 14 states). In late 1970 the company entered a new agricultural business area—commercial farming. Through subsidiaries, Cyanamid and John Hancock Mutual Life Insurance Company purchased 35,000 acres near Englehard, North Carolina, to be used for the production of feed grain. This land is being cleared at the rate of 7,000 acres per year, so that full crop production will be reached in 1976. It is to be operated under the name Mattamuskeet Farms.

AMERICAN HOME PRODUCTS CORP., 685 THIRD AVENUE, NEW YORK, N.Y. 10017

PRESCRIPTION DRUG, HOUSEWARE, FOOD, PACKAGED DRUG, HOUSEHOLD PRODUCTS, CANDY CORPORATION

Agribusiness involvement (inputs, outputs).—Wyeth Laboratories (pharmaceutical, biological and nutritional products), Fort Dodge Laboratories (veterinary products for large and small animal use), Ekco Products Inc. (commercial baking pans and services, aluminum containers, food handling systems), American Home Foods (specialty foods—"Chef Boy-Ar-Dee," "Dennison's Chili,"

nuts, mustard—"Gulden's," and popcorn—"Jiffy-Pop"), E. J. Brach and Sons ("America's largest general line candy producer"). Recently purchased 5% of William Wrigley Jr. Company's 3.9 million outsanding shares and 5.2% of Green Giant Company's 3 million outstanding shares.

ANHEUSER-BUSCH, INC., 721 PESTALOZZI STREET, ST. LOUIS, MO. 63118

BREWING COMPANY AND BASEBALL CLUB OWNERS

Agribusiness involvement (outputs).—Beer manufacturing ("Busch," "Budweiser," and "Michelob"), Industrial Products Division (products used in the banking and food processing industry—starch, frozen and dried eggs, yeast baking powder, oleomargarine, liquid sweetners, mold inihibitors, enrichment wafers, bakers cream, corn syrups, starches and dextrines), Lianco Container Corporation (jointly owned by Anheuser-Busch (60%) and Libby, McNeill & Libby (40%)—manufacturers cans and lids).

ARCO (ATLANTIC RICHFIELD CORP.), 717 FIFTH AVENUE, NEW YORK, N.Y. 10022

OIL, GAS AND CHEMICAL PRODUCING CORPORATION

Agribusiness involvement (inputs, outputs).—Agricultural products operation—Fort Madison, Iowa (anhydrous ammonia, solid fertilizers and other agricultural chemical products marketed through a network of Midwest farm retail centers). A transaction was announced in May, 1973 between ARCO Chemical Co. and CF Industries, a Midwest fertilizer and chemical company, whereby CF Industries would sublease the Fort Madison plant. On July 6, 1973, the Justice Department announced that it intends to file a suit blocking the acquisition. Food service (gasoline service station combinations on interstate highway systems incorporating food and lodging facilities).

BANKAMERICA CORP., BANK OF AMERICA CENTER, 555 CALIFORNIA STREET SAN FRANCISCO, CALIF. 94104

A ONE-BANK HOLDING CORPORATION FOR BANK OE AMERICA NATIONAL TRUST AND SAVINGS ASSOCITION, BANK AMERICA REALITY SERVICE, INC. AND DECIMUS CORP.

Agribusiness involvement (ag production, inputs).—"World's largest agricultural lender" (approximately $3 billion), Agri-business Analysis Division (a service of the Bank of America N.T. & S.A. which provides a more "thorough assessment" of agricultural information), owns 1462 acres in agricultural land, holds 100,000 acres of agricultural land in trust, Agribusiness Investment Co. (manages agricultural operations).

BANKERS TRUST NEW YORK CORP., BANKERS TRUST BUILDING, 16 WALL STREET, NEW YORK, N.Y. 10015

MULTI-BANK CORPORATION IN NEW YORK STATE

Agribusiness involvement (inputs).—Bank services economic activity in agriculture (*e.g.*, grape production in Chautauqua), food services (*e.g.*, restaurant complex in Hudson County), and food production.

BEATRICE FOODS, 120 SOUTH LA SALLE STREET, CHICAGO, ILL. 60603

RETAIL GROCERY, DAIRY, BAKERY, MEAT SPECIALTY, FOOD DISTRIBUTION, CONFECTIONERY WAREHOUSE, AGRI-PRODUCTS, CHEMICAL, LUGGAGE, MANUFACTURED PRODUCTS AND INVESTMENT CORPORATION

Agribusiness involvement (ag production, outputs).—Markets over 8000 proucts. Grocery Division (markets 4000 convenience food products in 25 states), Fresh and frozen bakery products (10 plants and 16 branches), Carbonated soft drink distribution (3 plants in 3 states), Peter Eckrich Division (meat specialties including more than 125 varieties of smoked sausage, frankfurts, luncheon meats, etc.), John Sexton Division (distribution of 2500 food and related products to the food service industry), Dairy Division (85 plants, 190 branches with distribution in 46 states and D.C.), Confectionery Division, Warehouse Division (23 cold storage and three dry storage warehouses) and Agri-Products Division (mink food, curing steer hides, pre-mix mineral and vitamin supplements for animal

feeds), Brookside Enterprises Inc. (produces and markets table, dessert and sacramental wines from two wineries in Southern California and one in Sacramento—owns 1200 acres of vineyards).

BLUEBIRD INC., 101 GREENWOOD AVENUE, JENKINTOWN, PA. 19046

MEAT PROCESSING AND PACKAGING

Agribusiness involvement (outputs).—Produces cooked and smoked hams ("nation's leading processor of smoked hams"), pork shoulders, canned hams, bacon, fresh and dry sausage products and smoked, sliced and canned meats. Currently constructing a $15 million plant in Chicago, the world's largest meat processing plant. Slaughters hogs, sells fresh pork cuts and renders, refines and sells lard and shortenings (3500 wholesale customers, leading customer (1971–72)—Great Atlantic and Pacific Tea Co. (11.7% of total net revenue and sales), next five largest customers in the aggregate accounted for 19.1%, none of which individually accounted for more than 5.2%).

BOEING CO., 7755 EAST MARGINAL WAY SOUTH, SEATTLE, WASH. 98124

AIRPLANE MANUFACTURER

Agribusiness involvement (ag production).—Leases 100,000 acres of land near Boardman, Oregon, from the State of Oregon. Adjacent to the Columbia River, U.S. Highway Interest 80 and the main line of Union Pacific's transcontinental railroad. Company has irrigated approximately 3300 acres of pasture land for grazing and raising alfalfa and eventually plans to place 50,000 acres under irrigation for grazing and diversified crops. Plans to develop vegetable, fruit and grain processing industry in addition to slaughterhouses and packinghouses, a tannery, poultry raising and processing, fertilizer production, a fish farm, a fish cannery and a winery.

BORDEN INC., 50 WEST BROAD STREET, COLUMBUS, OHIO 43215

DAIRY AND SERVICES, FOOD, APPAREL AND CHEMICAL CORPORATION

Agribusinesses involvement (outputs).—Second largest dairy, fifth largest food company and 17th largest chemical producer in the United States. Dairy and Services Division (milk operations in 28 states and ice cream operations in 33 states, bottled water operations, BBF Restaurants (60) in four states), Foods Division (condensed milk, evaporated milk, cheese, canned fruits and vegetables, dehydrated foods, snack foods, "Aunt Jane's"pickles, "Bama" jams and preserves, "Cracker Jack," "Comstock," "Doran's," "Greenwood's," "Old London," "Portion Pak," "ReaLemon," "Snow's," "Wyler's," "Calo" pet foods, "Kava" instant coffee), Chemical Division (feed grain, fertilizer, in-store wrapping of meats and produce, bottles), Borden Inc. (food sales).

CPC INTERNATIONAL, INTERNATIONAL PLAZA, ENGLEWOOD CLIFFS, N.J. 07632

MULTINATIONAL MANUFACTURER AND DISTRIBUTOR OF FOOD AND INDUSTRIAL PRODUCTS

Agribusiness involvement (ag production, outputs).—Corn Industrial (sugar refinery; corn syrups, starches, sucrose, dextrose and feeds), Best Foods ("Skippy" peanut butter, "Hellmann's," "Mazola" corn oil, S. B. Thomas (frozen foods), S. B. Penick (insecticides, packaging chemicals), Ott/Wica (produces chemicals for pharmaceutical, textile and agricultural industry), Dutch Pantry (restaurant and foods processing business), Funk Bros. (develops and markets hybrid seeds—manages 11,750 acre farm in Venezuela and 3000 acres in Colombia).

CAMPBELL SOUP CO., CAMDEN, N.J. 08101

CONVENIENCE FOOD MANUFACTURER

Agribusiness involvement (ag production).—Canned soups; bean products; tomato juice; "Swanson" frozen prepared foods; "Franco American;" "Pepperidge Farm" bread, rolls, cookies, crackers, pastries, layer cakes. Champion Valley Farms Inc. (balanced-diet canned pet foods—"Recipe"), owns and operates 34 principal producing plants, four mushroom farms (less than 2% of its

agricultural ingredients are grown on company premises). Clark Restaurants, Herfy's fast food units (57 in the Pacific Northwest), Hanover Trail Steak House (New Jersey), Lexington Gardens (seed and plant business), "Godiva" chocolates.

CARNATION CO., 5045 WILSHIRE BOULEVARD, LOS ANGELES, CALIF. 90036

FOOD, MILK, MILLING, TOOL AND CAN MANUFACTURING CORPORATION

Agribusiness involvement (ag production).—Evaporated milk, Trenton Foods, processed potatoes, can manufacturing, fresh milk and ice cream (retail and wholesale), pet foods ("Friskie's") and cereals; Albers Milling (poultry feed; corn meal; dairy, beef and horse feeds; specialty feeds and feeding equipment, grains and concentrates, poultry ranches and eggs); Contadina Foods (tomato products); Carnation Farms (1200 acre experimental farm at Carnation, Washington for research in breeding and nutrition for development of purebreed Holstein-Friesian cattle), Experimental farm at Watertown, Wisconsin used for breeding purposes.

CATERPILLAR TRACTOR CO., PEORIA, ILL. 61602

HEAVY EQUIPMENT MANUFACTURER

Agribusiness involvement (inputs).—Manufacturing machines for brush control, crop production and harvesting, farm pond construction, feedlot operation, irrigation systems, land clearing and terracing.

CHASE MANHATTAN CORP., 1 CHASE MANHATTAN CORPORATION, NEW YORK, N.Y. 10005

ONE-BANK HOLDING CORPORATION FOR THE CHASE MANHATTAN BANK, NATIONAL ASSOCIATION

Agribusiness involvement (inputs).—Major financier and lender to a variety of major agricultural and food industry corporations, such as entering in August, 1972 into an agreement with three other New York banks for a three-year revolving credit package of $100 million to the Great Atlantic & Pacific Tea Co.

CHEMICAL NEW YORK CORP., 20 PINE STREET, NEW YORK, N.Y. 10015

ONE-BANK HOLDING CORPORATION FOR THE CHEMICAL BANK

Agribusiness involvement (inputs).—Serves the 1500 largest U.S. corporations, many of which are the nation's major agricultural and food industry corporations.

CHESEBROUGH-POND'S INC., 485 LEXINGTON AVENUE, NEW YORK, N.Y. 10017

HEALTH AND BEAUTY PRODUCTS, HOSPITAL PRODUCTS AND SPECIALTY FOOD PRODUCTS CORPORATION

Agribusiness involvement (outputs).—Specialty Food Products Division ("Ragu" sauces and convenience foods—recently built a $3.8 million tomato paste and spaghetti sauce packaging plant in Merced, California), owns an undisclosed number of common shares of Adolph's Ltd. (meat tenderizers and markets a line of condiments).

CHROMALLOY AMERICAN CORP., 111 SOUTH MERAMEC, CLAYTON, MO. 63105

CONSUMER PRODUCTS AND SERVICES, METALLURGICAL PRODUCTS AND SERVICES, NATURAL RESOURCES AND POLLUTION-CONTROL, MARINE AND LAND TRANSPORTATION, PHARMACEUTICAL AND HEALTH SERVICES, INDUSTRIAL AND AGRICULTURAL EQUIPMENT, TEXTILE PRODUCTS AND PROCESSING, BUILDING PRODUCTS AND SERVICES

Agribusiness involvement (inputs).—Soft drink bottling and distribution in five different midwest states ("Dad's" Root Beer Co. of Chicago), Valley Line Co. of St. Louis (barge transportation on inland waterways), purchasing, mixing and sale of essential oils (spearmint and peppermint), Agri-products (silo unloaders, farm loaders, cattle feeders, forage boxes, manure and dry fertilizers spreaders, barn cleaners, truck hoists, plow shares and blades, stock and grain

truck bodies, stump cutters and other tractor attachments, poultry cages and other accessories, ramp hoists—3 divisions, 11 subsidiaries—18 plant locations in 12 states).

COCA COLA CO., P.O. DRAWER 351, WILMINGTON, DEL. 19899

SOFT DRINK, BEVERAGE AND CONCENTRATED FRUIT JUICE PRODUCER

Agribusiness involvement (ag production, outputs).—Owns or controls through long-term leases more than 30,000 acres of citrus holdings through its subsidiary Minute Maid in Florida (3% of the state's total), Duncan Foods Co.—Houston, Texas (coffee importing, processing and marketing—"Butter Nut," "Maryland Club"). Experimental animal bulk feed and roughage processing plants in Florida utilizing orange wastes.

CONAGRA, KIEWIT PLAZA, OMAHA, NEBR. 68131

FOOD PROCESSOR

Agribusiness involvement (ag production).—Flour products (flour, prepared bakery mixes and milling by-products for sale to commercial baking industry, industrial food and feed markets and governments), Feed products (scientifically formulated cattle, swine, poultry and dairy feed for sale to producers of meat, milk, poultry and eggs), Broiler products (broiler chicken products for sale to grocery store, industrial, institutional and food-service markets). Grocery products (prepared baking mixes, family flour, corn meal, corn grits, dried peas and beans, and syrups through grocery stores and food distributors—"Gradiola," "Famo," "Mother's Best," "Roller Champion," "Dixie Lily"), Agri-Food products (grain merchandising, corn mill products, specialty horse feeds, oat products, eggs, farm-raised catfish ("Country Skillet"), beef cattle, hogs, research and new venture developments in the U.S. and Puerto Rico.

CONNECTICUT GENERAL LIFE INSURANCE CO., HARTFORD, CONN. 06115

PROPERTY AND CASUALTY INSURER, INVESTMENT MANAGEMENT, EQUITY SALES AND REAL ESTATE

Agribusiness involvement (ag production).—A number of wholly-owned subsidiaries are involved in real estate ventures engaged in the development of properties throughout the U.S. for sale. Through one of these subsidiaries the company received $30,937 in ASCS payments in 1972 for an agricultural property in Humboldt County, Nevada. Also in 1972 the company purchased a half interest in a Colorado ranch property. Large investor in shopping centers.

CONSOLIDATED FOODS CORP., 135 SOUTH LA SALLE STREET, CHICAGO, ILL. 60603

CONSUMER GOODS AND SERVICES CORPORATION

Agribusiness involvement (ag production).—Frozen baked goods and convenience foods, seafoods, canned and processed fruits and vegetables, specialty meats, refined sugar (Azar Nut Co., Bloch & Guggenheimer, Booth Fisheries, Bryan Packing Co., E. Kahn's Sons Co., Kitchens of Sara Lee, Michigan Fruit Canners, Inc., Union Sugar, Van Wagenberg-Festen's N.V.); Convenience stores, restaurants and motels, foods and related supplies for volume feeding operations (Lawson Milk Co., L-K Enterprises, Lyons Restaurants, Manners Restaurants, Monarch Institutional Foods, Pearce-Young-Angel Co.); Candy, frozen confections, soft drinks (Hollywood Brands, John Lewis, Inc., Popsicle Industries, Shasta Beverages).

CONSOLIDATED FREIGHTWAYS, INC., INTERNATIONAL BUILDING, 601 CALIFORNIA STREET, SAN FRANCISCO, CALIF. 94108

MOTOR CARRIER CORPORATION

Agribusiness involvement (inputs).—Provides common carrier freight service for agricultural and food products between thousands of points in 40 states, serving all 10 of the nation's largest cities and 47 of the 50 leading industrial counties. Provides short haul service of chemicals in Western United States. Transicold Corp. (producer of cooling equipment for trucks and trailers).

CONTINENTAL ILLINOIS CORP., 231 SOUTH LA SALLE STREET, CHICAGO, ILL. 60690

ONE-BANK HOLDING CORPORATION FOR CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO AND ITS SUBSIDIARIES

Agribusiness involvement (inputs).—Major financial lender to agricultural and food manufacturing operations. Provides agricultural marketing information, i.e., "Helping Farmers Make Financial Decisions—A Guide for Agri-Marketers."

CONTINENTAL OIL CO., 30 ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020

PETROLEUM, COAL, CHEMICAL, PLANT FOOD AND MINERAL CORPORATION

Agribusiness involvement (inputs).—Conoco Chemical Division (plant food operation—"Agrico" brand plant foods), undeveloped acreage—4.8 million in U.S. and 33.4 million acres in Canada.

COOK UNITED INC., 16501 ROCKSIDE ROAD, MAPLE HEIGHTS, OHIO 44137

MERCHANDISING CORPORATION

Agribusiness involvement (ag production).—Supermarkets (23 in central and southern Ohio), Bakeries ("Laurie Ann"), Dairy (Farmview), Parkman Egg Co., United Poultry Co., "Dinner Bell Meats" (joint venture with Eckert Packing Co.), Cottage Creamery Co., Institutional foods (supplies hospitals, schools, restaurants and hotels in Cleveland, Ohio area with meat, eggs and produce), State Fish, Inc. (wholesale sea food).

DELTA AIR LINES, HARTSFIELD ATLANTA INTERNATIONAL AIRPORT, ATLANTA, GA. 30320

AIR CARRIER

Agribusiness involvement (inputs).—Nationwide carrier of agricultural and food industry air freight over 23,544 miles of unduplicated routes. In 1972 realized near $47 million in domestic and international freight revenues.

DILLON COMPANIES INC., 2700 EAST FOURTH STREET, HUTCHINSON, KANS. 67501

RETAIL BUSINESS

Agribusiness involvement (outputs).—Supermarkets (123) in Kansas, Arkansas and Oklahoma ("Dillon's"), Colorado ("King Soopers," "City Market"), Missouri ("Gerbes" Supermarkets), Wyoming ("Mr. D's Food Centers"); Convenience stores (133) in San Francisco Bay Area ("Quik Stop Markets Inc."), Kansas, Nebraska, Iowa ("Kwik Shop Inc."); Ice cream manufacturing plant, bakery, substantial owner of Fry's Food Stores, Inc. stock.

DOW CHEMICAL CO., MIDLAND, MICH. 48640

CHEMICAL COMPANY

Agribusiness involvement (ag production, inputs).—Pesticides, plastic packaging products, fertilizers, poultry and hog vitamin products, leases substantial portion of 17,000 acres in Arizona and California to Bud Antle, Inc. ("the world's largest independent lettuce grower") in Arizona and California. Dolco Packaging Corp.—jointly owned by Dow and Olson Farms Inc. operate a packaging plant in Decatur, Illinois. Catfish farm (Lake Jackson, Texas)—50,000 catfish growing and spawning.

EASTMAN KODAK CO., 343 STATE STREET, ROCHESTER, N.Y. 14650

PHOTOGRAPHIC AND CHEMICAL COMPANY

Agribusiness involvement (inputs).—Nutrition and food processing products (Sells Vitamin E for animal feeds also Vitamin E processed into tablets and capsules. Sells Vitamin A to the food, pharmaceutical, and feed industries. Sells monoglycerides which "improve" the texture of baked goods and other food products and "Tenox" antioxidants used to improve the keeping qualities of many popular table foods.

E. I. DU PONT DE NEMOURS & COMPANY, INC., 1007 MARKET STREET, WILMINGTON, DEL. 19898

CHEMICAL COMPANY

Agribusiness involvement (inputs).—World's largest chemical company. Agricultural chemicals (pesticides, plant biology—"trying to find compounds that will regulate plant growth," fertilizers, feed supplements), food and related products (packaging film, plastics, processing compounds), commercial food freezing units, Real Estate. In May, 1970 the company entered into an agreement with Stone Container Corp. (Chicago, Ill.) to develop and market an automated system for packaging frozen cuts of meat in a skin package made from du Pont film and Stone paperboard.

ELI LILLY AND CO., 307 EAST MCCARTY STREET, INDIANAPOLIS, IND. 46206

PHARMACEUTICAL AND CHEMICAL CORPORATION

Agribusiness involvement (inputs).—Elanco Products Company (Agricultural chemicals—herbicides ("Treflan," "Balan," Paarlan," major producer of diethylstilbestrol (DES), pharmaceutical and biological products for livestock and poultry, Veterinary products (drugs for farm livestock and pet animals), packaging products (cartons, molded plastic, etc.).

ESMARK, INC., 115 WEST JACKSON BOULEVARD, CHICAGO, ILL. 60604

CHEMICALS AND INDUSTRIAL PRODUCTS, FOOD PRODUCTS, PETROLEUM, INSURANCE AND FRESH MEATS COMPANY

Agribusiness involvement (ag production, inputs, outputs).—Swift Edible Oil Co. (Soybean, liquid shortening, specialty fats, hard butter for baking industry); Swift Chemical Co. (Vegetable protein, soy protein-based consumer products); Swift Dairy and Poultry Co. ("Butterball Swift's Premium Turkeys," ice, broiler and poultry production); Swift Food Service Co. (Supplier of food products to restaurants and other volume feeders); Swift Grocery Products Co. (Marketing of consumer refinery products—Derby Foods ("Peter Pan" peanut butter), Savortite—canner of meats); Swift Processed Meats Co.; Swift Fresh Meats Co.; GSI, Inc. (Globe Engineering Co.—specializes in the design of food processing plants and refrigerated warehouses). Joint venture with Gulfstream Land & Development Corp. to enter into a 2000-acre community development venture in Plantation, Florida; Estech, Inc. (Agricultural chemicals including phosphate and potash).

EXXON CORP., 1251 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10020

OIL, GAS AND CHEMICAL COMPANY

Agribusiness involvement (inputs).—Esso Chemical Company, Inc. (Agricultural chemicals).

F. W. WOOLWORTH CO., WOOLWORTH BUILDING, 233 BROADWAY, NEW YORK, N.Y. 10007

RETAIL CONSUMER GOODS

Agribusiness involvement (outputs.)—Restaurant operations (Harvest House Coffee Shops, fast-food stand-up and take-out counters) in operation in some 1725 stores throughout U.S., Puerto Rico, the Virgin Islands and Canada.

FEDERATED DEPARTMENT STORES, INC., CINCINNATI, OHIO 45202

RETAIL CONSUMER GOODS

Agribusiness involvement (outputs).—Ralph's Supermarkets (66 in California).

FIRST CHICAGO CORP., ONE FIRST NATIONAL PLAZA, CHICAGO, ILL. 60670

One-Bank Holding Company for the First National Bank of Chicago and Its SUBSIDIARIES

Agribusiness involvement (inputs).—Commercial Banking Department: Group One, Division A (Food, Beverages, Tobacco, Pharmaceuticals and Hospital Supplies); Group Two, Division C (Machine Tools, Farm, Road and Construction Machinery, Railway Equipment, Steel, Non-ferrous Metals, Automotive), *e.g.*, "Irrigation equipment nurtures grazing land . . . of Premier Corporation, a Michigan-based integrated beef producer which arranged a $3.2 million financing from First Chicago Investment Corporation to help complete a major acquisition."—1972 Annual Report.

FIRST NATIONAL CITY CORP., P.O. BOX 939, CHURCH STREET STATION, NEW YORK, N.Y. 10008

ONE-BANK HOLDING COMPANY FOR THE FIRST NATIONAL CITY BANK AND ITS SUBSIDIARIES

Agribusiness involvement (inputs).—Major lender to many large agricultural and food corporations throughout the United States, such as entering in August, 1972, into an agreement with three other New York banks for a three-year revolving credit package of $100 million to the Great Atlantic & Pacific Tea Co.

FISHER FOODS, INC., 5300 RICHMOND ROAD, BEDFORD HEIGHTS, OHIO 44146

FOOD AND CONSUMER GOODS RETAILING COMPANY

Agribusiness involvement (outputs).—Food retailing (Fisher-Fazio Division—operates stores in Greater Cleveland area, Dominick's Finer Foods, Inc.—operates stores in Greater Chicago area, Kantor Division—operates 13 discount stores and leased food departments in Southern Ohio and Northern Kentucky), Omar Bakeries Inc.—subsidiary serving independent customers in the Columbus-Dayton, Ohio area and supplying the Fisher-Fazio and Kantor divisions, Feren Fruit Basket Co.—a division engaged in packing and retailing, on a special order basis, gift baskets of gourmet foods and assortments of choice meats, Eagle Ice Cream Co.—supplies all of the supermarkets and Family Centers, Fast Food Restaurants (Arthur Treacher's Fish & Chips), Family Centers. Acquired 46 California "Shopping Bag" supermarkets from E. F. MacDonald Co. in September, 1972. Now operates 176 retail food stores throughout U.S.

FORD MOTOR CO., THE AMERICAN ROAD, DEARBORN, MICH. 48121

AUTOMOBILE AND TRUCK MANUFACTURER

Agribusiness involvement (inputs).—Automotive and Tractor Manufacturing, Assembly and Sales, Ford Motor Credit Company.

FOREMOST-MCKESSON, INC., 111 PINE STREET, SAN FRANCISCO, CALIF. 94111

FOOD, DRUG, HEALTH CARE, SCIENTIFIC, ALCOHOLIC BEVERAGE AND CHEMICAL CORPORATION

Agribusiness involvement (ag production).—Food company (Dairy Division—processing and wholesale distribution of milk and related dairy products in states west of the Mississippi River; Food Products—"world's largest supplier" of whey and whey-based products, including lactose, also produces and markets grocery shelf items and institutional food products; Water Division—"largest water supplier in the U.S."), Liquor company ("largest distributor of wines and liquors in the U.S.," on a franchise basis it represents every major importer of alcoholic beverages in the U.S., *e.g.*, "21 Brands"— "Ballantine's," "Tribuno,"

"Louis M. Martini," "Wente Bros."). Chemical company ("largest independent, multi-location chemical distributor in the U.S. handling a broad line of industrial, agricultural and fine chemicals."). Provident Securities Co., whose major assets were purchased in 1969, has major commercial land holdings throughout California.

G. D. SEARLE & CO., P.O. BOX 5110, CHICAGO, ILL. 60680

ETHICAL PHARMACEUTICALS

Agribusiness involvement (inputs).—Searle Agriculture Inc.—December, 1972, purchased 805 acres in Kane Co., Illinois, for raising bulls and for processing laboratories for the Curtiss Breeding Service (Artificial insemination of cattle, markets animal health products for cattle). Fermco (Manufactures enzyme products used to help fruit juices and soft drinks retain their fresh flavor and appearance, low calorie artificial sweetner).

GENERAL ELECTRIC CO., 570 LEXINGTON AVENUE, NEW YORK, N.Y. 10022

CONSUMER ELECTRICAL PRODUCTS, INDUSTRIAL POWER EQUIPMENT, INDUSTRIAL COMPONENTS AND SYSTEMS, AEROSPACE, CREDIT CORPORATION

Agribusiness involvement (inputs).—Financier, manager, and developer of the 6600-acre Agri-city project in Upper Deerfield Township, New Jersey, while ownership of the land will remain with the C. F. Seabrook Co. (Seabrook Farms). Project is slated to be a balanced community of industry, agriculture (five-acre greenhouse vegetable plots), and residential areas. Developing an experimental plant in Casa Grande, Arizona, to convert cattle feedlot manure into a high protein dietary supplement for animals.

GENERAL FOODS CORP., 250 NORTH STREET, WHITE PLAINS, N.Y. 10602

FOOD PROCESSING AND MARKETING CORPORATION

Agribusiness involvement (outputs).—Foods ("Birds Eye," "Jell-O," "Kool-Aid," "Maxwell House," "Post"), Food service (Institutional "Burger Chef" Systems, General Foods, Ltd.—Canada, General Foods International), Non-Food Unit (W. Atlee Burpee—"Quality products for home gardens and lawns"), Pet foods ("Gaines Meal," "Gravy Train," "Gainesburgers," "Prime," and "Top Choice").

GENERAL MOTORS CORP., 3044 WEST GRAND BOULEVARD, DETROIT, MICH. 48202

AUTOMOBILE AND TRUCK MANUFACTURER

Agribusiness involvement (inputs).—GMC Truck and Coach Division (GMC trucks and buses), GM Acceptance Corp. (wholesale and retail financing for GM dealers in passenger cars and trucks), Delco-Remy Division (starting, generating and ignition system, switches, vacuum controls for passenger cars, trucks, buses, farm tractors and off-highway equipment), Packard Electric Division (automotive, appliance, marine and farm equipment wiring systems and components), various automotive component divisions.

GETTY OIL CO., 3810 WILSHIRE BOULEVARD, LOS ANGELES, CALIF. 90010

OIL AND GAS COMPANY

Agribusiness involvement (ag production).—In 1968, the company owned 90,000 acres of land which had been purchased in the early 1900's in connection with its exploration and production operations but were no longer considered conductive to petroleum exploration and production operations. As a result of the availability of water from the California Aqueduct and after feasibility studies by the Stanford Research Institute, much of this land was found to have potential for agricultural development. Urban development potential was indicated for other portions of the properties. Of the acreage held in 1968, 160 acres had been developed into orchards and 13,000 acres had been cultivated as row crops. By the end of 1972, with the acquisition during 1972 of approximately 7,000 acres of agricultural

and commercial properties near Bakersfield, the ownership of land in California had increased to 97,000 acres, and the company had developed 4,400 acres in orchards, 600 acres in vineyards and 30,000 acres had been cultivated as row crops.

—May 3, 1973 "First Half Report".

On May 4, 1973, the *Wall Street Journal* reported that George F. Getty II, executive vice president, said "the company plans to expand its real estate and agricultural activities. The company said it owns several hundred thousand acres of land in California that will be used for real estate development and corporate agriculture."

GOODYEAR TIRE AND RUBBER CO., AKRON, OHIO 44316

DIVERSIFIED RUBBER, CHEMICAL AND INDUSTRIAL PRODUCTS MANUFACTURERS

Agribusiness involvement (input).—Agricultural implements, food packaging films.

GREAT ATLANTIC AND PACIFIC TEA CO., GRAYBAR BUILDING, 420 LEXINGTON AVENUE, NEW YORK, N.Y. 10017

RETAIL GROCERY

Agribusiness involvement (outputs).—Supermarkets (4200 stores in 35 states, the District of Columbia and Canada), U.S. Subsidiaries (Great Atlantic & Pacific Co. of Vermont, Nakat Packing Corp., American Coffee Corp., TAP, Inc., Compass Foods, Inc., Gress Stores Co. Inc., Super Market Service Corp., Vehicle Leasing Inc., Kwik Save, Inc.), Incidental to the retail business A & P operates numerous warehouses, 22 bakeries, three diversified grocery manufacturing plants, three milk product plants, one catsup manufacturing plant, six coffee roasting plants, three fresh milk plants, one delicatessen plant, one cheese curing plant, three frozen vegetable plants, one nut processing plant, one fish producing plant, one poultry processing plant, two laundries, a number of produce packing plants and buying offices in producing areas. Items produced by A & P and sold under company-owned brand names, such as bakery products, coffee, jellies and jams, macaroni products, candy, canned beans, catsup, milk products, detergents, waxes, and dog food (as distinguished from items which primarily involve only packaging) accounted for approximately 12% of total sales for the fiscal year ended in 1972, private labels ("Ann Page," "Jan Parker," "Iona," "Sultana," "Eight O'Clock" coffee. See Gulf & Western Industries.

GREAT WESTERN UNITED CORP., EQUITABLE BUILDING, DENVER, COLO. 80202

SUGAR, CONVENIENCE FOOD, AND DEVELOPER OF NEW COMMUNITIES

Agribusiness involvement (ag production).—Great Western Sugar Co. ("Largest producer of beet sugar in the U.S."), Shakey's Inc. (Some 422 pizza parlors in U.S.).

GREYHOUND CORP., 10 SOUTH RIVERSIDE PLAZA, CHICAGO, ILL. 60606

TRANSPORTATION AND DIVERSIFIED CONSUMER SERVICES CORPORATION

Agribusiness involvement (ag production, outputs).—Greyhound lines (passenger and freight transportation), Armour and Co. (manufacture and distribution, through Armour Food Co., of a broad range of fresh, processed and portion-control meats, poultry and other food products for consumer and institutional use). Greyhound Food Management (centralized management and services; coordinator of Greyhound's food service operations), Post Houses (restaurants coast to coast, primarily in bus terminals). Prophet Foods Company (food service management organization service industry, banks and other commercial establishments, colleges, schools, hospitals and nursing homes; route vending in selected cities), Cattle Science Capital Corp. (purchase and placement of cattle on feed for future sale on open market), Greyhound Leasing and Financial Corp. (worldwide industrial equipment leasing), Armour-Dial (manufacture and marketing of a wide variety of grocery, personal care and household products for the consumer; also ethical pharmaceuticals, diagnostics, chemicals, and animal health products in both foreign and domestic trade).

GULF OIL CORP., GULF BUILDING, PITTSBURGH, PA. 15230

OIL, GAS, AND CHEMICAL CORPORATION

Agribusiness involvement (inputs).—Products (diesel fuels, kerosene, tractor tires, insecticides, fertilizers, weed killers—agricultural chemical plants leased to The Williams Companies), Blackships, Inc. (Ocean transportation—received large ocean freight subsidies for transporting U.S. wheat to Russia in 1972 and 1973).

GULF AND WESTERN INDUSTRIES, ONE GULF AND WESTERN PLAZA, NEW YORK, N.Y. 10023

INDUSTRIAL PRODUCTS, DISTRIBUTION, METALS FORMING SYSTEMS, PRECISION ENGINEERING, LEISURE TIME, CONSUMER PRODUCTS, NATURAL RESOURCES, FOREST AND PAPER PRODUCTS, FOOD PRODUCTS AND FINANCIAL SERVICES CORPORATION

Agribusiness involvement (ag production, outputs).—Consolidated Cigar Corp., Food products ("Since South Puerto Rico Sugar Company joined Gulf and Western early in 1967, it has gone through a pattern of internal growth that has taken the company beyond its one-crop dependency on sugar. Reflecting this change, the company, together with Scott-Mattson Farms, has become Gulf & Western Food Products Co. Under this name, the group is engaged in a variety of agricultural related and land-use activities, ranging from cattle to cucumbers and from tomatoes to tourism."—1970 Annual Report). Company in 1973 has sought to buy controlling interest in the Great Atlantic and Pacific Tea Co.

HEUBLEIN, INC., 330 NEW PARK AVENUE, HARTFORD, CONN. 06101

FOOD AND ALCOHOLIC BEVERAGE CO.

Agribusiness Involvement (ag production, outputs).—Alcoholic beverage group (Smirnoff Beverage & Import Co.—"Smirnoff Vodka," "Black Velvet" Canadian whisky, "Harveys Bristol Cream," "Irish Mist," "Mai-Tai," "Hobo's Wife," "Brass Monkey;" United Vintners, Inc.—California wine company which includes Inglenook Vineyards and Italian Swiss Colony; Theodore Hamm Co.—"Hamm's and "Burgermeister" beer; Beaulieu Vineyard—California winery), Foods groups (Kentucky Fried Chicken Corp.—609 company-owned and 2,964 KFC franchised retail food service stores in the U.S., selling an average of 1.5 million meals a day to virtually every U.S. city with a population of over 20,000 population; "The Colonel's" restaurants with an expanded menu of KFC, H. Salt Fish & Chips and hamburgers; Spring Valley Foods Inc.—producer and processor of broiler chickens; Consumer Products Division—produces and markets "A–1 Sauce," "Grey Poupon Mustard" and a variety of other specialty foods).

HOUSEHOLD FINANCE CO., PRUDENTIAL PLAZA, CHICAGO, ILL. 60601

FINANCE COMPANY

Agribusiness involvement (outputs).—Merchandizing Division (Von's Grocery Co.—some 113 supermarkets in Southern California area).

IC INDUSTRIES (ILLINOIS CENTRAL INDUSTRIES, INC.), INC., 135 EAST ELEVENTH PLACE, CHICAGO, ILL. 60605

TRANSPORTATION, CONSUMER PRODUCTS, MANUFACTURING AND REAL ESTATE CORPORATION

Agribusiness involvement (outputs).—Illinois Central Railroad (Serves 14 states from the Great Lakes to the Gulf Coast), Pepsi-Cola General Bottlers, Inc. (Franchise bottler of Pepsi-Cola and other soft-drink flavors in seven states), Dad's Root Beer Co. (Root beer concentrate for nationwide and international system of 150 franchise bottlers), Waukesha Foundry Co. (Pumps and blending systems for food processing and textile manufacturing), Bubble Up Co. (129 soft-drink franchises in U.S. and foreign cities). Real Estate.

INTERNATIONAL HARVESTER CO., 401 NORTH MICHIGAN AVENUE, CHICAGO, ILL. 60611

AUTOMOTIVE AND FARM EQUIPMENT MANUFACTURER

Agribusiness involvement (inputs).—Farm Equipment Sales (National and International—". . . farmers use more International Harvester tractors than any other make, and we've just introduced a new line . . . one more reason International Harvester is the big name in farming. And will continue to be."—*WSJ* Journal Ad), Credit Corporation (Financing of notes receivable in the U.S. and overseas). Solar Division (distributes "Pacific Ocean Albacore" which is caught from the world's only gasturbine-powered fishing boat manufactured by the Solar Division).

INTERNATIONAL TELEPHONE & TELEGRAPH CORP., 320 PARK AVENUE, NEW YORK, N.Y. 10022

TELECOMMUNICATIONS EQUIPMENT AND OPERATIONS, INDUSTRIAL AND CONSUMER PRODUCTS, CONSUMER AND BUSINESS SERVICES, NATURAL RESOURCES, DEFENSE-SPACE AND NATURAL RESOURCES

Agribusiness involvement (outputs).—ITT Continental Baking Co. ("Wonder Bread," "Hostess Cake," "Profile Bread," Wonder Snack Division, food additives, Morton Frozen Foods), ITT Canteen Corp. (Vending, food service, industry serving, restaurants. In June, 1973, ITT announced the Canteen Corporation had been sold to TWA for $132 million in compliance with a 1971 consent decree it signed with the U.S. Department of Justice.), Gwaltney Inc. (Smithfield hams), ITT-Rayonier Inc. (Chemicals—owns 350,000 acres in Washington State), Research and Advanced Development Division (Materials—chemicals and fertilizers, techniques and technologies—natural resources management, bacteriology, food preservation).

IU INTERNATIONAL CORP., THE WILMINGTON TOWER, WILMINGTON, DEL. 19801

DIVERSIFIED LAND TRANSPORTATION, OCEAN SHIPPING, UTILITIES, INDUSTRIAL PRODUCTS AND SERVICES AND LAND DEVELOPMENT AND AGRICULTURE COMPANY

Agribusiness involvement (ag production, outputs).—Land Transportation (Pacific Intermountain Express—a major transcontinental motor carrier, Ryder Truck Lines—short haul carrier), Product Distribution Group (Operates two distribution systems from 11-state base in southeastern U.S.—one encompassing dairy products—Farmbest, Inc., institutional foods and related products requiring refrigeration; the other, paper and related dry products), Agriculture/Land Development (Produces sugar, molasses and macadamia nuts, owns or controls under long-term lease more than 265,000 acres of land in Hawaii—C. Brewer & Co., Ltd.; active in developing portions of its land for resort activities and condominiums. In 1972 IU International Corp., through eight plantation subsidiaries in Hawaii, received $3,582,994 in ASCS subsidies.), G & W. H. Corson Inc.—Pennsylvania lime maker.

J. C. PENNY CO., INC., 1301 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10019

RETAIL CONSUMER PRODUCTS CORPORATION

Agribusiness involvement (outputs).—Supermarkets Interstate Inc. (Operates 37 leased food supermarkets in department and discount stores in addition to 12 in Treasury Stores and 2 in J. C. Penny's Stores). Citizens National Bank of Dallas.

J. P. MORGAN & CO., INC., 23 WALL STREET, NEW YORK, N.Y. 10015

ONE-BANK HOLDING CORPORATION FOR MORGAN GUARANTY TRUST COMPANY OF NEW YORK AND ITS SUBSIDIARIES

Agribusiness involvement (inputs).—Extensive financial services to agricultural, food related, and food production corporation, such as entering in August, 1972, into an agreement with three other New York banks for a three-year revolving credit package of $100 million to the Great Atlantic & Pacific Tea Co.

JEWEL COMPANIES, INC., 1955 WEST NORTH AVENUE, MELROSE PARK, ILL. 60160

FOOD AND GENERAL MERCHANDIZER

Agribusiness involvement (outputs).—Retail food markets (Jewel-Eisner-Buttrey-Star—includes over 8500 supermarkets, 5300 general merchandise stores, and some 700 other stores), Food Manufacturing (bakery, cottage cheese processing, ice cream, beefburgers, fountain syrups, fresh produce distribution, coffee—"Hillfarm," "White Hen Pantry," Park Coffee Service), Mass Feeding Systems (Hot school lunches), Family and Carry-Out Restaurants (Brigham's, Buttrick's), Shopping Centers (Midco, "Case 'n Bottle").

JIM WALTER CORP., P.O. BOX 22601, TAMPA, FLA. 33622

BUILDING MATERIALS AND PRODUCTS, HOMEBUILDING, MORTGAGE FINANCING AND NATURAL RESOURCE DEVELOPMENT CORPORATION

Agribusiness involvement (ag production).—Sugar operations (South Coast sugar growing and refining—raw sugar, refined, powered, brown and liquid sugars, blackstrap molasses, fiber by-product. In 1972 Jim Walter Corp. received $315,795 in ASCS subsidy payments for property in Louisiana), Walter Land Co. (Houma, La.)—land development and sales for industrial use, Lorch, Inc. (Birmingham, Ala.)—chain of retail stores, shopping centers.

KELLOGG CO., BATTLE CREEK, MICH. 49016

FOOD MANUFACTURER

Agribusiness involvement (outputs).—Kellogg Cereals and Speciality Foods (43% of the U.S. cereal market), Fearn International Inc. (Manufacturer and marketer of soups and specialty products for restaurants and the institutional food trade), Salada Foods Ltd. (Canadian-based food company with subsidiaries in five countries which manufacturers a diversified line of food products—"Shirriff," "Rise 'n Shine"). Derives 24% of its sales and 12% of its profits from outside U.S. and Canada.

KRAFTCO CORP., 260 MADISON AVENUE, NEW YORK, N.Y. 10016

FOOD PROCESSING COMPANY

Agribusiness involvement (outputs).—Kraft Foods (Worldwide operation manufactures and distributes processed food products and dairy products in packaged form), Sealtest Foods (processes and distributes—Chiefly east of the Mississippi River—fluid milk products, manufactured dairy products, ice cream, frozen desserts, fruit beverages and butter), Breakstone Sugar Creek Foods (manufacturers and distributes certain manufactured dairy products), Packaging and Industrial Division.

THE KROGER CO., 1014 VINE STREET, CINCINNATI, OHIO 45201

RETAIL FOOD AND GROCERY COMPANY, PRODUCTS AND FOOD PROCESSING CORPORATION

Agribusiness involvement (outputs).—Retail Food Markets, Sausage products manufacturing, Egg production, Cheese production, Milk and ice cream production, Bakery goods ("Royal Viking"), Grain storage and feed milling, Corn Belt Broiler hatcheries, Meat fabricating and distribution plants ("Tenderay Brand Beef"), Frozen foods, Take-Out delicatessens. Operates third largest supermarket chain in U.S. with 1431 supermarkets and 458 drug stores in the south, midwest and California. American Financial Corp. owns approximately 7% of company stock (1 million shares).

LEASEWAY TRANSPORTATION CORP., 21111 CHAGRIN BOULEVARD, CLEVELAND, OHIO 44122

DISTRIBUTION CORPORATION

Agribusiness involvement (inputs).—Full distribution system for various large agricultural and food corporation such as Marcor, Sears, Roebuck & Co., Great Atlantic & Pacific Tea Co., Gulf Oil Co., Pueblo Supermarkets, Southern Pacific, and many major midwest petrochemical manufacturers including Standard Oil

of Ohio, Savannah Group—specialized bulk and liquid sugar distribution for Savannah Food & Industries, Inc.

LING-TEMCO-VOUGHT, INC. (LTV), P.O. BOX 5003, DALLAS, TEX. 75222

DIVERSIFIED FOOD PRODUCTS, STEEL, DEFENSE, EDUCATION, RECREATION AND TOURISM, SURFACE TRANSPORTATION AND PLASTICS CORPORATION

Agribusiness involvement (ag production inputs, outputs).—Wilson & Co., Inc. (Wilson-Sinclair Co.—livestock slaughtering and meat processing, hog slaughtering, pet foods cannery, tallow, oleo oil processing, poultry dressing and processing, hotel and restaurant unit supplier: Wilson Certified Foods Inc.—livestock slaughtering and processing, shortening and canned meat processor, major supplier of beef patties for McDonald's Restaurants in South, Southwest and Midwest; Wilson Laurel Farms Inc.—poultry dressing and processing, hatcherys, feed mills; Wilson Beef & Lamb Co.—lamb and cattle slaughtering, beef processing), International Technovation, Inc. and Agri-Chemical Products Division—engaged in the production and marketing of foam plastic egg cartons and meat, poultry and produce trays, and the marketing of agricultural chemicals.

LOEWS CORPS. 666 FIFTH AVENUE, NEW YORK, N.Y. 10019

ENTERTAINMENT, TRAVEL, CONSUMER PRODUCTS AND HOME BUILDING CORPORATION

Agribusiness involvement (outputs).—Reed Candy Co. (Candy drops and bar candy—"Sir," "Big Hunk,"), Lorillard Division (80 brands of tobacco products including cigarettes, pipe tobacco, cigars, little cigars, and chewing tobacco—"Kent," "Newport," "Old Gold," "Erick," "Briggs").

LUCKY STORES, INC., 1701 MARINA BOULEVARD, SAN LEANDRO, CALIF. 94577

FOOD, DEPARTMENT, DRUG, AUTOMOTIVE, FAÇRIC AND SPECIALTY STORES

Agribusiness involvement (outputs).—Lucky Discount Supermarkets (Western United States), Food Basket (San Diego County, California), Eagle (Midwest and Texas), Milk Processing, Delicatessen Packaging, Hancock Textile Co.

MALONE & HYDE INC., 1451 UNION AVENUE, MEMPHIS, TENN. 38104

WHOLESALE FOOD DISTRIBUTOR

Agribusiness involvement (outputs).—Regional Grocery Warehouses (Groceries, meats, produce, frozen foods, dairy products, tobacco products, etc.) distributes to approximately 1800 independent retail grocery stores in a 10 state area of the South-Central U.S., Retail Operations (64 supermarkets and a chain of 34 discount drug stores).

MANUFACTURERS HANOVER CORP., 350 PARK AVENUE, NEW YORK, N.Y. 10022

ONE-BANK HOLDING COMPANY FOR MANUFACTURERS HANOVER TRUST AND ITS SUBSIDIARIES

Agribusiness involvement (inputs).—Major lender to agricultural, food, and food-related corporations.

MARCOR, 619 WEST CHICAGO AVENUE, ILL. 60607

PACKAGING AND RETAIL STORES

Agribusiness involvement (inputs, outputs).—Packaging Corporation of America (Nation's largest cardboard food packaging company, also composite can food packaging), Ward's Food Services Division (food service units in 255 Montgomery Ward stores, Putsch's Restaurants—Kansas City, Missouri chain, Royal Chef—seven unit cafeteria, Sign of the Beefeater, Inc.

MARINE MIDLAND BANKS, INC., 241 MAIN STREET, BUFFALO, N.Y. 14203

NEW YORK STATE BANKING SYSTEM

Agribusiness involvement (inputs).—Large investor (loans and stock) in agricultural and food industry corporations.

M'DONALD'S CORP., M'DONALD'S PLAZA, OAK BROOK, ILL. 60521

RESTAURANTS

Agribusiness involvement (outputs).—Over 600 company-owned and 1600 franchise convenience food stores in the U.S. and Canada.

MELLON NATIONAL BANK AND TRUST CO., MELLON SQUARE, PITTSBURGH, PA. 15230

BANK AND FINANCIAL INSTITUTION

Agribusiness involvement (inputs).—Major lender to a variety of agricultural and food industry corporations.

MERCK & COMPANY, INC., RAHWAY, N.J. 07065

HUMAN AND ANIMAL HEALTH PRODUCTS, ENVIRONMENTAL HEALTH PRODUCTS

Agribusiness involvement (inputs).—Products "have made great contributions over the years to the economical and vastly increased production of poultry and have also played a significant part in improving efficiency in the raising or cattle and sheep."

MISSOURI BEEF PACKERS, INC., 630 AMARILLO BUILDING, AMARILLO, TEX., 79101

BEEF PROCESSING CORPORATION

Agribusiness involvement (ag production).—Five slaughter and packing divisions (Rock Port, Mo.; Friona, Texas; Plainview, Texas; Holton, Kansas; Boise, Idaho), Midwest Beef Inc., Missouri Beef Cartage Co., Packers Cleaning Service Inc., Missouri Beef Express Inc., Missouri Beef Export, Inc., Southwest Feed Yards Inc. (Hereford, Texas cattle-feeding operation).

MOBIL OIL CORP., 150 EAST 42ND STREET, NEW YORK, N.Y. 10017

OIL, GAS AND CHEMICAL CORPORATION

Agribusiness involvement (inputs).—Farm fuels (heating oils, kerosene, LP gas, truck and tractor fuel), farm lubricants (engine oils, gear lubricants, greases, automatic transmission fluids, hydrostatic transmission fluids), farm custom products (anti-transpirants, cattle spray, oils for fungicides—herbicides—insecticides, tractor tires, frost protection systems), farm chemical coatings (epoxysilo compounds, exterior paints, heavy-duty metal paints, interior paints, special dairy paints), farm chemical plastics (heavy-duty cover sheets, plastic mulch, plastic sheeting for windows and cold frames), farm crop chemicals (cotton crop defoliants, growth regulators, herbicides, insecticides).

NATIONAL SERVICE INDUSTRIES, INC., P.O. BOX 7158, STATION C, ATLANTA, GA. 30309

DIVERSIFIED SERVICE, CONSUMER APPAREL, AND MANUFACTURING CORPORATION

Agribusiness involvement (inputs).—Master packaging (printed flexible packaging materials for snack food and product), Bramco Products (automated farm equipment—feeding, heating, watering, ventilating, egg collection and waste disposal).

OCCIDENTAL PETROLEUM CORP., 10889 WILSHIRE BOUVEVARD, LOS ANGELES, CALIF. 90024

OIL, COAL, SULPHUR, CHEMICAL AND FERTILIZER PRODUCING CORPORATION

Agribusiness involvement (ag production).—Occidental Agricultural Chemicals Corporation (Best Fertilizers Companies of California, Texas and Arizona; Occidental Corporation of Florida; Jacksonville Phosphate Terminals, Inc.; the Greenbelt, Summers and Ashkum fertilizer companies, comprising the Midwest Division of Oxychem; and the Research and Development Division at Lakeland, Florida), International Ore & Fertilizer Corporation (Inter-ore) and Jefferson Lake Sulphur Company are also subsidiaries of Occidental Petroleum Corporation (worldwide marketing organization with 29 branch offices operating in

over 60 countries), Occidental International Corporation (organized to assist in foreign exploration and joint venture manufacturing and mining projects), real estate, 200,000 acres including ranch land holdings which are presently being leased to large cattle companies. In 1970 Occidental acquired a 33% interest in Vahlsing, Inc. (Robbinsville, N.J.), a diversified producer of frozen products and a large potato processor, in exchange for Occidental's controlling interest in Oxytrol Corp., which is engaged in "controlled atmosphere" transportation of fresh fruits and vegetables in the continental U.S., Caribbean, and Far East areas.

PACIFIC LIGHTING CORP., P.O. BOX 60043, TERMINAL ANNEX, LOS ANGELES, CALIF. 90060

UTILITY, REAL ESTATE AND AGRICULTURAL CORPORATION

Agribusiness involvement (ag production, outputs).—Blue Goose Growers, Inc. (Grower, packer and marketer of citrus and deciduous fruits in California, Arizona, Michigan, Maryland, and Florida), W. D. Fowler & Sons Corp. (Division of Blue Goose Growers, Inc. engaged in the diversified farm management business and California citrus and pistachio nut operations). Note: Blue Goose Growers, Inc. citrus is marketed through Sunkist Growers, Inc.

PEPSICO, INC. PURCHASE, N.Y. 10577

SOFT DRINK AND CONSUMER GOODS COMPANY

Agribusiness involvement (outputs).—Pepsi-Cola Products (Domestic soft drinks—ten soft drinks "Pepsi-Cola," "Mountain Dew," "Teem," "Mirinda Dry," "Glacier Club," etc.), Frito-Lay Products (Snack Foods—corn, potato, taco, tortilla, and cheese chips, pork rinds, corn snacks, dip mixes, pretzels, peanuts), PepsiCo International Products. In 1973 acquired 82% of the Rheingold Corp. (Beers: "Rheingold," "Ruppert-Knickerbocker," and Gablinger's;" Flavette Corp.: soft-drink flavoring extract—"Grapette," Orangette," "Cherryette," "Mason's Root Beer," "Mr. Lemon-Lime," "Mr. Root Beer" and "Dr. Wells"; "World's largest" independent franchise bottler of Pepsi-Cola). First soft drink bottler and manufacturer to serve Russia. Monsieur Henry Wines, Ltd. (Markets high quality Russian vodka in U.S., exclusive distributor of Soviet champagne, wine and brandy in U.S. and other European spirits—"Yago Sangria."

PETROLANE INC., 1600 EAST HILL STREET, LONG BEACH, CALIF. 90806

LP-GAS, OIL AND GAS INDUSTRY SERVICES, RETAILING OF BASIC CONSUMER PRODUCTS

Agribusiness involvement (outputs.—Stater Bros. Markets (Southern California supermarket chain), CASCO Food Service (Professional management for the dietary departments of hospitals, retirement communities and other segments of the health care industry).

PFIZER INC., 235 EAST 42ND STREET, NEW YORK, N.Y. 10017

PHARMACEUTICALS, CONSUMER PRODUCTS, CHEMICALS, MATERIAL SCIENCE PRODUCTS AND AGRICULTURAL PRODUCTS

Agribusiness involvement (inputs).—Agricultural Products (Antibotic and vitamin seed supplements, animal health and veterinary products), Chemical Products (Acidulants, food preservatives and flavorants, bulk vitamins, textured vegetable protein, and antibiotics, dairy and brewery products), Heisdorf & Nelson Farms, Inc. (poultry breeding—"Meat Nick Chick" broilers, "Brown Nick Chick" brown egg layer, and "Nick Chick" White egg layer).

PHILIP MORRIS, INC., 100 PARK AVENUE, NEW YORK, N.Y. 10017

TOBACCO, BREWING, LAND DEVELOPMENT, FOOD PRODUCTS, AND CONSUMER GOODS

Agribusiness involvement (outputs).—Philip Morris U.S.A. ("Marlboro," "Benson & Hedges 100's," "Parliaments," "Virginia Slims," "Multifilter". In February 1973 sold "certain assets" of Clark Gum Company—"Teaberry," "Cinnamint," "Fruit Punch," "Peppermint," "Spearmint," "Di-et Smile"—to Reed Candy Co.,

a subsidiary of H. P. Hood, Inc.), Miller Brewing Co., Mission Viejo Co. (community, land development and home building concern in California, Colorado and Arizona).

THE PROCTER AND GAMBLE CO., P.O. 599, CINCINNATI, OHIO 45201

MULTI-NATIONAL CONSUMER GOODS CORPORATION

Agribusiness involvement (outputs).—Food products: Traders Oil Mill Co. (shortenings, oils, peanut butter—"Crisco," "Crisco Oil," "Jif"), Duncan Hines (cake mixes), Folger Coffee Co. (coffee); Animal feed ingredients.

PUEBLO INTERNATIONAL, INC., G.P.O. BOX 3288, SAN JUAN, P.R. 00936

SUPERMARKET OPERATOR AND RADIO STATION OWNER

Agribusiness involvement (outputs).—Hills Supermarkets (Brentwood, L.I., N.Y.), Holsum Bakers of Puerto Rico, Inc., Pueblo Wholesale Co. (Carolina, P.R.), Puerto Rico Supermarkets, Caribe Foods, Inc. (St. Just, P.R.), Great Eastern Food Markets (New York and New Jersey), Pueblo Supermarkets.

RCA CORP., 30 ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020

CONSUMER ELECTRONICS, COMPUTERS, BROADCASTING, SERVICES, DEFENSE AND SPACE AND CONSUMER PRODUCTS

Agribusiness involvement (ag production, outputs).—Banquet Foods Corporation (Frozen prepared foods offering nearly 100 retail items packaged in both individual and family-sized servings, F. M. Stamper Co.—turkey producer).

R. J. REYNOLDS INDUSTRIES, INC., WINSTON-SALEM, N.C. 27102

TOBACCO, TRANSPORTATION, FOOD, ALUMINUM PRODUCTS AND PACKAGING AND INTERNATIONAL PETROLEUM

Agribusiness involvement (ag production, inputs, outputs).—Tobacco: R. J. Reynolds Tobacco Co. (Nation's leading manufacturer and exporter of cigarettes including "Winston," "Salem," "Camel," "Doral," and "Vantage," little cigars—"Winchester," smoking tobacco—"Prince Albert," plug chewing tobacco—"Days Work"), Containerized Freight Transportation: Sea-Land Service, Inc. (Provides containerized freight transportation serving 99 port terminals in 37 countries via 51 direct, line haul container and 19 relay vessels with intermodal transportation), Food and Beverages: RJR Foods Inc. (Markets a variety of convenience foods and beverages including "Hawaiian Punch," "Chun King," "Patio," "Vermont Maid," "Brer Rabbit," "College Inn" foods, "My T Fine," "Filler" snacks, "Davis baking powder).

RALSTON PURINA CO., CHECKERBOARD SQUARE, ST. LOUIS, MO. 63188

CONSUMER PRODUCTS, AGRICULTURE, AGRI-PRODUCTS, RESTAURANTS, NEW VENTURE MANAGEMENT, INTERNATIONAL OPERATIONS

Agribusiness involvement (ag production).—Agricultural Products: Chow division (animal and poultry feeds), Checkerboard Farms division (poultry products), Commodities division (Soybean and soy protein processing and related operations); Consumer products: Pet foods, Van Camp Sea Food Co. ("Chicken of the Sea"—announced in June, 1973 that it was closing its San Pedro, California cannery, meaning the loss of 1400 jobs held largely by members of minority races and a $7 million annual payroll, and will build a new facility in San Diego, Calif.), Mushrooms, Cereals, "Ry-Krisp" and other products; International products: Animal and poultry feeds, Poultry products, Pet foods and other related operations; Restaurants: Jack in the Box, Continental Restaurant Systems, Inc. ("Boar's Head," "Hungry Hunter," "Stag & Hound," "Tortilla Flats," and "The Dock"); National Laboratories, Inc. (animal biologics). NLT Corp. holds some 2.5 million shares of company stock.

RAPID-AMERICAN CORP., 711 FIFTH AVENUE, NEW YORK, N.Y. 10022

MEN'S CLOTHING AND ACCESSORIES AND MANUFACTURING AND MARKETING OF CONSUMER PRODUCTS

Agribusiness involvement (outputs).— Glen Alden Corp.: Schenley Industries (Produces, imports and markets numerous bourbons, scotches, whiskies, distilled spirits and wines), Meshulam Riklis, chairman of the board, owns 575,000 shares (25%) of General Host Corp., a food and tourist company.

REYNOLDS METALS CO., REYNOLDS METALS BUILDING, RICHMOND, VA. 23261

CHEMICALS AND ORE, MILL, BUILDING, PACKAGING, CONSUMER, ELECTRICAL, HIGHWAY AND FABRICATED PRODUCTS, AND MACHINERY

Agribusiness involvement (ag production).—Food packaging products, Eskimo Pie Corp. (ice cream), Aluminum irrigation pipe manufacturer, Reynolds Wrap Food Service. Received $42,387 in ASCS subsidy payments in 1972 for agricultural property owned in Henderson County, Kentucky.

RIVIANA FOODS, INC., 2727 ALLEN PARKWAY, HOUSTON, TEX. 77001

GROCERY PRODUCTS, SPECIALTY FOODS, RETAIL GOODS

Agribusiness involvement (ag production).—Grocery Products: Rice ("River," "Mahatma"), Private Label Instant Rice Products, "Success," Instant Rice, "Hill's" pet food, "Austex" (chili, beef stew, spaghetti, tamale products), "Belle" olive and cherries, "MBT" broths; Specialty Foods: Hebrew National Kosher Foods, Pangburn's Product Mix, Romanoff Chocolates, MacFarlane Candy Stores, Austex and Mar-Kes (frozen Mexican food specialties), California Convenience Foods (frozen solid-portion steak and other beef products distributed to restaurants and other institutional customers throughout U.S.); Retail Division: Lum's Fast Food Restaurants. ARC Beef Processing Co.—supplies the meat required by company's various subsidiaries (owned and operated as a joint venture by Rivarrosa Inc., a wholly-owned Riviana subsidiary, Chaparrosa Ranch, a large Texas cattle-ranching buisess and Alta Verdes Industries Inc., a major feed-lot operation in Eagle Pass, Texas).

ROADWAY EXPRESS, INC., 1077 GEORGE BOULEVARD, AKRON, OHIO 44309

MOTOR TRANSPORT CARRIER CORPORATION

Agribusiness involvement (inputs).—Long and short haul of agricultural food, and food-related products to more than 18,000 communities in 28 states and the District of Columbia.

SAFEWAY STORES, INC., P.O. BOX 660, OAKLAND, CALIF. 94604

RETAIL GROCERY CORPORATION

Agribusiness involvement (outputs).—Largest U.S. grocery market chain and second largest retailing company in the nation. Safeway operates 2331 stores in 27 states, District of Columbia and five Canadian provinces. Safeway operates 22 distribution centers, 12 bread baking, 1 cake baking, 1 cereal processing, 2 cookie and cracker baking, 3 coffee roasting, 1 dressing and salad oil plant, 1 edible oil refinery and finishing products plant, 1 fruit processing, margarine and dressing plant, 1 household chemical, 1 jelly and preserves, 1 soap, 14 ice cream, 1 instant, 15 milk, 3 egg candling, 3 meat processing, 19 produce prepackaging, 5 soft drink bottling, and 2 cheese pre-cutting plants. Safeway house brands compose 24–33% of all its store goods. Safeway's distribution system operates 22 distribution-warehousing centers, 42 warehouses and over 1900 tractor trailer combinations, making it the largest private tractor trailer fleet in the U.S. Safeway in 1968 initiated a joint venture with Holly Farms Poultry in establishing 16 fried chicken outlets mainly in the Washington, D.C. area with San Francisco a likely expansion area. Holly Farms is a wholly owned subsidiary of Federal Co., the largest broiler chicken producer in the world.

SAXON INDUSTRIES, 450 SEVENTH AVENUE, NEW YORK, N.Y. 10001

WHOLESALE PAPER AND PACKAGING MATERIALS

Agribusiness involvement (inputs).—Distribution Group: Food packaging materials (Boxboard, food service disposables, packaging materials—American Paper & Supply Co. Inc., Blake, Moffitt & Towne, Hobson Miller Paper Co.—37 distribution centers in 18 states). Consumer Products Group: Food service disposables (Fonda Container, Royal Lace—3 plants, 11 sales offices in 6 states).

SCHERING-PLOUGH, 60 ORANGE STREET, BLOOMFIELD, N.J. 07003

PRESCRIPTION PHARMACEUTICALS, NON-PRESCRIPTION MEDICINES, HUMAN DIAGNOSTIC AGENTS, ANIMAL HEALTH PRODUCTS, COSMETICS AND TOILETRIES, HOUSEHOLD PRODUCTS AND RADIO BROADCASTING COMPANY

Agribusiness involvement (inputs).—Animal Health Division (Prescription and proprietary products in the U.S.).

SEABOARD COAST LINE INDUSTRIES, INC., 3600 WEST BROAD STREET, RICHMOND, VA. 23230

TRANSPORTATION, LAND, MINERAL AND RETAIL SALES

Agribusiness involvement (ag production).—(ALICO) Atlantic Land and Improvement Co. (Jacksonville, Florida)—Owns and leases approximately 216,500 acres of land, most of it in citrus groves and cattle operations in southern Polk County, Florida and in Georgia. Large stockholder in company is Ben Hill Griffin, Jr. (Frostproof), one of Florida's large citrus growers and who has sought to merge ALICO with his own. Park-N-Shop, Inc., (Tampa, Florida). Large transporter of agricultural commodities.

SEARS, ROEBUCK AND COMPANY, 925 SOUTH HOMAN AVENUE, CHICAGO, ILL. 60607

DEPARTMENT STORES, MERCHANDISE CENTERS, AND INSURANCE COMPANY

Agribusiness involvement (inputs, outputs).—Some 837 retail stores and 1585 catalog service centers throughout the U.S. providing a variety of retail agricultural products (ranging from seed to farm machinery). Also manages numerous acquired restaurants under the restaurant's original names. Fast food service.

SECURITY PACIFIC NATIONAL BANK, P. O. BOX 2097, TERMINAL ANNEX, LOS ANGELES, CALIF. 90054

INTERNATIONAL BANKING CORPORATION

Agribusiness involvement (inputs).—Major financial lender to many agricultural, food, and food-related corporations.

SHELL OIL CO., ONE SHELL PLAZA, P. O. BOX 2463, HOUSTON, TEX. 77001

OIL, GAS AND CHEMICAL COMPANY

Agribusiness involvement (inputs).—Agricultural Division (Chemical fertilizers, pesticides—plants in Denver, Colorado; Axis, Alabama; Princeton, N.J.; St. Helens, Oregon; and Ventura, California). A Shell subsidiary in five western states is engaged in the retail farm supply business selling fertilizers made to Shell specifications.

SMITH KLINE AND FRENCH LABORATORIES, 1500 SPRING GARDEN STREET, PHILADELPHIA, PA. 19101

PHARMACEUTICALS, CONSUMER AND ANIMAL HEALTH PRODUCTS, MEDICAL SERVICES AND INSTRUMENTS AND INDUSTRIAL INSTRUMENTATION

Agribusiness involvement (inputs, outputs).—Consumer products: Avoset Food Corporation (Convenience foods for grocery and food service industry, provides

fresh convenience foods in portion controlled servings for housewives, airlines, hotels and hospitals in U.S. and 42 countries around the world, dairy and non-dairy products—"Qwip" and over 150 private labels for Great Atlantic & Pacific Tea Co., Safeway, Carnation and Borden among others, markets salad dressings, puddings and other products in individual containers for use by airlines—United and TWA, hotels—Hilton, hospitals, cafeterias and carry out restaurants), Norden Laboratories (Veterinary medical products, develops and markets some 30 biologicals and 100 pharmaceuticals for the veterinary profession, products for treatment and protection of livestock), Feed additives (animal health products).

THE SOUTHLAND CORP., 2828 NORTH HASKELL AVENUE, DALLAS, TEX. 75221

CONVENIENCE FOOD STORES, GROCERY STORES, SANDWICH SHOPS, CANDY SHOPS, MILK AND DAIRY PROCESSOR, MANUFACTURES AND DISTRIBUTES FINE CHOCOLATES AND SPECIALTY CANDIES, TRUCK LEASING, CHEMICALS

Agribusiness involvement (ag production).—3850 convenience food stores in 35 states, the District of Columbia, Canada and Mexico (7-Eleven Food Stores, Paka-asak Food Stores, Gristede's Food Stores, Smileys Southland Food Centers, Charles & Co., Barricini Candy Shops, Southland Distribution Center, Bradshaws Super Markets, Lofts Candy Shops), Dairy operations (Processor and distributor of milk, ice cream, and related dairy products under 14 regional brand names serving 24 states, including Wanzer Dairy (Chicago, Illinois) owner of 4,000-acre Stoughton Farms in southern Wisconsin). Accused in 1972 by the Federal Trade Commission of using the purchasing leverage of its 7-Eleven food stores and its dairy division to induce suppliers to those units to buy the company's chemical products.

SOUTHERN PACIFIC CO., ONE MARKET STREET, SAN FRANCISCO, CALIF. 94105

TRANSPORTATION COMPANY

Agribusiness involvement (ag production).—Major west coast agricultural and food kindred products freight hauler (25% of total freight revenues), Southern Pacific Land Co. (Owns approximately 3,855,000 acres of land, 173,000 acres of land in agriculture, principally in California. Currently investing approximately $2 million and large amounts of telephone wire in a joint venture with Giffen Inc., an agricultural manager for the development of the 2000 acres Golden Vineyards Co. in western Fresno Co., Calif.). The company has a 50% ownership (with Union Pacific) in Pacific Fruit Express.

SQUIBB CORP., 460 PARK AVENUE, NEW YORK, N.Y. 10022

ETHICAL PHARMACEUTICALS, PROPRIETARIES AND HOUSEHOLD PRODUCTS, SPECIALTY FOOD AND BEVERAGES, CONFECTIONS, FOOD SERVICES, FRAGRANCE AND COSMETIC PRODUCTS

Agribusiness involvement (inputs, outputs).—Beech-Nut Inc. (Specialty foods—"Table Talk" pies, roll candies—"Super Flavor," "Life Savers," chewing gum—"Beech-Nut," "Care Free," Dobbs Houses, Inc. (Food services, "theme" restaurants, catering, frozen foods—J. B. Foods, restaurants, fast food division), Edward Weck & Co. (prescription and proprietary medicine for livestock).

STANDARD OIL COMPANY OF CALIFORNIA, P. O. BOX 3495, SAN FRANCISCO, CALIF. 94120

OIL, GAS AND CHEMICAL COMPANY

Agribusiness involvement (ag production, inputs).—Chevron Chemical Co. ("Ortho"—agricultural and garden chemicals, Agricultural Public Information Council—"a central organization for a national public relations effort on behalf of agriculture asking farmers for brief, to the point letters covering agricultural topics," e. g., "do you feel your state university is guilty of favoring big farmers and big business?"). Chevron Land and Development Co. (California and Washington—land planning and development (shopping centers)—owns 306,000 acres of agricultural land in California).

STANDARD OIL COMPANY OF INDIANA, 910 SOUTH MICHIGAN AVENUE, CHICAGO, ILL. 60605

OIL, GAS AND CHEMICAL COMPANY

Agribusiness involvement (inputs).—Amoco Oil Company (Manufactures, transports, and sells petroleum products and fertilizers in 15 Midwest states), Amoco Chemicals Corp. (Anhydrous ammonia, dry and liquid balanced fertilizers, heavy fuel oils, agricultural chemicals, high-density polyethylene film for food packaging). Undeveloped leaseholds in U.S.—18.1 million acres—Option or permit—5.3 million acres.

TANDY CORP., 2727 WEST SEVENTH STREET, FORT WORTH, TEX. 76107

ELECTRONICS, CONSUMER HOBBY AND HANDICRAFTS, LEATHER GOODS AND HOME-IMPROVEMENT MATERIALS

Agribusiness involvement (inputs).—Wolfe Nurseries (retail nursery business—hybrid pecan trees, live nursery plants, insecticides, fertilizers, plant foods (31 stores in Texas), pecan trees farming operation), Woodie Taylor Vending Co. (Servicing machines—cigarette, soft drink and candy), Vit-A-Way (Manufacturer and distributor of mineral and vitamin feed supplements for livestock industry in 48 states and foreign countries), Automated and Custom Feed Services, Inc.

TENNECO INC., P. O. BOX 2511, HOUSTON, TEX. 77001

PIPELINE SYSTEMS, OIL OPERATIONS, CHEMICALS, PACKAGING, MANUFACTURING, AGRICULTURE AND LAND DEVELOPMENT

Agribusiness involvement (ag production, inputs, outputs).—Tenneco Chemicals (plastic packaging materials), Packaging Corporation of America (corrugated containers, folding cartons, paperboard), Walker Manufacturing Co. (automotive accessories), J. I. Case (farm equipment), Agriculture (Heggblade-Margueleas-Tenneco, Inc.—in charge of all agricultural operations ("Sun Giant"), Cal Date Co., H–M–T International (Mexico), California Almond Orchards, Inc., KCL Corp. (Discoverer Services, Ltd.—Canada, Boavillas Cattle Co., Victoria Land & Cattle Co., Tenneco West Inc.—handles all land development in California and Arizona).

TEXACO INC., 135 EAST 42ND STREET, NEW YORK, N.Y. 10017

OIL, GAS AND CHEMICAL COMPANY

Agribusiness involvement (inputs).—Products (Gas, motor oil, "Spraytex" fruit spray oils, "Texspray" cotton conditioner, farm machinery, lubricants, chemical feedstocks, nitrogen fertilizer solutions, solid fertilizers, insecticides), Federal Chemical Corp. (Manufactures and markets fertilizers in U.S.).

TIMES MIRROR CO., TIMES MIRROR SQUARE, LOS ANGELES, CALIF. 90053

PUBLISHING, PRINTING AND BROADCASTING COMPANY

Agribusiness involvement (ag production).—Company owns a significant (12.8%) amount of stock in the Tenjon Ranch (290,000 acres of land in California which produces cattle, cotton, potatoes, alfalfa, grain and mixed vegetables, grapes, and oranges).

THE TRAVELERS, ONE TOWER SQUARE, HARTFORD, CONN. 06115

INSURANCE COMPANY

Agribusiness involvement (inputs).—Real estate (The Prospect Co., Panther Valley Inc., Simons Land Co.), Farm and ranch mortgage loans ($466,167,000—approximately 20% of the Company's real estate investment), large sums in bonds, preferred and common stocks invested in a variety of agricultural, food and food-related corporations throughout the U.S.

U.S. INDUSTRIES, INC., 250 PARK AVENUE, NEW YORK, N.Y. 10017

TEXTILE MILLS, CLOTHING, PLASTICS, PACKAGING, FURNITURE, HOME AND COMMERCIAL BUILDING MATERIALS, FINANCE, AND DIVERSIFIED MANUFACTURING

Agribusiness involvement (inputs).—Big Dutchman Division (Automatic feeding and watering systems for poultry and livestock), Prairie State Paper Division (Heavy kraft and waterproof paper, special purpose wrapping and protection paper), Poly-Tech Division (Polyethylene film and bags), Production Control Division (Designs, formulates and packages food), Romar Tissue Division (Disposable paper products). The company, through its marine transportation subsidiary, signed contracts in 1972 to transport U.S. grains to Russia.

UNION CARBIDE CORP., UNION CARBIDE BUILDING, 270 PARK AVENUE, NEW YORK, N.Y. 10017

CHEMICALS AND PLASTICS; GASES, METALS, AND CARBONS; CONSUMER AND RELATED PRODUCTS; CORPORATE DEVELOPMENT

Agribusiness involvement (inputs).—Plastic Products Division (Plastics for packaging film), Process Chemicals Division (Agricultural chemicals—"Sevin" insecticide, chemicals used in food products). Films—Packaging Division (Produces and markets cellulose and plastic films and sheeting for use in processing and packaging meat, poultry, other food products and seed tape). Domsea Farms (Experimental projects to produce an economical, high quality food source by raising salmon and other marine food sources on artificial food).

UNITED BRANDS CO., 245 PARK AVENUE, NEW YORK, N.Y. 10017

FOOD PRODUCTS, FOOD PROCESSING AND FOOD SERVICE

Agribusiness involvement (ag production).—United Fruit Co. (Producer and marketer of bananas—"Chiquita"). Compañia Numar (Producer of cooking, salad oils and margarines for Central America), Clemente Jacques Y Cia, S.A. De C.V. (Mexican food processor), J. Hungerford Smith Co., Inc. (Major manufacturer of syrups, fudges, toppings and beverage bases for the fast-food service, industrial and institutional markets), Revere Sugar Refinery, Baskin-Robbins Ice Cream Company, A & W International, Inc., Inter Harvest, Inc. (Vegetable crop operation—lettuce, celery, cauliflower), United Brands Floriculture, Inc. (Major supplier of flowering and foliage potted plants and garden accessory items), John Morrell & Co. (Third largest full-line meat packer in the U.S.—H. H. Meyer Packing Co. ("Partridge"), Hunter Packing Co. ("Hunter"), Saratoga-Scott Petersen ("Saratoga-Scott Petersen"), Tom Sayer ("Tom Sawyer"), Maurer-Neur Inc. ("Rodeo"), Peyton Packing Co. ("Peyton"), Bob Ostrow Co.), M. H. Greenebaum, Inc. (Markets a variety of imported gourmet foods and domestic products—"Green Tree"), Grocery Products Division (Manufactures and markets non-refrigerated canned meat and grocery products—"Broadcast," "Red Heart"), Golden Sun Feeds Inc. (Manufacturer of livestock and poultry feeds), Hooper Engineering Inc. (Manufactures vacuum packaging equipment for the food industry), John Morrell & Co. Ltd. (Diversified corporation which manufactures and markets a wide variety of canned fruit and vegetables, meats, lard and pet foods throughout United Kingdom).

UNITED STATES STEEL CORP., 525 WILLIAM PENN PLACE, PITTSBURGH, PA. 15230

STEEL, CHEMICAL MINING, AND MANUFACTURING CORPORATION

Agribusiness involvement (inputs).—USS Agri-Chemicals (Agricultural chemical products, markets crop protection chemicals, seed and animal feed supplements, rents a 3500-pound tank capacity field vehicle—USS Shado-Wagon (Anhydrous ammonia fertilizer for use in conjunction with large-scale plowing by Company customers).

W. R. GRACE AND CO., 3 HANOVER SQUARE, NEW YORK, N.Y. 10004

CONSUMER GOODS AND SPECIALTY CHEMICALS

Agribusiness involvement (outputs).—Grocery products (Sea Pak—processes and distributes premium seafood to hotels, restaurants and super markets, Nal-

ley's Fine Foods—snack and convenience food producer in the Pacific Northwest, Morton Foods—snack and convenience food producer in the Southwest, Leaf Brands—producer of specialty chewing gum, malted milk balls and novelty candies, Wayne Bun—chocolate and confectionery products in the Midwest). Food service (Far West Services Inc.—restaurants and coffee shops). Specialty chemicals (Cryovac Division's Market-Ready Beef—vacuum packaging system, Jet Containers—manufacturer of disposable, plastic beverage containers, fertilizers, feed, pesticides, feed supplements and animal insemination services—Walnut Grove Products Co. and Farr Feeds).

WARNER-LAMBERT CO., 201 TABOR ROAD, MORRIS PLAINS, N.J. 07950

PROFESSIONAL, CONSUMER, OPTICAL, SAFETY, MEDICAL/SCIENTIFIC INSTRUMENT PRODUCTS

Agribusiness involvement (outputs).—Nepera Chemical Co. (Producer of pyridine and picoline chemicals, the basic building blocks of a number of agricultural products), American Chicle Division (Chewing gums, breath mints, convenience antacids, cough drops—"Dentyne," "Certs," "Clove," "Trident," "Clorets," "Smith Bros.," "Beeman's," "Rolaids," "Chiclets").

WEIS MARKETS, INC., 1000 SOUTH SECOND STREET, SUNBURY, PA. 17801

OPERATES RETAIL FOOD MARKETS

Agribusiness involvement (outputs).—Operates 80 retail food markets in Pennsylvania, Maryland and New York (Albany Public Markets), Amity House Ice Cream Shoppes. Over 1100 items bear Weis Market brand names and account for about 20% of grocery sales.

WELLS FARGO & COMPANY, 420 MONTGOMERY STREET, SAN FRANCISCO, CALIF. 94104

ONE-BANK HOLDING COMPANY FOR WELLS FARGO BANK AND ITS SUBSIDIARIES

Agribusiness involvement (inputs).—Major lender to a variety of agricultural, food and food-related corporations.

WESTERN BANCORPORATION, P.O. BOX 54068, LOS ANGELES, CALIF. 90054

MULTISTATE BANK HOLDING COMPANY

Agribusiness involvement (inputs).—Major financial lender to agricultural, food and food-related corporations in the 381 communities in 11 Western states which are serviced by 23 affiliated banks.

WETTERAU FOODS, INC., 8400 PERSHALL ROAD, HAZELWOOD, MO. 63042

FOOD AND NON-FOOD PRODUCTS DISTRIBUTOR AND BUILDING CONSTRUCTION

Agribusiness involvement (inputs).—Distributes food products to individually-owned and operated IGA Supermarkets in seven midwestern states, Holbrook Division—supplies food products to IGA-affiliated stores in New England, distributes food products to Red & White Supermarkets in the southeastern U.S., Wetterau Finance Co.—provides qualified retailers with a major share of the money required for equipment, inventory and operating capital, Wetterau Builders Inc.—provides retailers with low-cost service for building new stores or remodeling, Gateway Bakery—provides frozen dough products for retail stores, Monarch Printing Co., Inc.—low-cost printed and display materials for Wetterau retailers, Mohr Distributors Inc.—constructing discount department stores in connection with new IGA Foodliners.

WILLIAMS COMPANIES, NATIONAL BANK OF TULSA BUILDING, TULSA, OKLA. 74103

PETROLEUM PIPELINE SYSTEMS, STEEL, LP-GAS, CHEMICAL FERTILIZERS AND INSURANCE

Agribusiness involvement (inputs, outputs).—Willchemco, Inc. (Distribution facilities related to the manufacture and sale of anhydrous ammonia, urea, and certain high analysis fertilizers by Gulf Oil Co.'s Agricultural Chemicals Division), Agrico (Plant foods—majority of assets, properties and rights purchased

from Continental Oil Company in 1972, presently constructing a $46 million agricultural chemical complex (ammonia and urea ammonium nitrate) near Tulsa, Oklahoma). Nutrico (Foods research, development and marketing subsidiary—"Weight Watchers" skim milk and cottage cheese. "Fishrimps"—rocadina fish).

WINN-DIXIE STORES, INC., BOX B, JACKSONVILLE, FLA. 32203

FOOD RETAIL GROCERY COMPANY

Agribusiness involvement (outputs).—Nearly 900 retail food stores throughout the southeastern United States.

YELLOW FREIGHT SYSTEM, INC., 4700 WEST 110TH ST., OVERLAND PARK, KANS. 66207

COMMON CARRIER OF GENERAL COMMODITIES BY MOTOR VEHICLE

Agribusiness involvement (inputs).—Nationwide common carrier of agricultural and food products (non-liquid) for some 7000 shippers through 130 terminals in 31 states and 45,000 miles of route systems.

Some Corporations and Conglomerates That are Marketing Brand-Name Food Products

(By Ingrid Jones)

Increasingly, American food products are delivered to consumers by giant conglomerates and a narrowing number of powerful food firms. Supermarket shelves and bins are laden with hundreds of food items, but the processing and marketing of those products can be traced back to a few corporations operating in a highly-concentrated food industry.

The 1967 Census of Manufacturers counted more than 32,000 food manufacturing firms, but a mere 100 of those accounted for 71 percent of the industry's profits. In the canning and freezing segment of the industry, the concentration of power is even greater, with only nine firms accounting for nearly 55 percent of the profits. A 1972 study by the Federal Trade Commission found that consumers were being overcharged more than $2 billion a year because of monopolies within just 13 food lines.

Below are some samples of brand names concentrated within certain companies. The list is intended simply to offer some insight into the extent of that concentration. The listing is not intended to be exhaustive, nor does it imply sinister motives on the part of the corporations. It does suggest, however, that there is more than meets the consumer's eye on the supermarket shelf.

The corporations listed here were randomly selected—other corporations have as many or more food products within their organizations. The information is taken from the annual reports of the corporations.

First, there is a sampling of 28 corporations and conglomerates that market several food products each. Second, there is a list of a few popular, brand-name items that now are marketed by major conglomerates.

SOME MULTI-PRODUCT FOOD FIRMS

AMERICAN BRANDS, Inc.: Duffy-Mott (apple juice, prune juice, apple sauce, Clamato and Beefamota cocktails); Sunshine (biscuits, crackers, cakes, snack foods, flour, candy, cookies); Jim Beam (bourbon); Beam's Choice (bourbon); Beamister (wine); Gilbey's Spey Royal (Scotch); Chauteaux (vodkas and specialties); and "Mr. & Mrs. T" (Bloody Mary Mixes).

AMERICAN HOME PRODUCTS: Dennison's Chili; Chef-Boy-Ar-dee (Italian foods); Franklin (Crunch'n Munch) (Popcorn and peanut confection); Gulden's Spicy Brown Mustard; Luck's (Beans & Meats)—canned); Brach (candies); Jiffy Pop (popcorn); George Washington seasoning and broth.

BORDEN: Borden (cheeses, milk and other dairy products); Liederkranz (cheese); Eagle Brand (condensed milk); Wyler (soup mixes, drink mixes); Recipe Shrimp (frozen shrimp); Deran's (candies); Country Kitchen (candy); Realemon (lemon juice); Drake's (cakes, cookies and other bakery items); Lambert's (bakeries); Aunt Jane's (pickles); Comstock (canned fruit and vegetables); Wise (potato chips and snack foods); Flavor House (dry roasted nuts); Old London (potato chips); Cracker Jack (popping corn); Snow's (clam prod-

ucts); Portion Pak (frozen meat and seafood products); Tart & Creamy (mayonnaise, salad dressing, and sandwich spread); Greenwood's (pickled beets and red cabbage); Bama (jellies, jams, and syrups); None Such (mincemeat); Sacramento (canned tomato products); Kava (instant coffee); Frosted Shake (ready to drink milk shake); Campfire (marshmallows); and Borden Burger (fast-food restaurants).

CAMPBELL SOUP: Swanson (frozen foods, frozen dinners, frozen breakfasts, canned foods, packaged chicken); Bounty (canned stews); Pepperidge Farm (bread, rolls, cookies, etc.); Franco-American (canned Italian foods); V–8 (vegetable juice); Godiva (chocolate candy); Efficienc "c" (food service products); Clark's Restaurant (operations); Herfy's Restaurant (operations); and Advertising rights to Lassie.

CARNATION: Contadina (tomato paste and sauces); Spreadables (sandwich spreads w/meat etc.); Coffee-mate (non-dairy creamer); Topic (non-dairy creamer); Praise (non-dairy creamer); Carnation (dairy products, eggs, fruit juices, sauces, canned tomatoes); Slender (diet foods—pudding, dry milk additives); Trio (frozen potatoes); Chef-Mate (canned goods—beef stew, cheese sauce, chili con carne, and beef hash); Bon Bons (candy); Special Morning (cereal); Albers (corn meal); and Dinner-time (food service products).

CASTLE & COOKE: Dole (fresh bananas & pineapple, canned fruits); Puget Sound (salmon); Bumble Bee (canned tuna & other seafoods); Clover Leaf (canned tuna); Royal Hawaiian Macadamia Nut; and C & H Sugar.

COCA COLA: Minute Maid (orange juice); Hi C (imitation fruit juices); Santaba (ginger ale); Tab (soda); Sprite (soda); Simba (soda); Fanta (soda); Fresca (soda); Maryland Club (dried coffee); and Butter-nut (coffee).

GENERAL FOODS, CORPORATION: Brim-freeze (dried coffee); Master Blend (coffee); Maxwell House (coffee); Cafe Vienna (coffee); Instant Postum (instant coffee); Yuban (coffee); Sanka (coffee); Max-Pax (coffee); Super Sugar Crisp (cereal); Frosted Rice Krinkles (cereal); Pebbles (cereal); Pink Panthers Flakes (cereal); Alpha Bits (cereal); Grape Nuts and Flakes (cereal); Post Rasin Bran (creal); Post 40% Bran Flakes (cereal); Fortified Oat Flakes (cereal); Post Toasties (cereal) Birds Eye (frozen foods); Stove-Top (stuffing mix); Calumet Baking Powder; Swans Down (cake mix); Bisquick (baking mix); Shake 'n Bake (meat preparations, a seasoned flour mix); Roast 'n Boast (sauces and bags for cooking meats); Good Seasons (salad oils); Jell-o; D-Zerta (whipped topping); Cool-Whip (whipped topping); Dream Whip (whipped topping); Baker's (chocolate and coconut toppings); Minute Tapioca (dessert); and Kool-Aid (imitation fruit drinks).

GREEN GIANT: LeSueur Green Beans; Clark (soup); Jolly (puddings); Ovencrock (baked beans); Henrici's (restaurant); and Holloway House and Ontra (cafeterias).

HEUBLEIN, INC.: A–1 Sauce; Escoffier Sauces; Grey-Poupon mustard; Regina Wine Vinegar; Snap-E-Tom Tomato cocktail; Ortega Salsa; Ortega Green Chile; Ortega Diced Pimientos; Colonel Sanders Kentucky Fried Chicken (fast-food restaurants); The Colonel's (fast-food restaurants); Hamm's Regular and Draft Beer; Waldech Beer; Buckhorn Beer; Burgermeister Beer; Right Time Malt Beverage (beer); Liquors—Smirnoff beverages; (Smirnoff Vodkas, Popov Vodka, Lancers Vin Rose); Lancers Vinho Branco; Harvey's Sherries and Ports; Heublein Sweet and Dry Vermouths; Black Velvet Canadian Whisky; Irish Mist Liqueur; Tullamore Dew Irish Whiskey, Jose Cuervo Tequilla; Club Cocktails; Don Q. Rums; Relska Vodka; Heublein Full Menthe; McMaster's Scotch Whisky; Matador Tequilla; Italian Swiss Colony Wines; Lejon Vermouths; Champagnes and Brandies; Petri Wines; G & D Wines and Vermouths; Inglenook Vineyards; Bouchard Pere and Fils Burgundies; Chateau St. Georges St. Emilion Bordeaux Wine; Harveys Selection Table Wines; Byrrh Aperitif; Wines of Hungary; Kiku Masaumune Japanese Sake; and Bertana Italian Wines.

ITT: Wonder Bread; Hostess (cakes and bakery products); Profile (bread); Butter Top (bread); Gwaltney's (Smithfield ham and pork products); Morton (Frozen foods); and Pearson (candies).

KRAFTCO CORPORATION: Kraft (cheeses, salad dressings, jellies, dips, noodle specialties, sauces, mayonnaise, seasonings); Miracle Whip (salad dressing); Breakstone (yogurt, butter, cheeses); Velveeta (cheese spread); Parkay (margarine); Breyers (ice cream); HumKo (shortening); Vancouver Fancy Sausage; Philadelphia (cream cheese); Cracker Barrel (cheese); Sealtest (milk,

ice cream, non-dairy creamers, fruit juices, yogurt, puddings); Light 'n Lively (milk and fruit juices); and Sugar Creek (butter).

PEPSI-COLA: Lays (potato chips); Knickerbocker (beer); Fritos (corn chips, dips); Gablingers (beer); and Rheingold (beer).

PET, Inc.: Rain Clear (drinking water); Pet (dairy products); Mary Lee Taylor (dairy products); Daes of the Week (frozen desserts); A–OK Space Energy Sticks (snack food); Laura Scudder's (snack foods, peanut butter, mayonnaise, dip mixes); Facs (snack foods); Red Seal (snack foods); Wampum (corn chips); Dentlers (snack foods); Parrish (pastries); Schrafft's (ice cream, bakery goods, frozen foods); Aunt Fanny's (pastries); Downeyflake (flour, frozen pastries); Swiss Miss (frozen Fruit pies); Reese (gourmet and specialty foods); Sego (diet food, puddings and milk substitute); Pet-Ritz (frozen pies, shells, custard); Milady's (frozen blintzes and potato products); Chill-Ripe (frozen fruits and vegetables); Chef's Garden (frozen fruits and vegetables); Heartland (natural cereal); Golden Key (evaporated milk); BC (breakfast cocktail juice); Compliment (cooking sauces); Old El Paso (canned and frozen Mexican food); Orleans (canned shrimp); Gulf Belle (canned shrimp); Funsten (vacuum-packed nuts); Whitman's Sampler (candy); Musselman's (apple products, cider vinegar, jellies, canned and frozen fruits); Stuckey's (roadside stores with snack bars, service stations and camparks); 9–0–5 (one-stop party sellers liquors snacks and wines); Vendome (same as 9–0–5); and Schrafft's (restaurants, motor inns and business feeding services).

PHILIP MORRIS, Inc.: Miller High Life Beer; Lite (low calorie beer); and Meister Brau (beer).

PROCTOR AND GAMBLE: Duncan Hines (cake mixes); Folger (coffee); Pringle's (canned potato chips); Crisco (shortening); and Fluffo (shortening).

PUEBLO INTERNATIONAL: Holsum King (bread); Pueblo (food products); Hills (food products); Hills Supermarkets; Pueblo Supermarkets; and Great Eastern Food Markets.

PUREX CORPORATION: Pope (tomato products, olive oil, soups, sauces, vegetables); Freshpict Foods (fresh vegetables); Ellio's Frozen Pizza; Pacific Miss (cocktail artichokes); and Ayds (diet candy).

THE QUAKER OATS CO.: King Vitaman (cereal); Life (cereal); Cap 'n Crunch (cereal); Vanilla Crunch (cereal); Quangeroos (cereal); Instant Quaker Oatmeal (cereal); Celeste (frozen Italian foods); Aunt Jemima (frozen foods, dry flour mix & syrups); Muffets (muffin mix); Instant Grits; Masa Harina (tortilla mix); Burry's (crackers and cookies); Willy Wonka's Super Skrunch (candy); Willy Wonka's Peanut Butter Ooompas (candy); Flako (pie crust mix); Girl Scout Cookies; and "Magic Pan" (restaurants).

R. J. REYNOLDS, Inc.: Chun King (Chinese food, frozen and canned); Patio (Mexican food); My-T-Fine (puddings, pie fillings, pie crust mix); Hawaiian Punch (fruit drinks); College Inn (vegetable juices, soups and chicken and beef specialties); Davis OK (baking powder); Vermont Maid (syrup); Brer Rabbit (syrup); Filler (snack foods); Swel (cake frosting); and Cocomalt (instant beverage).

RALSTON PURINA: Chicken of the Sea (canned seafood); Continental Restaurant Systems (Boars Head, Hungry Hunter, Stag — Hound, Tortilla Flats, The Dock); Ry-Krisp (crackers); Chex & Ralston (cereal); Charged Bran (cereal); Freakies (cereal); Crispets (crackers); and Jack-In-The-Box (drive-in restaurants).

SAFEWAY STORES: Breakfast gems (eggs); Cream-o-crop (eggs); Velkay (shortening); Sno-White (salt); Shady Lane (margarine); Ovenjoy (bread, pastries); Highway (canned goods); Golden Heart (flour); Busy Baker (flour); Lucerne (dairy products); LaLani (fruit canned juices); Cragmont (sodas); Pennant (coffee); Candi-Cane (sugar); Party Pride (bread, pastries); Mrs. Wright (bread, pastries, cake mixes); Covered Wagon (pancake mix); Manor House (canned goods); Captain Choice (frozen seafood); Sea Trader (salmon (canned)); Crown Colony (spices); Empress (jellies, jams); Nu-Made (peanut butter); Real Roast (peanut butter); Tempest (seafood (canned)); Town House (canned goods); Zippy (pickles); and "Holly Farms" (fried chicken drive-in restaurants).

SOUTHDOWN Inc.: Royal Crown Cola; Diet Rite Cola; Nehi (soda); Judson (candies); Pearl (beer); Country Club Malt Liquor; Texas Pride (beer); Carta Blanca (beer); and Bohemia Ale.

SOUTHLAND CORP.: Sunny Seven (juices, dips, cheeses); Slurpee (drink); Gristede's (canned foods and specialty items); Farm Field (delicatessen salads);

Barricini (candy shops, ice cream); Loft's (candy shops); Adohr Farms (dairy); Bluff View Farms (dairy); Brigg's (dairy); Cabell's (dairy); Cooper Farms (dairy); Harbison's (dairy); Horten (dairy); Midwest Farms (dairy); Oak Farms (dairy); Spreckels (dairy); Velda Farms (dairy); Wanzer's (dairy); 7–11 Stores (food stores); Pak-a-Sak (food stores); Gristede's (food stores); Bradshaw's (supermarkets); Smiley's Southland (food stores); Charles & Company (food specialty stores); and Smiley's (fast food products cooked for carry-out).

STANDARD BRANDS: Fleischmann's Egg Beaters (egg substitute); Fleischmann's yeast; Fleischmann's corp oil; Blue Bonnet (margarine); Tender Leaf (tea); Chase & Sanborn (coffee); Siesta (coffee); Melrose (tea); Cracker Jacks (candy-popcorn); Moirs (candies); Lowney's (candies and ice cream); Baby Ruth, Butterfinger, and Circlets (candies); Southern Belle (nuts); Planter's Peanuts; Magic (baking powder); Chipits Baking Chips; Angelus (marshmallows); Royal Baking powder; Royal (puddings and desserts); and Liquors: McGuinnes (liquor); Calona (wines); Black and White (scotch); Fleischmann's Gin; Fleischmann's Royal Vodka; Canadian Ltd. (Canadian Whisky).

STOKELY-VAN CAMP: Gatorade (fruit dink); Pictsweet (frozen vegetables and fruits); Sunshine (vegetables); Kuners (canned fruits and vegetables); Popeye (popcorn, puffed wheat and rice); and Betty Zane (popcorn, puffed wheat and rice).

UNILEVER: Lipton (tea, soup); Good Humor (ice cream); Wish Bone (salad dressing); Knox (gelatines); Mrs. Butterworth's (syrup); Imperial (margarine); Lucky Whip (whipped topping); Golden Glow (margarine); Good Luck (margarine); and Spry (shortening).

UNITED BRANDS CO.: Greentree (hams); Danish Crown (imported meat products); Bob Ostrow (meat products); Partridge (meat products); Morrell (meat products); The Hunter (meat products); Saratoga-Scott Peterson (meat products); Tom Sawyer (meat products); Rodeo Brand (meat products); Peyton (meat products); Broadcast (canned chili, stew and corned beef hash); J. Hungerford Smith (industrial and institutional syrups and toppings); Baskin-Robbins (ice cream); Chiquita (bananas); Fyffes (bananas); Inter Harvest (fresh vegetables); and A & W Root Beer (drive-in restaurants).

SOME CONGLOMERATE FOOD PRODUCTS—A BAKER'S DOZEN

1. Baker's Bread, Anheuser-Busch.
2. Ragu (Italian Food), Chesebrough-Pond's Inc.
3. Indiana River (fresh tomatoes), Gulf & Western Industries.
4. Armour (meat products), Greyhound Corp.
5. Dad's Root Beer, I. C. Industries (Ill. Central RR).
6. Wilson (meat products), Ling-Temco-Vought Corp.
7. Libby's (canned and frozen fruits and vegetables), Nestle.
8. Banquet (frozen dinners), RCA.
9. Qwip (toppings, drinks, puddings), Smith Kline & French Laboratories.
10. Life Savers (candy), Squibb.
11. Peter Pan (peanut butter), Swift and Co.
12. Sun Giant (fresh produce), Tenneco.
13. Weight Watchers (diet drink), The Williams Companies.

APPENDIX II

FTC AND PHASE II: THE 'McGOVERN PAPERS'

PAUL D. SCANLON*

FTC Oligopoly Investigation

Senator George S. McGovern, currently the Democratic contender for the Presidency of the United States, issued a statement on April 24, 1972, calling for a freeze on prices in the concentrated sector of the economy until the Price Commission has reviewed and acted on a non-public FTC study that had found, according to the Senator, an aggregate of some $15 billion in annual consumer overcharges by 100 manufacturing industries. The FTC document, purportedly a preliminary staff report on an oligopoly-investigation project that is to cover all 400 manufacturing and another 100 non-manufacturing industries when completed, was promptly disowned by various agency officials. The day the press accounts of the "McGovern Papers" hit the streets, Senator William Proxmire, Chairman of the Joint Economic Committee, called on the FTC to make the report public in the interests of finding out whether, as Senator McGovern had charged, there was in fact an inconsistency between the policies of the Price Commission in granting price increases to various industries in the concentrated sector at a time when a sister agency, the FTC, was finding that price levels in those industries were already significantly above the competitive norm.

FTC Disclaimers—Overcharge Figures 'Hypothetical'?

A United Press International (UPI) story released the next day,

* Mr. Scanlon is Associate Editor of the *Review*.

April 25, quoted Lawrence Meyer, the FTC's Director of its Office of Policy Planning and Evaluation, as saying that the figures in question were only "rough estimates" and couldn't be used as a reliable guide to what prices should be in the listed industries. "Meyer declined to provide a copy of the study, but UPI obtained one from other sources. The study did not make the excess price estimates cited by McGovern, but it did provide data on estimated excess profits and waste from which the South Dakota Senator computed his estimates." [1] The *Review*, through the courtesy of friends on Capitol Hill, has also obtained a copy of the FTC report in question. And as usual the agency's denials suggest a great deal more regard for political self-preservation than for administrative candor. First, the quoted FTC official, Mr. Meyer, is a lawyer and former political aide to the Senator from Auto Land, Robert Griffin (R.Mich.);

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[1] "WASHINGTON—A confidential study of 100 leading industries estimates that lack of competition causes the firms involved to reap bloated profits and waste billions of dollars a year through inefficient operation.

"The Federal Trade Commission study has been cited by Sen. George McGovern, who said the Price Commission should freeze all prices until the study is made public.

"But Lawrence Meyer, the FTC official who directed the study, told UPI McGovern misused the statistics by interpreting from them that prices are inflated by more than 15 billion a year.

" 'The figures can't be used the way he is using them,' Meyer said. The FTC's figures on excess profits and waste, he said, were only 'rough estimates,' far too inaccurate to be translated into realistic estimates of excess pricing.

"Meyer declined to provide a copy of the study, but UPI obtained one from other sources. The study did not make the excess price estimates cited by McGovern, but it did provide data on estimated excess profits and waste from which the South Dakota Senator computed his estimates.

"The study concluded that concentrated industries—ones controlled by a few firms—not only waste more money and make more, but also adopt the 'deception' of hiding some excess profits through bookkeeping ploys.

" 'We expect both waste and deception to be relatively more serious the higher the concentration,' the study said. 'When concentration is very low, the industry is competitive.' " United Press International (UPI), April 25, 1972.

Sen. McGovern Charges:

The Capital Times
(Madison, Wis.)
4/24/72, p. 1

'Monopolies Cost Public $15 Billion'

By DAVID S. BRODER
(Washington Post-Capital Times Service)

BOSTON — Sen. George S. McGovern charged Sunday that a secret government report shows that "anticompetitive monopoly pricing" [illegible] costs th[illegible] mission's Bureau of Economics is in fact preparing such a report.

McGovern iss[illegible] statement [illegible] which results from nopoly [illegible] pri-

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he is not an economist and had nothing to do with the study, either in a working or supervisory capacity. The man who in fact directed the inquiry, Dr. H. Michael Mann, has not issued any such disclaimers and, as mentioned below, has in fact cited it himself for precisely the same propositions as those pointed to by Senator McGovern.

FTC Policy Planning—'Welfare-Loss' Analysis

Secondly, if there is any error in Senator McGovern's reporting or interpreting of the figures, it is not readily apparent from the study itself. What the FTC economists are doing is reviewing, on an industry-by-industry basis, each of the country's approximately 400 4-digit manufacturing industries, plus another 100 of the more important industries in the non-manufacturing sector (such as trade, construction, and services), for the purpose of determining how it should allocate its own antitrust enforcement resources. The question being asked of each industry is the extent to which it is imposing a "welfare loss" on the consuming public as a result of higher-than-competitive prices. The size of this welfare-loss figure is being estimated in the conventional way, namely, by (1) determining the "gap" between each industry's actual (monopoly) price and the price that would prevail under competitive conditions and then (b)

plugging that figure into the traditional welfare-loss formula[1] to get the alleged net social cost of the monopoly pricing in question.

Monopoly Profit Margin—Inefficiencies of Monopoly

The monopoly margin being imposed by each industry is similarly being computed in the orthodox way. First, the FTC is examining each industry's reported profits, subtracting an amount equal to the opportunity cost of capital (5% after taxes on stockholders' equity or roughly the earnings in competitive industries during the relevant years), and expressing the remainder—the *monopoly profit margin*—as a percentage of the industry's sales. Secondly, an estimate is being made of the probable *inefficiencies* or wastes present in these industries, these similarly being expressed as a percentage of sales. Combining these two figures—monopoly profits plus the excessive costs associated with a lack of efficiency-inducing competitive tension or pressure—the FTC's economists have come up with an "adjusted profit margin," the aggregate amount by which each industry's price would probably fall if the agency could successfully restore effective competition in it through an appropriate antitrust enforcement action.

Auto Prices 9.11% Above Competitive Level?

Table 1, below, lists the 100 industries included in the interim FTC report referred to by Senator McGovern, together with the agency's estimate of the amount (percent) by which each such industry's current price exceeds the competitive level, the industry's sales volume, and the dollar amount derived by multiplying those two figures. The latter figure, the "monopoly overcharge" indicated in column 3 of Table 1, is our own computation, one derived, as noted, by simply multiplying the FTC's percentage estimate of the monopoly margin times the industry's sales volume. The automobile

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[1] Welfare loss equals one-half the monopoly sales volume (S), times elasticity of demand for the product (E), times the square of the "gap" between the actual and the competitive price $(t)^2$, or $W = \frac{1}{2}SE(t)^2$. See Dr. Frederic M. Scherer, *Industrial Market Structure and Economic Performance* (Rand McNally, 1970), p. 402, and Charles E. Mueller, "Lawyer's Guide to the 'Welfare Loss' Concept: An Introduction," 5 *Antitrust Law and Economics Review* (Spring 1972) (below).

A2 Monday, April 24, 1972 THE WASHINGTON POST

McGovern Asks Price Freeze

By David S. Broder
Washington Post Staff Writer

BOSTON, April 23—Sen. George S. McGovern charged today that a secret government report shows that "anticompetitive or monopoly pricing" by 100 major firms costs the consumer "more than $15 billion a year" in excess prices. He demanded that the Price Commission freeze all prices until the report is made public.

Winding up his campaigning for Tuesday's Massachusetts presidential primary, the South Dakota senator said the Nixon administration's wage-price controls have served only "to rob the worker, the pensioner and the poor and to fatten the treasuries of big corporations."

He said his information on the extent of what he called "monopoly prices" came from "a confidential preliminary study" of the subject made by the Federal Trade Commission's Bureau of Economics.

In Washington, FTC officials said the figures cited by McGovern sound like "good estimates," and that the $15 billion figure is in line with academic studies. But the officials would not confirm whether the commission's Bureau of Economics is in fact preparing such a report.

McGovern issued a formal statement on the wage-price issue as he campaigned in Boston, Worcester and Springfield in his last full day of stumping here. On Monday, he makes a pair of early-morning factory visits and then flies to Pennsylvania, where he also is entered in the presidential primary on Tuesday.

Two other presidential hopefuls—Reps. Wilbur Mills and Shirley Chisholm—were also campaigning here today, but the man who has been regarded as McGovern's main challenger—Sen. Edmund S. Muskie of Maine—canceled his plans to return to the state.

Muskie dropped scheduled appearances today in Worcester and Lowell after learning of the results of today's Boston Globe poll, showing McGovern with a 43 per cent to 19 per cent lead in Tuesday's preference poll.

Local Muskue aides said the decision was made in order to "maintain the momentum" of the senator's campaign in Pennsylvania, rather than out of discouragement with the Massachusetts prospects, but the decision further diminished already low morale in the Muskie camp.

Jane Muskie, the senator's wife, substituted for him at the two stops he was to have made.

According to McGovern's statement, the FTC study, which eventually will cover 500 firms, is designed to measure the degree to which "pricing which results from firms' monopoly positions . . . exceeds prices that would result from open competition."

He said his office had received a copy of a "confidential preliminary study" covering the first 100 of these firms, which found they were "overcharging the consumer by more than $15 billion a year."

McGovern said auto prices were "more than 9 per cent above the competitive level . . . costing the consumer more than $2.5 billion a year." He said the differential in such industries as gasoline, steel, detergents, chemicals, drugs, farm machinery, soft drinks, beer, tires and television sets ranged from 5 per cent to 10 per cent "above the competitive level."

Citing recent Price Commission decisions permitting increases for some of these industries, McGovern urged that the commission "immediately freeze all price increase requests" until it receives and studies the FTC report. "Instead of allowing increases in those cases" involving industries with monopolistic prices, he said, "it should require price rollbacks or at least no further increases."

The senator said future price board decisions should distinguish between competitive and monopolized industries and stronger efforts should be made to break up highly concentrated industries through antitrust action.

McGovern opened his campaigning today with a talk to a Knights of Columbus communion breakfast in suburban Medford, where he was joined for the second straight day by Kathleen Kennedy, daughter of the late Robert F Kennedy.

McGovern was introduced to the gathering by Wisconsin Gov. Patrick J. Lucey, a longtime Kennedy ally who endorsed McGovern last week.

industry, for example, charges a price that includes a 9.11% monopoly margin and has annual sales of $27.3 billion. Multiplying those two figures (after rounding) yields $2.48 billion, the dollar amount by which auto prices would be expected to fall if the industry should be made effectively competitive. Adding up these monopoly-overcharge figures for each of the 100 industries in the FTC's list does indeed, as Senator McGovern reported, give a total overcharge of just over $15 billion per year. When the other 400 industries being studied by the agency are brought into this computation, the total will presumably rise a great deal higher.

Consumer Support for 'Hypothetical' FTC Program?

A number of factors suggest that the FTC's prompt disavowals of this study are to be taken with a large grain of political salt. First, the Director of the agency's Bureau of Economics, Dr. H. Michael Mann of Boston College, had already confirmed the existence of the study and the character of its preliminary findings—including their intended use and significance—in a public speech made in his hometown of Newton, Massachusetts, on April 22, 1972, two days *before* Senator McGovern released his statement on it. "Some work done at the [Federal Trade] Commission by [its] Bureau of Economics in the area of planning the allocation of [its] antitrust resources suggests that *the benefits to be derived from successful attempts to increase the degree of competition may, in certain industries, well exceed $100,000,000 each.*"[2] In Table 1, below, we count 41 industries with monopoly overcharges above this $100 million level. If the estimates by the FTC's economists are not "real"—i.e., if they're really just "hypothetical" exercises for the agency's economics staff—then why is Dr. Mann telling consumers that, if they'll only get behind antitrust and push hard, they can get their prices lowered by these "hypothetical" amounts? And of course there is the further question of the use the FTC itself can make of these figures if they are, as it now says, unreliable in character. Does the agency propose to allocate its enforcement resources on the

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[2] Dr. H. Michael Mann, "Antitrust and the Consumer: The Policy and Its Constituency," Association of Massachusetts Consumers, Inc., Hotel Marriott, Newton, Massachusetts (April 22, 1972). (Emphasis added.) The text of this speech is presented below.

Washington (DC) Evening Star, April 24, 1972 A-11

Proxmire Seeks FTC Report On $15-Billion Overcharges

By BAILEY MORRIS
Star Staff Writer

Sen. William Proxmire asked the Federal Trade Commission today to make public the results of a secret study which contends that consumers are being overcharged some $15 billion a year for key products ranging from steel to drugs.

In a letter to FTC chairman Miles Kirkpatrick the Wisconsin Democrat, who chairs the Joint Economic Committee, said that in light of President Nixon's anti-inflation policies the FTC study should be made available for public and congressional scrutiny.

The study, an internal document prepared by the agency for its own planning purposes, is a breakdown of the so-called monopoly overcharge resulting from the lack of competition in such key industries as drugs, steel, petroleum, auto parts, photo equipment, detergents, TV sets, beer and soft drinks.

Completed at the end of March, the study, prepared by the FTC's Bureau of Economics, says that steel prices, for example, are more than 6 percent above the level that would prevail if the industry were actively competitive.

An overcharge to consumers of some $1.25 billion a year has been the result of this monopoly, the report concludes.

The FTC study of 100 of the largest U.S. industries is the first phase in a massive report the agency has uundertaken of the 500 largest industries in this country.

Sen. George McGovern, D-S. Dak., released the preliminary results of the confidential FTC study while campaigning in Boston over the weekend.

Sen. McGovern asked the Price Commission to freeze all future price increases until the FTC report on concentrated industries is made available. He also recommended that the commission hold off price increases until the FTC can show that prices charged by the firms in question are not aboye competititve levels.

The FTC study reportedly says that consumers are being overcharged some $2.5 billion a year in higher auto prices, some $1.3 billion annually in non-competitive petroleum prices: $739m illion a year for auto parts; $403 million a year for photocopying equipment; $377 million a year for drugs; $247.8 million a year for soft drinks; and $188 million a year for beet.

FTC staffers says the study was reluctantly approved by the five-member commission, at the staff's urgings, for internal planning purposes only.

The agency recently announced an anti-trust action attacking concentration and high prices in the cereal industry as a result of an alleged monopoly held by the five large companies.

Results of the new, internal study are presumably intended to help the FTC decide whether to take similar action against other industries.

One agency observer says that the study itself poses major problems for the commission, which has been "busily denying that it plans any more cereal-type cases."

Release of these "astounding figures," he says, is going to put pressure on the commission which must now answer criticism that "if it had this data, why hasn't it done more aout it?"

McGovern said tthat price increases allowed by the Price Commission have been for "industries which were already charging far in excess of llegitimate competitive returns."

He said steel mills, for example, are overcharging about $1.2 billion a year according to the FTC study but the Price Commission recently granted these price increases: U.S. Steel, a 3.6 percent; Republic Steel, 3.4 percent and National Steel, 8 percent on sheet products.

The result of the monopoly overcharge and recent price hikes has been increasing inflation and climbing prices for the consumer, he charged.

basis of a set of fictitious data?

Overcharges Understated?

There is a sense, of course, in which these numbers *are* obviously inadequate. As one FTC economist has reportedly said of the study: "This data should not be made public for two reasons. First, its publication would mean that the individual Commissioners who head up our agency would have to respond to questions about it and they don't know enough economics to defend it adequately. Secondly, the data is inherently defective in that it grossly *understates* the *real* monopoly overcharges in these industries. The real figures will undoubtedly be some substantial multiple of the ones we have in our report; what we don't know is the *size* of that multiple."

Phase II Designed to Preserve Monopoly Prices

Meanwhile, what of the Price Commission and Phase II? Has Mr. Grayson asked the FTC for its analysis in passing on the various industry requests for price increases? Apparently not. Granting that the Price Commission has no statutory authority to fight monopoly, as such, one is still entitled to ask how that body can rationally evaluate an industry's request for *higher* prices without first determining whether its *current* prices are adequate or inadequate to permit whatever level of monopoly profits (and inefficiency) it uses as its standard in passing on these questions. If, as the FTC reports, automobile prices are already 9.11% too high, and steel prices 6.4% too high, one can only assume that the Price Commission's guiding principle in approving price *increases* there is to either extend—or at least protect—whatever level of monopoly profits the industry's stockholders might have been earning at the time the anti-inflation program went into effect. Put another way, the Price Commission has apparently taken as politically unalterable the present structure of monopoly pricing in the economy, its duty to fight inflation being constrained by the higher duty to preserve the inequalities of income built into the nation's concentrated industry structure. If costs rise by, say, 5.5% in two industries, one competitive and the other monopolized, both are to be given permission to

Wash. Post, 4/26/72

Inefficiency Cited In Industry Study

By William B. Mead
United Press International

A confidential Federal Trade Commission study estimates that some industries which are controlled by just a few companies permit inefficiency and excess profits to account for 11 cents out of every sales dollar.

"We expect both waste and deception to be relatively more serious the higher the concentration," the study said. "As concentration increases, the opportunities for waste and the motivation toward deception both increase, since the true profit margin increases."

The study looked at 100 leading industries in the nation in an effort to determine what effect competition has on both profits and efficiency.

It estimated that up to 11 cents out of every sales dollar went for excess profits or waste in the photographic equipment and supplies industry.

The study estimated excess profit and waste at 9.1 cents of the sales dollar for autos, 9.4 cents for cigarettes, 7.8 cents for soft drinks, 8 cents for drugs, 6.8 cents for soaps and detergents and 6.4 cents for steel.

For only two of the 100 industries—women's suits and coats and women's and children's underwear—was the estimate less than a penny per dollar.

Sen. George McGovern (D—S.D.) has used the study in presidential campaign speeches, urging the Price Commission to freeze all prices until the FTC makes the study public. Sen. William Proxmire (D—Wis.) also called for public release of the study.

So far, however, the FTC has refused on grounds the estimates are imprecise and intended only to guide the agency in deciding which industries are worthy of antitrust investigation.

UPI obtained a copy of the study from a source who requested anonymity.

Lawrence G. Meyer, who directed the study, said McGovern misused the statistics by translating them into estimates of overpricing. For example, McGovern multiplied the 9.1 cent auto figure by the industry's total sales—$27.2 billion—and said auto prices were "more than 9 per cent above the competitive level . . . costing the consumer more than $2.5 billion a year."

"Our figures are just rough estimates," Meyer said in an interview. "They can't be used the way he (McGovern) is using them." Meyer is the FTC's director of policy planning and evaluation.

Meyer said the FTC picked 5 per cent as a normal profit return, then estimated how much more than that each industry was absorbing in profit and waste. He said the estimates were based largely on a common economic theory that the fewer firms in an industry, the more excess profit and waste results.

The study attributed much of this excess to "deception"—the hiding of extra profits through bookkeeping ploys.

In a speech Saturday before a Massachusetts consumers group H. Michael Mann, director of the FTC's Bureau of Economics, said concentration within industry may cost the nation as much as $6 per cent of the gross national product, some $60 billion."

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raise their prices by that amount without regard to their grossly different current price-cost margins.

Suppressing Wage Gains in Competitive Sector

The difficulty with this line of analysis, of course, is that it carries

with it an implicit policy of suppressing advancement by the relatively underpaid workers in the more competitive industries. Wages are of course correlated with prices, i.e., workers of a given skill get higher wages in the more concentrated industries than in the competitive industries. Weak competitive pressures permit the oligopoly industries to pass on their wage increases to the consumers of their products (workers in *other* industries), the result being a tendency for wages—and thus prices—to ratchet steadily upward in the oligopoly (or cartelized) sectors of the economy. In the competitive industries, on the other hand, strong competitive pressures—in the absence of actual collusion—force the member firms to rigorously resist *their* workers' demand for higher wages. Among workers, then, the relatively rich get richer and the relatively poor remain that way. In an economy where oligopoly industries with discretionary power over prices coexist alongside competitive industries constrained to a rigorous cost-minimization regime, the hydraulics of the system push the former's wages and prices steadily upward and simultaneously grind the latter's downward toward the subsistence minimum.

Sharing the Total 'Supply' of Permissible Wage Increases

Consider the effects here of imposing, as we have imposed under Phase II, an overall "ceiling" of 5.5% on aggregate (economywide) wage increases. This is, by definition, an "average" figure. Under such a limitation on average wage increases, a gain by one group of workers is necessarily a loss to some *other* group. If the country's workforce was evenly divided, for example, between workers in noncompetitive and competitive industries, letting either of those two groups of workers have a wage increase of twice the overall average or 11% would exhaust the entire "supply" of available wage increases for the year in question; nothing would be left for the other half of the nation's workers. Similarly, to let one of these two groups receive its full "share" of available wage increases, 5.5%, automatically limits the other group's increases to that same level. How does one rationally "justify," for example, a policy of granting

Evening Star (Wash., DC), April 30, 1972

FTC's New Antitrust Tool

By BAILEY MORRIS
Star Staff Writer

The five-member Federal Trade Commission, under growing pressure for new action in the consumer field but unsure of which direction to take, has developed a tool to help it make up its mind.

Called the consumer welfare model, the new tool is an elaborate mathematical formula which helps the commission decide which merger or monopoly to challenge by showing how much money consumers will save as a result.

The formula, developed primarily for the agency's antitrust actions, will presumably be applied to two major cases, involving Xerox Corp. and the petroleum industry, which the FTC's Bureau of Competition reportedly has under consideration.

To date, more publicity, man-hours, and money have gone into the agency's Bureau of Consumer Protection and its highly visible advertising actions than into the Bureau of Competition.

But staff members and FTC observers feel that the situation may change as the commission begins to apply the formula, which has been mentioned in the trade press and in news stories about concentrated industries, but not actually used.

Commission's Criteria

Under the new "policy planning wave which has overtaken the commission," according to one staff member, each antitrust case brought before it by the staff must be justified in terms of:

- How the particular case will affect the industry in question.
- How much the industry is "overcharging" the public.
- How much consumers will benefit, in dollar terms, as a result of the case.

In addition, staffers say, the planning formula to be applied to actual cases also carries with it a "probability of winning" percentage to help commissioners assess the practicality of the case.

The formula not only tells the commission that by restoring competition to the auto parts industry, for example, it can save consumers more than $1 million a year; it also shows the commission that an auto parts case (again for example) is bigger and potentially more beneficial in dollar terms than another might be.

Ad Cases' Results

"Our corrective ad cases which have been given all the publicity may end up looking pretty bad under this formula," one staffer says. "A trade magazine recently reported that sales of one firm involved in an FTC corrective ad case actually went up instead of down as a result of the action."

If, he added, the commission begins to work under the theory that a dollar value must be attached to the cases it brings, "it will have to ask itself whether or not these big advertising cases are getting any nickels back to consumers."

There is a growing feeling around the agency, observers say, that a major antitrust "test case" must be brought before the principles of law behind the formula can be assessed.

As previously reported, the FTC has recently completed the first phase in a massive study of the 500 largest industries. This study does apply, on a theoretical basis but using real profit data, the principle of how much consumers will benefit if competition is restored in such industries as autos, drugs, detergents and photo equipment.

Industries Cited

Included in the first phase, which encompasses 100 of the largest industries, are: autos, auto parts, steel, petroleum, chemicals, photographic equipment, drugs, cigarettes, newspapers, milk, bread, cosmetics, tires, plastics and beer.

The study is divided into tiers. Tier One, for example, includes giant industries like autos and the largest dollar amounts ($2.5 billion annually in this case) under the benefit to consumer heading.

Tier Two includes such staple items as bread and milk. If competition could be restored in the bread industry, the study says consumers would save $191.9 million annually, and in the milk industry $256.7 million annually.

Confronted with figures of potential consumer savings like this, observers say, the commission is under great pressure to act. "If it really believes its antitrust formula is accurate or even close to the mark, it is almost obligated to act on it," one said.

15% wage increases to workers already earning $12 per hour in the cartelized construction industries when one knows quite well that every 1% given there has to be withheld from workers making $1.80 per hour in some non-cartelized industry somewhere else?

'Personalizing' Income-Distribution Injustice

To be sure, all of these inequities existed prior to the inauguration of our present price and wage controls. But in that earlier period we could at least tell ourselves that it was all the result of the "natural" workings of the marketplace, that no individual human beings were responsible for the fact that one group of managers and workers waxed affluent while another, no less motivated or competent, suffered a relative poverty. Now, however, we have a public body that is formally assigned the task of preserving this income-distribution status quo. Injustice has now been personalized. Wages and prices are now openly political in character and, in the political arena, the rich and powerful always pull still further ahead of the poor and the weak. The economically and politically powerful unions in our great oligopoly industries get their "share"—and more—of the aggregate supply of permissible wage increases; the weaker unions and the unorganized workers in the less concentrated sectors not only find themselves getting significantly smaller wage increases *but paying the bill—in the form of higher product prices—for the larger gains of their more favored brothers in the oligopoly sector.*

Politics and Economics

Is all of this necessary? Are the two public bodies involved here, the Wage Board and the Price Commission, really barred from taking existing wage and price *levels* into account in evaluating requests for wage and price *increases?* The economists serving on these bodies know quite well, of course, that the two cannot be rationally separated, that a wage-price decision made solely on the basis of *changes* in costs and without regard to the existing relationship between necessary costs and proposed prices is a political decision rather than an economic one.

FTC 'Certification' of Current Price Competitiveness

If the Price Commission is serious about trying to do its job as fairly and as rationally as possible, why doesn't it take the obvious step of asking for the FTC's analysis of the requests for price increases in the more significant industries? The latter agency is, by statutory designation, the official keeper of the nation's economic expertise on matters having to do with competition and monopoly in the unregulated sector—and thus on industry performance there in the price-cost dimension. The FTC, under its organic statute, the Federal Trade Commission Act, has the duty of conducting any economic studies requested by the President or the Congress. Why is the Price Commission unwilling to call on the FTC to do the very thing it was created to do, namely, keep the President and the Congress informed on technical economic issues? A simple policy rule, one that could probably be implemented by a brief Executive Order from the White House, would suffice here: "No request for a price increase filed by a firm in Tier I or Tier II will be evaluated by the Price Commission *until a certification has been received from the Federal Trade Commission that the current price level of the industry involved is not significantly above the competitive level.*"

Politics and the Inflation-Unemployment Dilemma

Could the FTC's chief economist, Dr. Mann, "certify" the competitiveness of the American automobile or steel industry's current price level? Of course not. He's already told us, in Table 1, below, that those two industries are currently overcharging us by at least 9.11% and 6.4%, respectively. And that's why Mr. Grayson of the Price Commission is not likely to be calling on the FTC here any time soon. Fighting inflation in America in 1972 means further impoverishing the politically weak, not offending the politically powerful. We can't "afford" to pay a decent wage to the lower half of the work force that is making less than $9,000 per year, or a wage of any kind, decent or otherwise, to the 5 million men that are currently unemployed, because there's just nothing left over for them after we've taken care of the needs of the more fortunate few represented by America's two outstanding humanitarians of 1972, Harold Geneen of

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Monopoly, Inc., and George Meany of Big Labor, Inc. After they've gotten their's, all that's left is inflation. And every right-thinking American knows what you have to do to "fight inflation," namely, disemploy another million or so men whose $1.80 per hour is, as the other humanitarians on the Council of Economic Advisers keep telling us, the real "cause" of the country's inflationary problems.

Table 1

FTC Estimates of Monopoly Margin in 100 Selected Manufacturing Industries

Rank	SIC	Industry	(1) FTC Adjusted Monopoly Margin (As Percent of Sales)	(2) Value of Shipments (Sales in $ Billions)	(1) x (2) Monopoly Overcharge ($ Millions)
1.	3711	Motor Vehicles	9.11%	$27.3	$2,486.7
2.	2911	Petroleum Refining	6.19	20.3	1,256.2
3.	3312	Blast Furnaces & Steel Mills	6.40	19.6	1,255.7
4.	3714	Motor Vehicle Parts & Accessories	6.36	11.6	739.3
5.	2011	Meat Packing Plants	3.10	15.6	483.9
6.	3861	Photographic Equipment & Supplies	11.01	3.7	403.5
7.	2834	Pharmaceutical Preparations	8.04	4.7	377.6
8.	2818	Industrial Organic Chemicals, nec	5.46	6.4	348.2
9.	2711	Newspapers	5.67	5.8	315.1
10.	2111	Cigarettes	9.36	3.0	284.9
11.	2819	Industrial Inorganic Chemicals, nec	6.42	4.2	272.7
12.	2026	Fluid Milk	3.28	7.8	256.7
13.	3522	Farm Machinery	5.84	4.3	251.1
14.	2036	Soft Drinks, Bottled & Canned	7.31	3.2	247.8
15.	2042	Prepared Feeds for Animals & Fowls	4.20	4.8	201.5
16.	2082	Malt Liquors	6.76	2.9	198.0
17.	2051	Bread, Cake & Related Products	3.76	5.1	191.9
18.	2821	Plastic Materials & Resins	5.23	3.5	181.7
19.	3273	Ready-Mixed Concrete	6.59	2.7	176.9
20.	2841	Soaps & Other Detergents	6.79	2.6	176.1
21.	2751	Commercial Printing, Except Lithographic	5.22	3.3	169.9
22.	2211	Weaving Mills, Cotton	5.10	3.3	169.7
23.	3731	Ship Building & Repairing	6.39	2.5	160.9
24.	2844	Toilet Preparations	6.17	2.5	155.2
25.	3011	Tires & Inner Tubes	5.57	2.7	152.3

Table 1—Continued

Rank	SIC	Industry	(1) FTC Adjusted Monopoly Margin (As Percent of Sales)	(2) Value of Shipments (Sales in $ Billions)	(1) x (2) Monopoly Overcharge ($ Millions)
26.	2631	Paperboard Mills	5.20	2.9	151.2
27.	2653	Corrugated & Solid Fiber Boxes	5.10	3.0	150.9
28.	3443	Fabricated Plate Work (Boiler Shops)	5.61	2.7	150.8
29.	3433	Heating Equipment, Except Electric	5.95	1.1	
30.	3441	Fabricated Structural Steel	5.05	3.0	149.9
31.	3651	Radio & TV Receiving Sets	3.88	3.8	149.2
32.	2033	Canned Fruits & Vegetables	4.14	3.5	143.6
33.	2851	Paints & Allied Products	4.86	2.9	141.5
34.	3519	Internal Combustion Engines, nec	6.67	2.1	139.6
35.	3334	Primary Aluminum	8.03	1.6	129.2
36.	3621	Motors & Generators	4.92	2.4	118.2
37.	3561	Pumps & Compressors	5.31	2.2	117.2
38.	3494	Valves & Pipe Fittings	5.14	2.3	116.9
39.	3541	Machine Tools, Metal Cutting Type	5.32	2.1	113.2
40.	3613	Switchgear & Switchboard Apparatus	6.47	1.7	109.3
41.	2721	Periodicals	3.24	3.1	100.3
42.	2071	Confectionery Products	5.05	1.9	94.4
43.	2641	Paper Coating & Glazing	5.72	1.6	89.6
44.	2041	Flour & Other Grain Mill Products	3.60	2.5	88.5
45.	2085	Distilled Liquor, Except Brandy	6.47	1.4	88.3
46.	3221	Glass Containers	6.49	1.4	85.1
47.	2037	Frozen Fruits & Vegetables	4.08	2.1	84.9
48.	3612	Transformers	6.92	1.2	81.9

Table 1—Continued

Rank	SIC	Industry	(1) FTC Adjusted Monopoly Margin (As Percent of Sales)	(2) Value of Shipments (Sales in $ Billions)	(1) x (2) Monopoly Overcharge ($ Millions)
49.	3511	Steam Engines & Turbines	7.79	1.0	81.3
50.	3642	Lighting Fixtures	4.95	1.6	78.9
51.	3241	Cement, Hydraulic	6.29	1.2	78.4
52.	2731	Book Publishing	3.79	2.0	78.1
53.	3821	Mechanical Measuring Devices	5.20	1.4	75.7
54.	2647	Sanitary Paper Products	5.72	1.3	73.9
55.	3452	Bolts, Nuts, Rivets & Washers	4.46	1.6	73.3
56.	2062	Cane Sugar Refining	5.20	1.4	71.5
57.	2823	Cellulosic Man-made Fibers	7.91	0.9	71.4
58.	2032	Canned Specialties	5.23	1.4	71.2
59.	2654	Sanitary Food Containers	5.85	1.1	64.1
60.	3391	Iron & Steel Forgings	5.03	1.3	63.5
61.	2499	Wood Products, nec	5.20	0.7	62.6
62.	3611	Electric Measuring Instruments	5.21	1.2	61.7
63.	3791	Trailer Coaches	4.52	1.3	59.9
64.	2052	Crackers & Cookies	4.29	1.4	57.3
65.	3141	Shoes, Except Rubber	2.01	2.3	55.9
66.	3811	Engineering & Scientific Instruments	5.54	1.0	55.4
67.	2335	Women's & Misses' Dresses	1.75	3.1	54.0
68.	3272	Concrete Products, nec	4.40	1.2	52.8
69.	3641	Electric Lamps	6.37	0.8	49.8
70.	2812	Alkalies & Chlorine	6.42	0.7	46.2
71.	3291	Abrasive Products	6.32	0.7	45.8
72.	3555	Printing Trades Machinery	5.73	0.8	43.1
73.	2311	Men's & Boys' Suits & Coats	2.25	1.9	43.0
74.	3842	Surgical Appliances & Supplies	4.77	0.8	39.9
75.	3551	Food Products Machinery	4.64	0.8	38.5

Table 1—Continued

Rank	SIC	Industry	(1) FTC Adjusted Monopoly Margin (As Percent of Sales)	(2) Value of Shipments (Sales in $ Billions)	(1) x (2) Monopoly Overcharge ($ Millions)
76.	3822	Automatic Temperature Controls	6.08	0.6	37.3
77.	2611	Pulp Mills	4.97	0.7	36.3
78.	2282	Throwing & Winding Mills	6.40	0.6	36.3
79.	3552	Textile Machinery	4.61	0.7	32.8
80.	3871	Watches & Clocks	4.30	0.7	32.1
81.	3721	Aircraft	6.95	0.4	31.1
82.	3579	Office Machines, nec	5.89	0.5	30.4
83.	2771	Greeting Card Publishing	5.88	0.5	30.4
84.	3713	Truck & Bus Bodies	4.20	0.7	29.7
85.	3941	Games & Toys	2.62	1.1	29.2
86.	3275	Gypsum Products	7.45	0.4	28.9
87.	3251	Bricks & Structural Clay Tile	7.95	0.4	28.8
88.	3671	Electron Tubes, Receiving Type	7.75	0.3	23.3
89.	3673	Electron Tubes, Transmitting	6.07	0.4	22.4
90.	3536	Hoists, Cranes & Monorails	4.97	0.4	22.1
91.	2241	Narrow Fabric Mills	4.33	0.4	19.3
92.	3931	Musical Instruments & Parts	4.35	0.4	18.9
93.	3831	Optical Instruments & Lenses	4.40	0.4	17.9
94.	2121	Cigars	3.65	0.4	13.3
95.	3843	Dental Equipment & Supplies	4.43	0.2	9.8
96.	3253	Ceramic Wall & Floor Tile	5.69	0.2	9.1
97.	2342	Corsets & Allied Garments	1.00	0.7	6.6
98.	2337	Women's & Misses' Suits & Coats	0.36	1.8	6.4
99.	2341	Women's & Children's Underwear	0.53	1.1	5.9
100.	2831	Biological Products	1.34	0.2	2.1



UNITED STATES DEPARTMENT OF AGRICULTURE
Economic Research Service

INTERRELATIONS IN OUR FOOD SYSTEM

Talk prepared by
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A great deal of concern has been expressed over the past several years about the dramatic changes occurring in the organization and control mechanisms within agriculture and the future role of agricultural producers in our food system. This concern has been generated in great part by the increasingly visible influence of large food processing and distributing firms and other nonfarm interests on agricultural production and by the continuing decline in the number of farms, especially small family type farms. Fears have been voiced that the control of agricultural production and marketing is becoming concentrated in the hands of a relatively small number of corporations and that if present trends in farm numbers continue, 100,000 or fewer farms will account for 70 to 80 percent of all agricultural production within two or three decades.

Whether or not such predictions come to pass, dramatic changes currently underway in the interrelationships and organizational structure of the food system will continue to occur in the foreseeable future. This paper briefly examines the nature and causes of these changes and their impacts on producers of agricultural commodities, and speculates about the possible future configuration of the food system.

Origins and evidence of Structural Change in the Food System

The food industry can be viewed as consisting of four sequentially linked subsectors: the farm input sector, the production sector, the food processing sector, and the food merchandising sector. All the subsectors have been undergoing a common internal structural change, namely, a decrease in the number of firms accompanied by a corresponding increase in the size of firms. For example, the number of plants manufacturing food products from farm produced raw materials declined 24 percent between 1958 and 1967 (the latest period for which data are available), while output per plant increased 82 percent. Correspondingly, the total number of retail grocery stores fell 16 percent during this period, while the number of stores operated by large chains (101

stores or more) increased. The market share of large grocery chains increased from 29.4 percent to 36.1 percent between 1958 and 1967. There is every indication that these trends in establishment and firm numbers and sizes are still underway.

In the input, processing, and merchandising sectors, the decrease in firms has been identified almost entirely with the demise of small, local enterprises. This can be attributed to a number of factors, including technological developments that have caused shifts in the competitive relationships among types and sizes of firms and urbanization and growth of mass markets. Large, multi-product firms have taken an increasing share of the market in these subsectors. These firms are national or regional in scope. Their growth along with the disappearance of local firms has had a major influence on the production sector. National processing and distribution firms, for example, are not dependent on any one production area for farm produced raw materials. They obtain supplies in areas where they can get the volume, quality, and prices needed to support nationwide marketing programs. Consequently, their activities play a role in determining location of production with the result that producers for localized markets along with their associated input suppliers and marketing firms are placed at a competitive disadvantage.

These firms have also been innovators in developing new techniques for coordinating the activities of the production sector to their requirements with accompanying impacts on independent localized firms, as well as producers. A major factor in the decline of independent feed manufacturers, for example, has been the development of integrated precision controlled livestock production--marketing systems, where manufacture of the feed input has become an integral part of the system.

Such developments are also transforming agricultural production into a dichotomous sector. Firms producing commodities such as broilers, fed cattle and some vegetable crops are increasingly using techniques of production and coordination that are similar to industrial processes. Moreover, some enterprises such as hog production may soon follow the pattern. In contrast, range cattle, grain, and most field crop producers continue to employ conventional styles of operation.

Much of the structural change occurring in the food system is in response to changes in the characteristics of our society. Rising consumer affluence and changing lifestyles have prompted consumer demand for food to shift from raw commodities to sophisticated products and services. This affluence has also given the consumer more discretionary purchasing power and reduced the proportion of his income spent on food. Consequently, the food industry has been forced to increasingly take consumer wants and desires into account and shift from a commodity production orientation to a consumer product-merchandising orientation. Significant manifestations of this changing orientation have been the emergence of mass merchandising techniques, including the recent surge in fast-food service, and the proliferation of various fabricated and ready prepared food products.

Adjustments are particularly bewildering at the farm level because all of this change in orientation is requiring reversals in the roles of the production and product marketing sectors. The agricultural production sector, once the direct supplier of many consumer food products is now the raw material supplying stage of the food system.

This concept of the production sector as primarily a source of raw materials is divergent from the traditional concept of it as the Nation's food producer and the processing and distribution sectors as only vehicles for moving farm output to the final consumer. The difference between the two ways of viewing the relationship between the production and processing sectors is subtle. However, it bears directly on the question of who controls or will control agriculture, and is the basis of much of the current concern about the future of the independent family farm. Under the traditional concept, the basic decisions concerning the kinds and volumes of food products to be produced were made in the production sector, independently, in a large part, of other sectors of the food system.

When the production sector is viewed as a raw material supplier to the processing sector, the basic decision-making processes involved in the determination of food production become of more direct concern to the processing sector. In this situation, especially for those commodities with a high degree of formalized vertical coordination, agricultural production takes place on order from the processing sector. Farm commodities are then produced in volumes and qualities specified by nonfarm market oriented interests.

There are two important implications to farmers of viewing the production sector as a source of raw material supplies to the food system. One is the loss of independence that farmers face under contractual arrangements and vertical integration. Another is the alleged precarious bargaining position of individual producers in dealing with large processing and marketing firms without the benefit of alternative markets. The case of the broiler producer has become the classic example of the woes that will befall the independent farmer who becomes part of an integrated production-marketing system. His transformation from an independent farmer to an employee of the integrators is well documented. The basic problem here, however, is not with contract production and integration as such, but from the over rapid expansion of production and hazards of pursuing a highly specialized activity with no alternative uses for resources. Producers of other highly coordinated commodities have fared much better and have been able to develop arrangements that are, in general, satisfactory to all parties concerned. The broiler case does, however, point out the desirability of developing adequate safeguards to protect the interests of producers entering into contractual agreements with processors.

However, even with the loss of independence and the farmers' relatively weak bargaining strength, there are certain advantages to producers from closer coordination with the processing sector. Chief among these is guaranteed outlets for their production. Other benefits that are applicable to society in general

are the increased efficiencies inherent in closer coordination. Producers can concentrate on what they do best, namely, produce agricultural commodities without worrying about finding a home for their output. Processors and distributors assured of adequate supplies can devote their efforts to processing and marketing rather than attempting to locate sources of raw material.

For farmers for whom loss of independence is not an overriding concern, group action, including either operating cooperatives or bargaining associations, can be used to gain a voice in coordination between the production and processing sectors. For such group action to be effective, however, certain conditions relating to volume, scale of operation, and market orientation must be met. Small local farmer co-ops generally are unable to meet all these requirements.

Such cooperatives often are concerned with only one commodity or a closely related commodity group. Also, being organized by and controlled by producers, their interests largely reflect those of their producer members. That is, they tend to be production, commodity-oriented. This places them at a disadvantage in competing with market, product-oriented corporate marketing firms. In many instances the cooperative's major function is to move its members' commodity into market channels, while the corporate marketing firm's function usually is to develop and merchandise consumer food products. This sometimes tends to limit the effectiveness of local co-ops.

There are several developments occurring simultaneously in the cooperative field to deal with this basic problem. Some cooperatives, notably dairy, have merged into large regional organizations, and have been able to enhance their competitive position in dealing with corporate processors and distributors. Other co-ops have integrated forward into the food system often to the point of developing and merchandising consumer products of their own. Where this occurs, the cooperative may take on many of the characteristics of corporate marketing firms, including product-market orientation and often diversification into products based on commodities other than those produced by its original members. Such a cooperative is indistinguishable from its corporate counterpart in its product merchandising philosophy.

In another type of arrangement, co-ops have entered into joint ventures with corporate marketing firms, with the co-op normally responsible for raw material supply and procurement and the marketing firm responsible for product development and merchandising. In this kind of relationship, producers gain access to product markets while maintaining greater control of their operations than by individually contracting with processors, while the processor has an assured raw material supply for an extended period of time, thereby gaining some of the advantages of vertical integration into production and avoiding some of the disadvantages.

Coordination of Production and Processing

In any productive process consisting of more than one stage, some mechanism must be devised to coordinate the activities of the several contributing stages.

This is as true for our food system as it is for the manufacture and distribution of automobiles or any other industrial product. Market requirements must be evaluated, inputs meeting certain specifications must be acquired and assembled at the right place, at the right time, and in the right quantity at each stage of the production process. Then, the final products must be distributed to geographically dispersed markets in an orderly manner.

A number of institutional arrangements are used to coordinate the activities of the several stages and numerous participants that make up the food system. Some of these, especially those that entail changes in traditional relationships between producers of agricultural commodities and the processing-distribution complex have become the subject of critical public scrutiny. The major methods in use for coordinating production and other activities are open market contracting and vertical integration, the latter being defined as ownership control of more than one stage in a vertical system. Principles underlying these methods apply regardless of the type of legal business entities involved in the food system--proprietorships, corporations, and cooperatives. And all methods are used to some extent in coordinating the food system.

Agricultural commodities that are produced to a significant extent under contractual arrangements or vertical integration, in general, possess a number of characteristics that distinguish them from commodities associated with open markets at the farm level. In general, the formally coordinated or industrialized type commodities are characterized by a more intensive use of both land and capital than the predominately open market commodities; they tend to be more perishable and initially less homogenous in nature. For certain commodities, technological innovations in either production or processing have provided the impetus for shifting from open market coordination to contracting or vertical integration. Lack of homogeneity, in particular, provides a strong incentive to turn to the formal coordinative application of technology to achieve raw product uniformity. Moreover, for certain commodities, production as well as processing activities are capable of being reduced to technological routines requiring mere technical supervision and less direct decision input from management.

The extent of formal coordination between production and processing in the food system, including both contracting and vertical integration, ranges from virtually all sugar beets and sugar cane to less than one percent for feed grains and hay and forage crops. In the aggregate, however, less than one-fourth of U.S. agricultural output is produced under formal vertical arrangements.

Commodities that are highly coordinated through formal arrangements in addition to sugar beets and cane include milk, broilers and turkeys, and fruits and vegetables (table 1). About one-fourth of cattle feeding is under some type of formal coordination, primarily custom feeding, and hog production is undergoing experimentation with contracting. Crops that depend primarily on market coordination include wheat, feed grains, and soybeans. These continue to be produced by traditional independent family farms.

Table 1.--Methods of coordinating production of selected agricultural commodities, 1970 estimates

Commodity	Corporate			Producer cooperatives[1]	Open markets
	Vertical integration	Contracts			
		Individual producers	Producer bargaining associations		
	Percent of production				
Sugarbeets	2	--	98	--	--
Sugarcane	60	23	--	17	--
Fluid grade milk	3	15	--	[1]80	2
Broilers	7	85	--	5	3
Processing vegetables	10	69	9	7	5
Citrus fruits	30	14	3	38	15
Turkeys	12	42	--	17	29
Potatoes	25	24	13	8	30
Deciduous fruits and nuts	20	--	8	30	42
Eggs	20	20	--	15	45
Fresh market vegetables	30	21	--	5	44

[1] Includes producers bargaining associations.

In the highly coordinated sector, some commodities are dominated by corporations, some largely by producer cooperatives, and others by a mix of corporations and cooperatives.

Virtually all of the production of sugar beets and about three-fourths of vegetables for processing are controlled primarily by processing corporations through production contracts. However, producer bargaining associations actively represent grower interests in negotiating contract terms with processors in both sugar beets and processing vegetables.

About 85 percent of broiler production is controlled by corporations through production contracts. These firms generally have interests in the feed industry. The turkey industry is developing along a variety of lines, with over 40 percent of production contracted to such corporations. Producer cooperatives, however, play a larger role in turkeys, accounting for nearly a fifth of the total output.

Processing corporations dominate the citrus industry, controlling only slightly less than half the total crop through contractual arrangements and vertically integrated production. Over a third of the citrus production, however, is marketed by producer co-ops.

Distributing corporations using both contractual arrangements and vertical integration control about 40 percent of egg production, while producer cooperatives handle about 15 percent of the output.

About 30 percent of fresh market vegetables are produced by vertically integrated production-marketing firms. A substantial proportion of this volume, however, is controlled by growers who have integrated forward into marketing activities. Producer cooperatives are the major factor in deciduous fruits and tree nuts, accounting for 30 percent of total output. Vertically integrated production-marketing firms, however, control about a fifth of the deciduous fruit crop, and as in fresh market vegetables, a substantial part of this is accounted for by forward integration on the part of growers.

Plantation type production-milling operations account for the bulk of the sugarcane that is produced under vertical integration (about 60 percent of the crop). The remainder of the cane crop is controlled by corporate and cooperative mills, primarily through production contracts.

Producer cooperatives handle about 80 percent of fluid grade milk and play a significant role in coordinating the fluid milk sector.

For those sectors in which corporations play an important role, direct involvement in agricultural production by nonfarm interests is not limited to farm input and marketing firms. It extends to firms in the nonfood sectors of the economy as well. An analysis of the activities of nonfarm firms involved in the production of agricultural commodities with a high incidence of formal coordination is being undertaken in the Economic Research Service. Of 262 such firms so far identified, 21 percent are basically farm input suppliers,

·48 percent are agricultural processing and distribution firms, but 31 percent are primarily engaged in nonagricultural manufacturing or service industries.

Two basic types of firms are included in the latter group: the conglomerates with interests in the food industry, and other firms for which agricultural production is incidental to the basic activity. Development firms producing agricultural commodities on land held for future disposition and land based natural resource companies (oil, gas, timber, etc.) engaging in agricultural production are examples of the types of firms in the second category.

The Future Configuration of Our Food System

Any statements about the configuration of the domestic food system in 1985 or beyond must of necessity be speculative in nature. Only one statement can be made with a high degree of certainty. That is, that the raw commodities from which our food products will be manufactured will still originate in the agricultural production sector.

To indulge in further conjecture, however, requires recognition that a number of factors could affect the shape of the food system in 1985. Among these are environmental concerns, unionization of farm labor, and technological breakthroughs.

Large scale industrialized cattle feedlots and other types of confinement livestock enterprises are beginning to encounter waste disposal problems with potentially serious environmental impacts. A set of guidelines relating water quality standards to animal wastes is currently being developed. Failure to develop means of meeting these standards could conceivably slow the growth of industrialized confinement livestock production. However, waste disposal systems that should be able to meet any imposed environmental standards are now being designed into large scale feedlots. The cost of installing waste disposal systems will probably be prohibitive for smaller, family type enterprises. Thus, the impact of environmental restraints on the organization of confinement livestock production will be to accelerate the shift to an industrialized production system.

Contamination, both of food supplies and the environment from agricultural chemicals is another problem that will influence the future control and organization of the food system. Regulations pertaining to pesticide and other chemical residues in food products, especially, provide a strong incentive for food processors to exert increased control over the way in which agricultural commodities are produced.

One of the major impacts of farm labor unionization will be to speed the exodus of small and marginal producers of labor intensive commodities. Although the major efforts of farm labor organizers will be directed toward integrated corporate farms and large scale producers rather than small marginal operations, the latter will be under considerable pressure to match wage increases and improved terms of employment won from their larger competitors. Thus, the unionization of farm labor will probably act to accelerate the industrialization process in agriculture.

Technology has played a leading role in bringing about change both within and outside the food system. It is not necessary here to recount technological innovations and their impacts on the organization and coordination of the food system. Rather, it is sufficient to point out the pace of technological innovation is increasing at an increasing rate, and that major innovations in the past have generally moved us toward an industrialized agricultural organization. This will continue even though there will be changes in technological emphasis to accommodate such issues as environmental enhancement.

By 1985 the contemporary transition of our food system will largely be history. Internal control of the system will rest in those market oriented agencies with the most direct access to mass consumer markets. Agricultural production will be regarded as just one stage in the production and distribution of consumer food products and will be dictated by market requirements rather than market choices being governed by what is produced.

The farm sector, however, will contain two distinct and quite different parts. One of these will be little different from our traditional concept of farming, in that it will consist of basically independent farmers producing and selling commodities on open markets. The commodities that will be produced in this part of agriculture are the major field crops, mainly cash grains and forage crops and range livestock. The only real difference in the organization of this part of agriculture between now and 1985 will be that production units will be fewer and larger. They will still be independently operated and controlled.

There is a potential for a limited degree of more formalized coordination between production and marketing agencies in these commodities by 1985. Consumption of beef, for instance, is projected to increase significantly by 1985. If this increased demand should cause extremely tight supplies of feeder cattle, it is possible that cattle feedlot operators may enter into forward delivery contracts with feeder cattle producers as a means of insuring adequate supplies to fulfill their own commitments. Likewise, expanded export commitments of grains could create temporary shortages that could induce grain marketing agencies to contract in advance for supplies. The effect of such contracts might be only to accelerate production increases, which if realized could remove the incentive for contracting. A situation of this type occurred in cotton in 1970 and 1971. It is possible, however, that future experiences of this nature could turn out otherwise. Forward contracting could become the normal way of doing business. The coordinative process would then amount to a type of open market forward selling rather than the conventional procedure of marketing a crop after it is produced.

The other part of the production sector in 1985 will be very closely coordinated with the processing-distribution stages of the food system. Virtually all confinement livestock and products will come under tightly knit industrialized production-processing-marketing systems. This is already the case in broilers where over 95 percent of the production is either under contract or vertical integration. By 1985, cattle feeding will be predominantly large-scale operations closely coordinated with slaughter operations through contractual arrangements and vertical integration. Hog production, in which independent

family farms currently account for about 98 percent of the output may take a turn toward a more industrialized production-marketing system. This is contingent only on possibilities of overcoming certain technological problems associated with large scale hog production.

The dominant role of larger cooperatives in marketing fluid grade milk may well include all milk, and it seems a reasonable possibility that most production of basic dairy products will be done by cooperatives under long-term contracts with corporate merchandisers or, in some cases, selling their own branded products.

Nearly all processing vegetable crops and all major sugar crops are currently produced within an industrialized structure, so for these commodities no major changes in organization and coordinating techniques are anticipated. Growth of industrialization in most other commodity subsectors will be largely a continuation of ongoing trends.

In summary, the food system and especially a significant part of the production sector will not only more closely resemble other economic sectors by 1985, it will be a more fully integrated part of the general economy. Diversification of food industry firms into other nonfood business activities along with the entry of nonfood firms into food system activities is rapidly erasing any distinction between food and nonfood companies. It appears that a class of broadly diversified consumer products merchandising organizations, both corporate and cooperative, will dominate the scene by 1985. Very probably a combined buildup of incentives growing out of benefits of vertical coordination associated with scale, operational control, and market diversification will force even the strongest remaining producer co-ops into such configurations. Food products will be just one of many lines of consumer goods manufactured and distributed by such firms.

Therefore, decision centers controlling the food distribution system will be shared by other consumer product systems. Although physical and technical distinctions will remain, the administrative intersectoral demarkations between the various product lines will disappear. In this way, agriculture as a part of the food system will be integrated into the general economy. Agriculture will be drawn into a system that will govern future output responses through rigid contract specifications or direct participation in production under business rules now commonly employed in the commercial sector at large.

This will mean that the day of the fiercely independent farmer who answers only to himself will be past. Production of the future will be carried out as a strictly demand oriented business enterprise rather than being entered into as a way of life.

APPENDIX 12

FEDERAL TRADE COMMISSION,
Washington, D.C., October 19, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the June 28, 1973, testimony of Chairman Lewis A. Engman, Mr. James T. Halverson, Director of the Bureau of Competition, and Dr. H. Michael Mann, Director of the Bureau of Economics, before your Subcommittee on Monopolies and Commercial Law concerning the Federal Trade Commission's activities relating to the food industry, the Subcommittee asked that we provide certain additional information and materials. By letter to Chairman Engman dated July 24, 1973, you requested responses to nineteen further questions.

You will find enclosed the Bureau of Competition's responses to the nineteen questions, as well as memoranda prepared by the Bureau which discuss FTC and Justice Department cooperation in antitrust enforcement, the Capper-Volstead Act, antitrust exemptions for the food industry, and selected other matters.

At your request, we are also sending a copy of the monopoly over-charge study prepared by the Bureau of Economics. The Commission wants to stress that it is most reluctant to provide this document, and we urge that it be considered strictly confidential and not be released in whole or in part to the public. In the opinion of Dr. Mann, under whose direction the study was performed, and in the opinion of the Commission, the data in the study are very imprecise. Furthermore, the study is a highly technical one, easily misunderstood by non-economists.

We also believe that other general caveats must be emphasized. The tentative observations of the staff study are highly speculative and theoretical. In particular, it is in no way appropriate to conclude from this material that any or all of the indicated consumer savings could actually be attained in any given industry, and it is certainly inappropriate to conclude from this report that the antitrust laws have been violated in the case of any particular industry. Far more precise and detailed inquiry would be necessary to reach any conclusions on either of these points. Please emphasize to your Subcommittee that the study represents only a pilot project done by the staff and has never been approved by the Commission.

By direction of the Commission.

CHARLES A. TOBIN, *Secretary.*

Enclosures.

Question 1. What would be the status of farmer cooperatives under the antitrust laws if there were not a Capper-Volstead Act? Would this mean that all cooperative activities of farmers would be illegal?

Response 1. A memorandum submitted in response to Request 5, above, sets forth in detail the legialstive purpose, legislative history, the exempting provisions and important court decisions interpreting the Capper-Volstead Act. In sum, the memorandum pointed out that the Capper-Volstead Act provided a limited, rather than a broad exemption. As indicated there, the exemption relates primarily to the formation of farm cooperatives (and the federation of such cooperatives) for the purpose of processing or marketing farm products. In the absence of the Capper-Volstead Act, not all cooperative activities of farm cooperatives would be illegal. However, such constraints on cooperative activities as are now imposed by the antitrust laws on ordinary businessmen and business corporations, would have equal application to the joint activities of farmers and farm cooperatives.

Question 2. Has the FTC ever urged the Secretary of Agriculutre to take action under Section 2 of the Capper-Volstead Act to prevent a cooperative

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from enhancing prices unduly? What activities has the FTC undertaken to ensure that the antitrust exemption in the Capper-Volstead Act is kept within its statutory limits?

Response 2. The Commission has not urged the Secretary of Agriculture to take action under Section 2 of the Capper-Volstead Act to prevent a cooperative from enhancing prices unduly. In a related area, however, the Commission in 1971 did suggest to the Secretary of Agriculture that a marketing order for the celery industry in Florida should be reviewed to determine if it was unduly anticompetitive.

Question 3. Would the FTC recommend legislation which would permit it to gather economic and financial information on the effect of an antitrust exemption such as the Capper-Volstead Act?

Response 3. Under Section 6(b) of the Federal Trade Commission Act the Commission has a very broad power to obtain economic and financial information from any corporation (other than banks or common carriers) engaged in interstate commerce. Theoretically, this jurisdiction extends to matters that might lie beyond the specific enforcement jurisdiction of the Commission under the antitrust laws or under other specific substantive laws which give the Commission enforcement responsibilities. Thus, the Commission theoretically has the power to demand economic and financial information from an organization which is specifically exempted, in certain respects, from the operation of the antitrust laws by reason of the Capper-Volstead Act. However, even if Congress made explicit the Commission's authority to collect information in this area, it would be of limited usefulness for enforcement purposes given the existence of the Capper-Volstead exemption.

Question 4. Is the present antitrust exemption for cooperatives more or less than that possessed by labor unions?

Response 4. The antitrust exemption in the Capper-Volstead Act is limited to acts of cooperatives, or persons comprising them, related to the marketing of agricultural products. Section 6 of the Clayton Act provides a limited immunity for labor unions under the antitrust laws with respect to legitimate bargaining activity. Thus both exemptions are limited but the area of immunization is different in each case. The nature of the Capper-Volstead exemption is discussed in detail in the memorandum on this subject furnished in response to Request 5, above.

Question 5. Section 2 of the Capper-Volstead Act, 7 U.S.C. 292 appears to make it mandatory for the Secretary of Agriculture to act when there is no reason to believe that prices are enhanced unduly by a cooperative. It says that "[i]f the Secretary . . . *shall* have reason . . . he *shall* serve upon such association a complaint." What is the interpretation of the FTC of Section 2?

Response 5. Section 2 of the Capper-Volstead Act requires that the Secretary of Agriculture take action against the undue enhancement of prices by a cooperative. It would appear that the initial clause stating "if the Secretary . . . *shall* have reason" imposes upon the Secretary the initial discretion to determine whether reasonable grounds exist for finding undue enhancement of prices. Thereafter, however, the second clause of the provision would seem to require the Secretary to take action by service of a complaint in the event that he has such reason to believe prices have been unduly enhanced.

Question 6. Are activities by cooperatives to purchase equipment used in agricultural production and other activity not involving marketing exempt from the antitrust laws?

Response 6. Activities by cooperatives other than in connection with the marketing of agricultural goods are not in our view exempt from the antitrust laws by reason of the Capper-Volstead Act. The memorandum outlining the legislative history and interpretation of the Act submitted in response to Request 5, above, tends to support the view that the exemption should not be construed as going beyond its intendment as set forth in the legislative purposes. Specifically, purchases of equipment and other activity not involving marketing by an agricultural cooperative would not be exempt from the antitrust laws.

Question 7. Are mergers by cooperatives exempt from the antitrust laws? Is there a difference between Section 7 of the Clayton Act and Section 1 and 2 of the Sherman Act in this regard?

Response 7. Mergers by cooperatives are exempted under the antitrust law by reason of the Capper-Volstead Act if they involve two or more cooperatives that are properly operating within the Act. A merger of a Capper-Volstead cooperative and an entity which does not fall within the purview of the Act is not exempt.

The memorandum prepared in response to Request 5, above, details the Bureau's views in this area. There *is*, in this sense, a difference between Section 7 of the Clayton Act and Section 1 and 2 of the Sherman Act, in that the mere merger of two Capper-Volstead cooperatives is immunized, whereas joint activity of such cooperatives, or monopolization or attempt to monopolize, going beyond the marketing function would be subject to Section 1 and 2 of the Sherman Act, and also to Section 5 of the Federal Trade Commission.

Question 8. What is the FTC's understanding of the informal operating arrangement with the Antitrust Division whereby (i) certain kinds of violations and (ii) certain areas of industry are the enforcement responsibility of one agency or the other? Please be specfic about (i) and (ii). What areas of industry presently are the responsibility of the FTC and of the Antitrust Division?

Response 8. As previously expressed in the memorandum submitted in response to Request 2, above, the liaison arrangement between the Federal Trade Commission and the Antitrust Division does not specifically cast jurisdiction in particular cases to one agency or the other. The liaison arrangement, rather, is designed to avoid duplication of efforts between the two agencies and to provide for the mutual interchange of information as to specific investigations. Historically, however, certain kinds of violations have been prosecuted by one agency or the other. For example, all price discrimination activity, other than that type of activity coming under the criminal provisions of Section 3 of the Robinson-Patman Act, has traditionally been cleared to the Federal Trade Commission for investigation. On the other hand, certain types of "hardcore" antitrust violations, particularly those which are amenable to criminal prosecution (such as horizontal price fixing and boycott agreements) have traditionally been handled by the Department of Justice. (Only the Department has authority to bring criminal cases.) Beyond this, there are no established and inviolable rules as to which agency will conduct a particular investigation. In the event that both agencies seek clearance as to a particular matter, it is usualy resolved on the basis of the superior expertise or prior experience of one agency or the other with respect to the industry, the parties, or the areas of violation involved.

Specifically, with respect to food, while both agencies have conducted numerous investigations concerning food and food related industries, the Commission has amassed considerable general expertise in the field through its previous economic studies (see questions 16 and 17). The Commission's on-going merger enforcement programs with respect to food distribution (chain grocery stores), grocery products manufacturing and the dairy industry, result in substantial continuing expertise in these areas and it will normally be the Commission that will investigate such mergers. On the other hand the Department of Justice normally would handle mergers of meat packers by tradition stemming from the original meat packers case in the 1920's.

Question 9. Would the FTC recommend modification or repeal of USDA marketing order authority?

Response 9. The principal purpose for the promulgation of the Agricultural Adjustment Act, under which USDA marketing orders are issued, was to protect and develop the smaller agricultural commodity markets throughout the nation. At the time of its promulgation, these markets were composed of individual producers who, for the most part, lacked any comprehensive marketing organization and lacked any influence in determining the prices of their commodities. A marketing order issued pursuant to that Act has the effect of stabilizing the producer-handlers' prices by controlling the supply of the commodity available for the market. Through such an order, the handler-producer is intended to be assured a fair return for his product.

The Capper-Volstead Act supplemented these purposes by permitting producers to form agricultural cooperatives whose marketing activities are exempt from the antitrust laws. The Capper-Volstead Act allows the producer-handlers to reduce costs by vertically integrating so that the cooperative may grow, harvest, process, and market the produce. The profits of the operation are distributed on the basis of the amount contributed by each member of the cooperative.

In the Bureau's view, the time is right for a reexamination of agricultural exemptions from the antitrust laws with a view toward discovering where, if anywhere, the protection designed for circumstances of the 1930's is still needed. Conversely, a congressional determination might now be appropriate as to whether the production of food products should be subject to the same competitive rigors as other segments of American business. The USDA marketing order authority, as well as Capper-Volstead coverage, should at least be modified so as

to be applicable only in instances where there is an overriding need for protection which must take precedence over the national policy of a fully competitive marketplace mandated by the antitrust laws.

Question 10. What kind of liaison has the FTC had with the Price Commission?

Response 10. The Commission has had no formal liaison with the Price Commission. On occasion, the Price Commission has specifically referred matters to the FTC where the possibility of antitrust violations has appeared. This was the case, for example, with respect to lumber pricing. The Price Commission suggested in November 1972, that the FTC should look into this matter. Shortly thereafter the FTC issued a complaint involving the use of basing point prices in the sale of plywood. Also, there have been instances in which the FTC staff, upon examination of complaints concerning prices, has determined that the matters complained of did not primarily involve antitrust questions and should be referred to the Price Commission.

Question 11. Does the operation of the Price Commission raise any anticompetitive dangers?

Response 11. The antitrust laws generally prohibit the interference by private interest with the natural effect on prices of supply and demand. The powers of the Price Commission, on the other hand are invoked to deal with temporary problems of supply and demand by government regulation of prices. The impact of such price regulation on competition, however, would not necessarily raise anticompetitive dangers. The results would depend upon what particular prices were regulated, how they were regulated and for how long. Presumably a market that was exhibiting temporary imbalances of supply and demand could recover during a brief period of regulation and return to a normal competitive condition.

Question 12. The publication *Supermarket News* reported on Monday, July 16, 1973, page 2, that the price freeze of the past few months triggered tie-in practices and other activities designed to ameliorate its effects, but which also violate the antitrust laws. Do you have evidence that this kind of activity has taken place? Is there any evidence that such activity will end with the enforcement of Phase IV? What is the FTC doing to investigate and prevent these anticompetitive consequences of the price freeze?

Response 12. The Federal Trade Commission does not have probative information that tying practices are taking place in the food industry, and is unable to confirm the *Supermarket News* report or comment on the likelihood of such practices continuing past the freeze period. However, the article does indicate that the practice was prompted by the low ceilings which the freeze imposed on certain products for which there is a high consumer demand. The lifting of the freeze would theoretically eliminate the motivation for the offensive practice if it is occurring.

The Bureau of Competition received some complaints involving reports that meat was being withheld from the market on an industrywide basis until after the lifting of the freeze. Apparently similar complaints were received by the Antitrust Division of the Department of Justice which has had a long familiarity with the meat industry. The Antitrust Division commenced an investigation and, under the Commission's liaison procedure with that agency, the FTC cleared the matter to the Antitrust Division for investigation.

This does not mean that the Commission has not been actively concerned about recent events in food industries. The Federal Trade Commission already has a substantial commitment to antitrust enforcement in the food industries in terms of non-public investigations being conducted, cases in litigation and on-going merger monitoring. However, because of current widespread publicity about food prices and concern that antitrust violations may be contributing to the current inflationary trend at the supermarket, the Bureau of Competition has underway a broad-spectrum review of the food industries to determine if and where new enforcement initiatives might be most appropriate and beneficial.

Question 13. The Subcommittee recently heard testimony recommending that enforcement of the Packers and Stockyards Act be shifted from USDA to the FTC. What is the FTC's view on enforcement of the Packers and Stockyards Act presently, and the recommendation to shift its enforcement to the FTC?

Response 13. The Federal Trade Commission is not suited to the administrative and regulatory functions now performed by the Department of Agriculture with respect to the Packers and Stockyards Act. The Commission's jurisdiction and area of expertise is generally found in enforcement of the antitrust laws and laws respecting unfair competition. If antitrust enforcement responsibility under the Packers and Stockyards Act were to be shifted to the FTC the Commission

would appear to be in a position to exercise effective jurisdiction because of its existing expertise in application of the antitrust laws to other areas of food production and distribution.

We discuss the Commission's existing jurisdiction under the Packers and Stockyards Act in the memorandum submitted in response to Request, above.

Question 14. The FTC's Advisory Opinion No. 147 on backhauls was criticized several times in testimony before the Subcommittee. What is the FTC doing to revise this opinion?

Response 14. The Commission presently is giving further consideration to the backhaul question generally and to Advisory Opinion No. 147 in particular. The Commission will gladly inform the Subcommittee as to the results of its deliberations when they become available.

Question 15. Economic effect of law enforcement: The National Commission on Food Marketing in its 1966 Final Report concluded that, in view of a variety of enforcement problems:

"A study and reappraisal of the Robinson-Patman Act and its administration is now appropriate, in order to determine needed revisions in light of current economic conditions and overall antitrust policies."

Furthermore, in 1970, two FTC attorneys testified before the House Select Committee on Small Business that in some instances the Robison–Patman Act is being enforced in a manner which has anti-competitive effects.

(a) What steps are being taken to review the economic effect of enforcement of the Robinson-Patman Act with regard to food prices and other prices generally?

(b) Do you have any indication at this time as to whether Robinson-Patman Act enforcement is having any specific effects on food prices—either positive or negative?

(c) In whatever report the FTC may prepare on this subject, identify enforcement effects in the food industry and food-related industries?

Response 15. A pilot project concerning enforcement effectiveness in the Robinson-Patman area has been undertaken. A number of orders respecting discrimination in prices and promotional activities in the food area were included in this project. However, there was no specific focus of this project on food pricing. At the present time, the Commission does not have evidence that Robinson-Patman enforcement has had any conclusive effect on food pricing generally. The Commission will shortly be considering what further steps may be appropriate in furtherance of this effort to study the effect of Robinson-Patman enforcement, and it will take into account the desirability of identifying such enforcement effects in the food industry and fool related industries.

Question 16. The FTC's 1966 Economic Report on the *Structure and Competitive Behavior of Food Retailing* indicated that on the basis of 1963 figures, supermarket concentration in many metropolitan areas was near or exceeded the level of 50% for the four leading firms, and that concentration was increasing when compared to previous figures.

(a) Has this trend continued or accelerated since 1963?

(b) How do the more recent figures compare to those for 1963?

(c) What has FTC done to prevent increased market concentration in metropolitan areas where the concentration rates indicate competitive problems exist or would result from substantially increased concentration?

(d) What has the FTC done to reduce concentration in markets where the concentration ratios indicate competitive problems may already exist?

Are there areas where mergers have contributed to present levels of concentration? What are these?

Response 16. The FTC's 1966 Economic Report did indicate that there had been a substantial increase in concentration in local markets throughout the United States in food retailing between 1948 and 1963. That study, however, seems to have been plagued with problems arising out of definition changes in Census categories between 1948 and 1963. Moreover, it did not provide detailed information for each local market but, instead, focused on overall trends on a collective basis.

One result of the FTC staff report, combined with Commission experience in litigated cases and the report of the National Commission on Food Marketing (Organization and Competition in Food Retailing, Technical Study No. 7, National Comission on Food Marketing. June 1966), was the issuance by the Commission of its enforcement policy statement on mergers in food distribution, and a specific order and resolution requiring premerger notification of food distribution acquisitions and mergers. This program has resulted in a continuous

dialogue with the retail end of the industry and has unquestionably had an effect upon mergers and acquisitions in the industry. A primary concern of the Commission program was to stop overall national concentration resulting from mergers, and this aim has largely been accomplished.

Another aim of the program was to check a trend towards concentration in local markets. It was anticipated that this would be accomplished through encouraging internal expansion into additional markets (or, alternatively, through toe-hold mergers) by major food distributors. However, the premerger reporting forms used during the last six year shave not provided information which would permit any judgment on the extent of such actual expansions. A revised form now in use will provide this information for the future.

The National Commission on Food Marketing study reported that local concentration increased substantially in the 1954–1958 period, but barely increased in the 1958–1963 period. Last year, the staff ordered from Census concentration data for 1967 and 1972 from the 218 standard metropolitan statistical areas, thereby bringing up to date Table 2–6 in the 1966 study. We have received the 1967 data, which has already been included in materials submitted to the Subcommittee, and anticipate receiving the 1972 data in approximately 6 months.

In response to part (a) of this question, the relative stability of the 1958–1963 period seems to have continued in the 1963–1967[1] period. The figures are as follows for all local markets, showing average grocery store concentration:

	Top 4	Top 8	Top 20
1954	45.5	54.4	64.5
1958	49.3	59.9	71.0
1963	50.1	62.0	74.3
1967	51.1	64.8	77.7

In response to part (b) of this question, the 1972 Census data will be available in about 6 months and we will then endeavor to develop our trend data further. Trade estimates are of course available from several sources. However, they are not always consistent and do not permit overall conclusions, although we do use them on a case by case basis in individual areas.

On the basis of the information available to us through the enforcement policy reporting system, we do not believe that sharply increased local concentration, where it has occurred, has resulted generally from mergers. The Bureau of Competition is engaged at this time with the Bureau of Economics in an endeavor to determine those local markets which might merit a detailed investigation. This process involves balancing out market size, rate of increase in concentration, whether the increase came in the Top 4 or Top 8 and why, economies of sale in store size and in advertising, barriers to entry, and other factors.

In direct response to parts (c) and (d) of this question, the Commission's enforcement policy program on mergers has undoubtedly had some effect upon local concentration, but it has not reversed the trend to the extent that it has for national concentration.

Question 17. Between 1960 and 1969, the FTC published 11 economic reports related to the food industries. Since 1969, it has published only one. Is there any reason for the reduced number of economic reports related to food? Has this reduction been compensated for by publications about other areas?

Response 17. There are a number of reasons why the food industries received a great deal of attention in FTC economic reports during the 1960's and have received less emphasis recently. First, the food studies of the 1960's were in part an effort to evaluate dramatic changes in food manufacturing and distribution that had occurred since World War II. Before the war, the food industry had consisted mainly of the distribution of staple products through neighborhood stores. After the war, products became more complex, with processed foods, con-

[1] Eleven new local market areas were added in the 1967 data. For these 11 markets, Top 4 concentration averaged 53.5%, Top 8 67.5%, and Top 20 81.0%. These 11 new areas increased concentration in all categories. Without them, the slight increase in concentration noted for the 1957–1963 period probably continued relatively unchanged in the 1963–1967 period.

venience products, and frozen foods assuming a major role. Also, supermarkets became the major factor in distribution, largely replacing neighborhood stores. These changes were accompanied by mergers and the growth of vertical integration among food firms. Thus, the studies of the 1960's were an effort to evaluate competitive conditions in the "new" food industry which had emerged in the postwar period.

Second, the FTC was asked to provide research support for the National Commission on Food Marketing. Two of the FTC's major economic reports, *The Structure and Competitive Behavior of Food Retailing* (1966) and *The Structure of Food Manufacturing* (1966) were prepared under contract for the Food Commission. The extensive work done by the FTC for the Food Commission also resulted in a certain "spin-off" of data and ideas that could be used in other economic reports. Reports on the baking industry (1967), food chain selling practices in D.C. and San Francisco (1969) and discount food pricing in Washington, D.C. (1971) were facilitated by work done previously on the Food Commission studies.

Since 1969 there has been less emphasis on food in our study program. This reflects the fact that changes in the food industries since the mid-1960's have been far less dramatic than those which took place earlier. Thus, the basic studies done by the FTC and by the Food Commission still provide a reasonably accurate picture of structure and competitive conditions.

The existence of competitive problems in other sectors of the economy means that we cannot continue to devote as large a proportion of our study resources to food as during the 1960's. Since 1970, a substantial proportion of those resources has been devoted to major concentrated industries (e.g. automobiles, drugs, electrical machinery, and the energy sector). There are long-term studies which should result in significant publications in the future.

As resources permit, and competitive changes occur, the FTC will continue to study the food industries. Recently, the staff of the Bureau of Economics completed an *Economic Report on the Dairy Industry* which will be published shortly. Research is also underway in the Bureau on changes in the market positions and diversification patterns of leading food chains. Such work will continue in the future but probably not on the scale of the mid-1960's.

Question 18. We understand from your testimony that the Business Advisory Council has recommended that the Quarterly Financial Report be transferred from the FTC to the Bureau of the Census if the FTC obtains line of business data. Could you provide for us a list of food industry representatives on the Business Advisory Council?

Response 18. Attached is a copy of a letterhead, which lists the membership of the Business Advisory Council. The only member who appears to have a direct affiliation with a food industry is Robert H. North, Executive Vice President of the International Association of Ice Cream Manufacturers. As the letterhead indicates, members of the Council are appointed by six national business organizations. The membership changes from time to time and additional members affiliated with food industries might be appointed in the future. When the Business Advisory Council meets to review a proposed FTC report form, representatives from a wide variety of firms may attend. As an example, a list of participants at an October 5, 1972, panel meeting is attached. At this particular meeting the only attendee directly affiliated with a food industry was Thomas A. Daly of the National Soft Drink Assn. Other meetings on matters of particular interest to food companies would probably attract a larger representation of food executives. It should be noted that in this day of highly diversified companies it is not always possible to classify companies into "food" and "non-food" categories. A company like IT&T, for example, has a food subsidiary (Continental Baking) even though the bulk of its activities are in other areas.

Question 19. Food advertising—The National Commission on Food Marketing, in its 1966 Final Report stated that it was unable to study the competitive effect of advertising discounts and advertising rate variations granted to food advertisers by the media. It recommended, therefore: ". . . it would be appropriate for the Federal Trade Commission to investigate advertising rates for the purpose of examining discounts, other variations in charges, their justifications, and rate-making methods."

(*a*) Has any study of this subject been made by the FTC, and if so, what conclusions have been reached, and what actions initiated?

(*b*) If no such study has been initiated to date, does the FTC consider that one would be of value? What priority should such a study be given?

Response 19. Although the Commission has under consideration matters concerning media advertising rates and discounts in various contexts, no comprehensive study with respect to food advertising rates and discounts has been undertaken.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C.

Certification.—I certify that these Minutes are correct:

DAVID T. HULETT.
Statistical Policy Division, Office of Management and Budget.

MINUTES

Meeting.—BACFR Panel on the Federal Trade Commission's Quarterly Financial Report for Corporations.

Date and time.—Thursday, October 5, 1972, at 9:30 a.m.

Place.—Conference Room 2010, New Executive Office Building, Washington, D.C.

Presiding officer.—David T. Hulett.

Present from industry

John H. Aiken, Federal Statistics Users' Conference; R. H. Alleman, International Telephone & Telegraph Co.; Lewis E. Boroughs, Burlington Industries, Inc.; Dale S. Bowen, American Institute of CPA's; James E. Bryan, Standard Oil (Indiana); Marjorie V. Campbell, Manufacturing Chemists Association; and Thomas A. Daly, National Soft Drink Association.

A. D'Antonio, Texaco, Inc.; B. H. Dittig, Standard Oil (Ohio); Paul S. Dresser, Gulf Oil Corp.; James G. Ellis, Motor Vehicle Manufacturers Association; G. J. Fenerty, SCM Corp. and Financial Executives Institute; E. L. Foster, Jr., The Anaconda Co.; Dennis Frank, Federated Department Stores; W. S. Gardner, U.S. Steel Corp.; and Frank J. Genet, American Can Co.

Charles C. Hornbostel, Financial Executives Institute; Paul R. Huard, National Association of Manufacturers; Robert G. Jones, Procter & Gamble Co.; Thomas F. Krauter, IT&T and Nat'l Electrical Manufacturers Association; Richard R. MacNabb, Machinery & Allied Products Institutes; David J. Mahrer, Aluminum Company of America; and G. L. Meyer, Business Equipment Manufacturers Association.

R. J. Miller, Aluminum Company of America; R. G. Moore, Jr., General Electric Co.; Robert B. Murray, Eastman Kodak Co.; Brice O'Brien, American Mining Congress; E. G. O'Neill, Standard Oil Co. (New Jersey); Clayton T. Piercy, General Motors Corp.; and Walter L. Powell, General Electric Co.

Stanley A. Ratzlaff, Atlantic Richfield Co.; R. E. Robbins, National Cash Register Co.; Leonard C. Rose, Chrysler Corp.; S. S. Rutherford, Jr., Sun Oil Co.; Mary Sandt, American Iron and Steel Institute; J. A. Sciarrino, Financial Executives Institute; Michael D. Sherman, Pharmaceutical Manufacturers Association; and Howard L. Siers, E. I. duPont de Nemours & Co., Inc.

N. B. Stevenson, Standard Oil Co. of California; Charles Stewart, Machinery & Allied Products Institute; R. H. Stewart, American Petroleum Institute; St. Clair J. Tweedie, American Textile Manufacturers Institute; L. G. Weeks, Armco Steel Corp.; Joseph D. Womack, Burlington Industries, Inc.; John F. Wood, Aerospace Industries Assn. of America; Eugene H. Wurster, Mobil Oil Corp.; and Michael Zagorac, National Assn. of Chain Drug Stores.

Business advisory council on Federal reports.—David M. March.

Present from Government

John J. Carey, Office of Management and Budget; Murray D. Dessel, Office of Management and Budget; Norman Frumkin, Department of Commerce, SESA; John A. Gorman, Department of Commerce, BEA; Maynard Guss, Department of Commerce, BEA; James T. Halverson, Federal Trade Commission; David T. Hulett, Office of Management and Budget; Henry H. Key, Federal Trade Commission; Richard Keyser, Securities and Exchange Commission; and Charles H. Koch, Federal Trade Commission.

William Levin, Federal Trade Commission; David C. Lund, Price Commission; Michael Mann, Federal Trade Commission; Charles L. Marks, Federal Trade Commission; Robert Menke, Securities and Exchange Commission; Robert Parker, Department of Commerce, BEA; Russell C. Parker, Federal Trade Commission; Davil W. Penn, Federal Trade Commission; Robert W. Raynsford, Office of Management and Budget; and Mary K. Ryan, Price Commission.

Eleanor J. Stockwell, Federal Reserve Board; Frank A. Szumilo, Department of Commerce, BEA; Stephen Taylor, Federal Reserve Board; Robert G. Wilson, Internal Revenue Service; John T. Woodward, Department of Commerce, BEA; Aluminum Company of America; American Retail Federation; The Anaconda Co.; Armco Steel Corp.; and Atlantic Richfield Co.

Buffalo Forge Co.; Carrier Corp.; Cities Service Co.; Corporate Accountability Research Group; Dow Chemical U.S.A.; Dresser Industries, Inc.; E. I. Du Pont de Nemours & Co.; Exxon Corp.; Federated Department Stores, Inc.; and Financial Executives Institute.

FMC Corp.; General Mills, Inc.; Harsco Corp.; Inland Steel Co.; International Telephone & Telegraph Corp.; Kraftco Corp.; Machinery & Allied Products Institute; 3M Co.; Mobil Oil Corp.; and Motor Vehicle Manufacturers Association.

Senator Gaylord Nelson; Otis Elevator Co.; Phillips Petroleum Co.; PPG Industries, Inc.; Robertshaw Controls Co.; The Sherwin-Williams Co.; Shipbuilders Council of America; The Signal Cos.; and Standard Oil Co. (Indiana).

The Standard Oil Co. (Ohio); Stewart-Warner Corp.; Studebaker Worthington Corp.; Sybron Corp.; Texaco Inc.; The Timken Co.; Union Oil Company of California; United States Steel Corp.; and Westinghouse Electric Corp.

1—Monopoly Overcharge Study

Request 1.—On page 93 of the transcript, Chairman Rodino requests a copy of the Bureau of Economics staff report on Monopoly Over-charge.

Response. Recognizing its responsibility to provide Congress with information the Commission is making available to the Subcommittee a copy of the Monopoly Over-charge study which is attached (Exhibit A); however, the Commission strongly urges that this document be kept strictly confidential.

This report is an internal working paper prepared by the Commission's Bureau of Economics and the Office of Policy Planning and Evaluation as a pilot study which was designed to be used solely by the Commission to assist it in its planning efforts. As such, the Commission considers ths staff report confidential and would not make it public. In addition, this is a highly technical report based on imprecise data which if quoted out of context could easily be misunderstood and misconstrued. We also believe that other general caveats must be emphasized. The tentative observations of the staff study are highly speculative and theoretical. In particular, it is in no way appropriate to conclude from this material that any or all of the indicated consumer savings could actually be attained in any given industry, and it is certainly inappropriate to conclude from this report that the antitrust laws have been violated in the case of any particular industry. Far more precise and detailed inquiry would be necessary to reach any conclusions on either of these points. The Bureau of Economics has stated it is not at all confident that the rankings among the 100 industries studied would be the same if the quality of the data were improved. For the above reasons we request that the Subcommittee preserve the confidentiality of this document.

A—Study

[The Federal Trade Commission has requested that this study be kept confidential.]

2—FTC—Justice Liaison

Request 2.—On page 145 of the transcript Mr. Mezvinsky requests an outline of the antitrust jurisdictions of the Federal Trade Commission and Department of Justice and a description of how they intermesh.

Response.—Congress, by design, conceived a dual enforcement of the antitrust laws by the Commission and the Department of Justice. Congress found the Sherman Act (which is enforced by the Department of Justice and not by the Federal Trade Commission), inadequate to meet the growing problems of trade restraints due to the restricted interpretation of the Act by the courts up to 1914. The Congress, therefore, enacted the Federal Trade Commission Act to reach practices injurious to the maintenance of free competition, both in situations which meet Sherman Act requirements and in those which cannot be reached by the Sherman Act. Moreover, Congress, in enacting the Clayton Act, made the Department of Justice and the Federal Trade Commission, both responsible for

the enforcement of Sections 2, 3, 7 and 8. These sections prohibit, respectively, price discrimination, exclusive dealing, acquisitions and mergers likely to have an adverse effect on competition and interlocking directorates.

The dual enforcement system is not duplicative, and there are several differences between the basic statutory responsibilities of the Commission and those of the Department of Justice. The Sherman Act prohibits contracts, combinations and conspiracies in restraint of trade. On the other hand, the Federal Trade Commission Act prohibits unfair methods of competition in commerce. As interpreted by the Supreme Court, the Federal Trade Commission Act gives the Commission jurisdiction to declare, as illegal, not only a practice which when full blown would violate the Sherman Act or Clayton Act, but also incipient violations. This power of the Commission was specifically recognized in *Federal Trade Commission* v. *Motion Picture Service Co.*, 344 U.S. 392 (1953). At pages 394 and 395 of the opinion the Supreme Court stated:

"It is . . . clear that the Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act . . . to stop in thier incipiency acts and practices which, when full blown, would violate those Acts. . . . as well as to condemn as 'unfair methods of competition' existing violations of them."

In sum, every violation of the Sherman Act also violates the Federal Trade Commission Act; but not every violation of the Federal Trade Commission Act necessarily violates the Sherman Act. Although Congress has conferred upon the Federal Trade Commission a unique and broad authority supplementing the Sherman Act, the Commission does not have authority to bring criminal actions. Such authority rests exclusively with the Department of Justice.

To carry out their dual enforcement responsibility representatives of the Commission and the Antitrust Division of the Department of Justice have conferred periodically since 1938 on the subject of liaison and coordination. A notification plan originated in 1936, was reduced to writing in 1948 and has been supplemented by practical working experience. Both agencies have designated liaison officers to coordinate enforcement efforts.

The written liaison agreement (Exhibit B) established a systematic mutual exchange of information regarding pending antitrust investigations and new investigations at the time they are initiated. Essentially, the agreement provides that each agency will make duplicate cards, exchange the cards between the liaison offices and maintain a file on such exchange cards in each office. The information to be shown on cards includes the following for each pending investigation: the file number, the title, specification of product or products involved and a statement of the charges involved.

Before an investigation is initiated, one of the duplicate cards is sent to the other agency. Information is conveyed back as to whether or not any matter is pending in the other agency concerning the specific party or parties, commodity and charges. Should there be no matter pending, the submitting agency can proceed without further liaison. If, on the other hand, a matter is pending, further liaison is effected before a new investigation is undertaken. If agreement is not reached at the liaison office level, the arrangement provides for the matter to be taken, if necessary, to the Assistant Attorney General for the Antitrust Division and the Chairman of the Federal Trade Commission.

The exchange of information involves not only initial investigations but also Advisory Opinions, Business Review Requests, investigations to determine compliance with outstanding cease and desist orders or decrees. To the extent permitted by existing law, investigative files of one agency are fully available to the other.

Nothing in the arrangements limits either agency in making its own decision as to which investigations it will undertake. The undertaking of a broad-scale study of an economic field by either agency does not preclude the other agency either from utilizing information gathered by the investigating agency or from initiating a specific investigation or prosecution within the same general economic field or industry.

When a matter is before the Commission and the Commission determines prior to issuance of a complaint that the facts warrant possible criminal action, the Commission, by written notice informs the Antitrust Division and makes the files available to the Antitrust Division for its determination as to whether it intends to present the matter to a grand jury. Such determination is made by the Antitrust Division within thirty days. If the Division intends to present the matter to a grand jury, the Commission's files are transferred to the Division for such purpose. On the other hand, if the Antitrust Division informs the Com-

mission in writing that it does not intend to present the matter for grand jury action, the Commission proceeds under its administrative enforcement procedures.

Unlike the Department of Justice, the Commission is not restricted to proceeding on a case-by-case basis against particular companies. It can issue statements of enforcement policy and industry guides and promulgate trade regulation rules in appropriate circumstances. It also can hold fact finding hearings.

In determining which agency is better suited to enforcement of the antitrust laws in given situations, the Commission uses the criteria mentioned above and also considers the following factors: prior proceedings against a firm or industry, the statute involved, the effect of administrative proceedings compared with federal court proceedings manpower, remedies available, the appropriateness of possible criminal action, and those instances where the Commission would not have jurisdiction under Section 5 (of a Sherman Act type violation) because of the necessity of establishing that the activities are "in commerce."

Thus, an industry, or a portion of it may be under investigation or prosecution by both agencies, but with respect to differing practices. For example, the Commission investigated and ultimately obtained a number of final orders in the dairy industry concerning mergers and acquisitions. During that period of time, the Antitrust Division initiated investigations and ultimately filed a number of criminal actions against price fixing activities by certain dairies. Similarly, the Commission has investigated and issued complaints with respect to mergers and acquisitions in the bread industry, and the Antitrust Division has filed a number of criminal actions involving price fixing activities by certain baking firms. Still another example is the cement industry. The Commission, over many years has investigated and litigated a number of merger cases in this industry, which culminated in a Statement of Merger Enforcement Policy for the Cement Industry. At the same time, the Antitrust Division actively prosecuted the price fixing practices of certain producers of cement and ready-mix concrete.

There is, of course, an inherent possibility for overlap between the two agencies as both have responsibility for enforcing the Clayton Act and each also enforces trade, regulation laws phrased in broad and general terms. The concurrent jurisdiction of the two agencies however, was not a legislative aberration, but was the means Congress deliberately chose to provide effective enforcement of the antitrust laws.

The Congress, in enacting the antitrust laws, did not require or provide for any coordination effort or liaison arrangement. The two agencies, recognizing that their concurrent enforcement authority involved the potential for duplication and overlapping efforts, with attendant waste of enforcement resources and inconvenience to the business community, coordinated their work through the thorough, detailed and effective liaison arrangement described above.

It has been and is now the joint policy of the Federal Trade Commission and the Antitrust Division of the Department of Justice to avoid duplication of law enforcement proceedings where the two agencies have concurrent jurisdiction. As a result of the liaison arrangement, there are daily contacts between the two agencies whereby each is kept fully informed of the activities of the other.

When an investigation is proposed, the initiating agency advises the other agency of its proposed purpose and scope, including the probable changes. The initiating agency is advised whether there is a basis for conflict, i.e., pending investigation, litigation, etc. As to the general character of the efforts of each agency, it is recognized that the initiating agency's intention to conduct an investigation may be based upon the receipt of complaints concerning a particular practice, the development of its information internally from previous experience or contemporary study of business and economic conditions and an evaluation of its resources.

In conclusion, the following is a summary of the substantive jurisdiction of the two agencies:

1. Both agencies have jurisdiction over price fixing, boycotts, and other collusive actions in restraint of trade.

2. The FTC has sole jurisdiction over potential or incipient restraints.

3. Both agencies have jurisdiction over price discrimination (Clayton Act, Section 2 as amended by the Robinson Patman Act), although the Antitrust Division has instituted no proceedings involving only price discrimination.

4. Both agencies can proceed against exclusive dealing and tying arrangements (Clayton Act, Section 3).

5. Both agencies have jurisdiction over Interlocking Directorates (Clayton Act, Section 8).

6. Both agencies have jurisdiction over mergers and acquisitions (Clayton Act, Section 7).

The two agencies, through their liaison procedures, use the best procedure available in individual matters to insure that the public interest is fully served. Except where criminal prosecution is preferable, the agencies do not, as a general procedure, check back to determine what action has been taken with respect to matters which have been cleared for investigation. In all instances in which the Federal Trade Commission has transferred a matter to the Antitrust Division for criminal action, the Commission is advised by the Antitrust Division whether the matter will be presented to a grand jury. With respect to noncriminal cases, a copy of each complaint is automatically forwarded to the other agency. With respect to investigations, in which formal action has not been taken, the liaison arrangement requires a full exchange of information and evidence between the agencies, freely and promptly, and each informs the other of the scope, substance and disposition of proposed or pending investigations whenever any question between the agencies arises. In the main the arrangement has served the pubic well in view of our respective statutory mandates.

B—Liaison Arrangements

Memorandum for the Commission—June 30, 1948

Re Proposed liaison arrangements with the Antitrust Division of the Department of Justice.

Reference is made to Commission minute of June 11, 1948, authorizing and directing the undersigned to attend a conference, which was held in the office of the Assistant Attorney General in charge of the Antitrust Division on June 21, 1948, concerning liaison relations between the Commission and the Department of Justice, with particular reference to investigations involving farm equipment manufacturers and the National Paper Trade Association, and to present his suggestions, as set forth in his memorandum of June 8, 1948, with reference to liaison arrangements between the Commission and the Department of Justice.

The authorized conference was held on June 21. Those in attendance included Hon. Herbert A. Bergson, Assistant Attorney General in Charge of the Antitrust Division, Holmes Baldridge, Chief of the Litigation Section, Antitrust Division, Edward P. Hodges, Chief of the Complaint Section, Antitrust Division, L. Garland Kendrick, Assistant Chief Examiner, and the undersigned. During the course of the conference an agreement was reached providing for the establishment of a systematic, mutual exchange of information regarding pending antimonopoly investigations and of each new investigation at the time it is directed. The exchange of information thus agreed upon would include the file number, the title, specification of product or products involved, and statement of charges. The proposal provides that all information concerning Federal Trade Commission investigations exchanged would be transmitted from the office of Assistant Chief Examiner L. Garland Kendrick to the office of Mr. Edward P. Hodges, Chief of the Complaint Section of the Antitrust Division, and that information concerning Department of Justice antitrust investigations would be transmitted from the office of Mr. Hodges to the office of Mr. Kendrick. Information thus exchanged would be designated confidential. Its use would be limited to the promotion of liaison and coordination of effort of the two agencies in their antimonopoly work.

Following the conference in Mr. Bergson's office, the undersigned, Mr. Kendrick and Mr. Hodges discussed and worked out details concerning the exchange of information by the two agencies. An agreement on those details was reached, as shown by the attached memorandum prepared by Mr. Kendrick.

Upon receipt of a card disclosing information that a new investigation has been directed by either agency, information is to be conveyed back by telephone from the recipient of the card, as to whether or not any matter is pending in his agency concerning the specific party or parties, commodity, and charges. Should there be no matter pending in the opposite agency, investigation of the submitting agency can proceed without further liaison. If, on the other hand a matter is pending, further liaison is to be effected before the new investigation is undertaken. However, nothing herein contained shall in any way limit either agency in making an independent decision as to what investigation it will undertake.

The representatives of the two agencies have signified their agreement to the details of this arrangement by signing this memorandum.

EVERETTE MACINTYRE,
Assistant Chief Trial Counsel.
L. GARLAND KENDRICK,
Assistant Chief Examiner for the Federal Trade Commission.
EDWARD P. HODGES,
Chief of Complaint Section of the Antitrust Division, Department of Justice.

3—SUPERMARKET CONCENTRATION

Request 3. On page 149, Mr. Mezvinsky asked if the FTC had any data more recent that 1963 on supermarket concentration in various metropolitan areas.

Response. Attached as Exhibit C is a table representing the 1967 concentration ratios in 218 standard metropolitan statistical areas.

C—TABLE

[Exhibit C was submitted with previous material and is in app. 2, at p. 437.]

4—DAIRY INDUSTRY STUDY

Request 4. On page 155, Mr. Falso requested a description of the Bureau of Economics follow-up on the 1966 dairy industry study.

Response. While the Bureau of Economics did a follow-up investigation of the structure and performance of the fluid milk industry in six major cities: New York, Chicago, Washington, Baltimore, Dallas, Denver, and Portland (Oregon), covering January 1965 to October 1966, the variations among the markets was so great that the Bureau of Economics determined no general conclusions could be drawn. Therefore, no study was recommended for publication by the Commission.

In addition, attached as Exhibit D is a copy of the Commission's enforcement policy on dairy mergers, including a copy of the June 29, 1973, press release announcing the enforcement policy.

D—DAIRY MERGER POLICY

FEDERAL TRADE COMMISSION NEWS, WASHINGTON, D.C.

FTC ANNOUNCES ENFORCEMENT POLICY ON DAIRY MERGERS

The Federal Trade Commission today announced an enforcement policy with respect to mergers in the dairy industry, to guard against concentration-increasing acquisitions.

The Commission noted that anticompetitive merger activity by the four largest national dairies during the 1950's was stopped during the last decade by FTC orders.

"Following the expiration of these orders, beginning in 1972, the threat of renewed merger activity ruinous to competition in the dairy industry is again a possibility," the Commission said. "Indeed, several large dairies, not under Commission orders, and ranking just below the top four companies, have been using mergers to expand their market shares."

The major focus of the FTC's enforcement policy will be on fluid milk company acquisitions by large dairies that, by themselves or in combination with the acquired company, process more than 1 billion pounds of Class I milk annually. Investigations will be made when a milk acquisition involves:

Any processing plant, distribution facility, or route (except those serving retail home delivery exclusively) within a 150-mile radius of existing plants or distribution facilities of the acquiring company, unless prior approval of the Commission has been granted.

Any processing company or plant within a radius of between 150 and 500 miles of existing plants or distribution facilities of the acquiring company, and which in any of the three previous years processed more than 26 million pounds of Class I milk annually (approximately 40,000 quarts a day or $2.5 million annual sales), unless prior Commission approval has been granted.

Any dairy plant beyond a 500-mile radius of existing plants or distribution facilities of the acquiring company and which in any of the three previous years processed more than 26 million pounds of Class I milk, upon detrmination of

possible anti-competitive effects due to an evaluation of the following: (a) the size and market position of the acquired company or plant; (b) the distance separating the acquired company's marketing area from the acquiring company's; (c) concentration and entry conditions into the acquired company's markets; and (d) the overall size and the local and regional market positions held by the acquiring company.

Any company that processes 300 million pounds of Class I milk annually.

Different standards will be used in assessing acquisitions involving companies with combined annual processing of less than 1 billion pounds of Class I milk. Where such acquisitions involve major regional companies acquiring dairy companies ranking in the top four in adjacent markets, they will be investigated as a possible threat to competition. Other acquisitions within the dairy industry will be investigated only when they exceed the U.S. Department of Justice *Merger Guidelines* of May 30, 1968. The determination for investigation in such latter cases will be based upon a sliding scale of market shares held by the firms. For example, where four-firm concentration is 75% or more in any market, a merger likely will be challenged if the acquiring and acquired firms each has a 4% market share. In contrast, a market acquisition of only 1% will probably draw a challenge if the acquiring company already accounts for 25%.

For acquisitions involving dairy products other than fluid milk, the *Federal Trade Commission Enforcement Policy with Respect to Product Extension Mergers in Grocery Products Manufacturing*, announced on May 15, 1968, will apply unless a company is bound by an FTC order that implies a stronger prohibition.

These enforcement criteria are not to be construed as an expression of the views of the Commission or any individual Commissioner on the legality of any particular merger or acquisition. Also, they are in no way to be considered applicable to acquisitions by companies under outstanding Commission orders requiring prior FTC approval of acquisitions.

The Commission also pointed out that "new developments in the dairy industry may cause it to change the enforcement policy as the competitive effects of the new developments become apparent."

The full text of the enforcement policy is available upon request to the Federal Trade Commission, Washington, D.C. 20580.

Commissioner Everette MacIntyre abstained as to this action.

[From the Federal Register, vol. 38, No. 127—July 3, 1973]

NOTICES

FEDERAL TRADE COMMISSION

ENFORCEMENT POLICY WITH RESPECT TO MERGERS IN DAIRY INDUSTRY

Criteria for Assessing Future Mergers

The merger activity of the four largest national dairies, which during the 1950's was creating high local concentration and consolidating it into high regional and national concentration through leading firm market extension mergers, was stopped during the last decade by FTC orders. The firms acquired in this movement were often middle-tier dairies whose size permitted them to expand internally most easily into new markets and to offer the greatest potential competition to the largest national dairies.

Following the expiration of these orders, beginning in 1972, the threat of renewed merger activity ruinous to competition in the dairy industry is again a possibility. Indeed, several large dairies not under Commission orders, and ranking just below the top four companies, have been using mergers to expand their market shares. Although the motivating force is a desire to increase sales, the reason large firms prefer making horizontal and market extension mergers rather than expanding internally is that the purchase of additional maket shares through acquisition of established firms reduces the risk that competitive bidding for additional sales will cause price reductions and lower profits to all.

The same is true of geographic expansion into concentrated markets. Obtaining a significant position in such a market, other than by acquisition of a major established firm, is likely to intensify price competition due to price reactions of other processors unwilling to have their market shares eroded by a new entrant. A merger would not disturb the price structure and would be preferred by both the buyer and seller of the established market position. A resumption of leading firm market extension mergers would again threaten the preservation of a strong middle-tier of independent dairies. The preservation of this tier of

viable independent companies is as essential to the competitive health of the dairy industry today as it was when the Commission cited it in its finding in Beatrice Foods Co., FTC Docket No. 6653.

Concentration has remained high in local and regional markets despite the deconcentrating effects of improvements in transportation equipment and the completion of interstate highways linking together previously separate local markets. These deconcenstrating forces have been offset by the disappearance of hundreds of very small high-cost processors, other processors serving the rapidly declining retail home delivery channel of distribution, and by the continuation of high barriers to new plant entry caused by the difficulty in obtaining distribution outlets, moderate scale requirements, and no growth in industry demand.

The only new plant entry has been by food chains vertically integrating into processing. A food chain with sufficiently large local or regional sales can overcome entry barriers because of its assured market for the output of a plant. The continued growth of food chains and their success in achieving consumer acceptance for private label milk has caused vertical integration into processing to increase sharply since the early 1960's. Vertical integration is the source of considerable market foreclosure to non-integrated dairies in many local markets and it may be causing smaller and new entrant food chains in some markets to face a cost disadvantage. Although the threat of food chain integration appears to have had a significant price effect, particularly through the wholesale and retail pricing of private label milk, the actual integration of food chains into processing has not been associated with further intensifications of price competition.

In view of the above facts which indicate a need for continuing to guard against concentration-increasing mergers, the Commission should make abundantly clear, insofar as possible, its future enforcement policy in the dairy industry. In doing so, the Commission wants it to be known that new developments in the dairy industry may cause it to change the enforcement policy as the competitive effects of the new developments become apparent.

Major criteria for assessing future fluid milk product industry mergers. The Commission has adopted the following enforcement criteria for initiating investigations of acquisitions which raise significant questions of law or policy under section 7 of the Clayton Act, as amended by the Celler-Kefauver Act. These criteria are in no way to be considered applicable to acquisitions by companies under outstanding Commission orders requiring prior approval of the Commission with respect to acquisitions.

1. The Commission will focus particular attention on fluid milk company mergers and acquisitions by large dairy companies processing more than one billion pounds [1] of Class I milk annually (or when combined with an acquired company processing that amount). Investigations will be made when the acquired entity as believed to fall within any of the following categories:

(a) Any fluid milk processing plant, distribution facility, or route (except those serving retail home delivery exclusively) within a 150-mile radius of existing plants or distribution facilities of the acquiring company, unless prior approval of the Commission has been granted.[2]

(b) Any fluid milk processing company or plant located within a radius of between 150 and 500 miles of existing plants or distribution facilities of the acquiring company, and which in any of the three years prior to acquisition processed more than 26 million pounds of Class I milk annually (approximately 40,000 quarts a day or $2.5 million annual sales), unless prior Commission approval has been granted.[3]

(c) Any dairy plant located beyond a 500-mile radius of existing plants or distribution facilities of the requiring company and which in any of the three years prior to acquisition processed more than 26 million pounds [1] of Class I milk, upon determination of possible anti-competitive effect due to an evaluation of the following: (1) The size and market position(s) of the acquired company or plant; (ii) the distance the acquired company's marketing area is separate

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[1] Home delivery sales and processing not done in the United States should not be included when computing sales volumes and market shares herein.

[2] Reference to prior approval in this statement should not be interpreted to mean that companies must request Commission approval prior to the consummation of any merger or acquisition. However, the Commission shall continue to provide advisory opinions, as provided by its Rules of Practice, regarding the legality of particular mergers, and invites those contemplating mergers to avail themselves of this program in any situation where there is uncertainty as to the legality of a prospective merger.

[3] U.S. Department of Justice, Merger Guidelines, May 30, 1968 (mimeograph).

from the marketing area of the acquiring company; (iii) concentration and entry conditions into the acquired company's markets; and (iv) the overall size and the local and regional market positions held by the acquiring company.

(d) Any company that processes 300 million pounds [1] of Class I milk annually.

2. Acquisitions involving companies with combined annual processing of less than 1 billion pounds of Class I milk generally pose less of a threat to competition except, insofar as they involve the acquisitions by major regional companies of dairy companies ranking in the top 4 in adjacent markets. Mergers which involve such leading firms may pose a threat and will be investigated as will other mergers which exceed the guidelines established by the Department of Justice.[3] The Justice Department's guidelines specify that horizontal mergers or acquisitions will likely be challenged where four-firm concentration is 75 percent or more in any market and the acquiring and acquired firms hold the following market shares: [1]

Acquiring firms	*Acquired firms*
4%	4% or more
10%	2% or more
15%	1% or more

If the four-firm concentration is less than 75 percent, the guidelines indicate challenging mergers with these market shares:

Acquiring firms	*Acquired firms*
5%	5% or more
10%	4% or more
15%	3% or more
20%	2% or more
25%	1% or more

3. For acquisitions involving dairy products other than fluid milk, the Federal Trade Commission Enforcement Policy with Respect to Product Extension Mergers in Grocery Products Manufacturing, announced on May 15, 1968, will apply unless a company is bound by an FTC order that implies a stronger prohibition.

The above enforcement criteria are not to be construed as an expression of the views of the Commission or any individual Commissioner on the legality of any particular merger or acquisition. Rather, the Commission has chosen quantifiable standards to describe concisely those mergers and acquisitions in the dairy industry which merit special attention.

Pre-merger notification. In order to carry out the above enforcement policy in a fair and expeditious manner, the Commission will require that any company processing more than 300 million pounds [1] of Class I milk annually, or when combined with an acquired company processes that amount, notify and provide special reports to the Commission at least 60 days prior [4] to making any acquisition having the following characteristics:

1. A fluid milk processing plant, distribution facility, or route (except those serving retail home delivery exclusively) located within a 500-mile radius of an existing plant or distribution facility of such company.

2. A dairy company which in any of the three years prior to acquisition made annual fluid milk sales in excess of $2.5 million [1] or a processing plant which processed 26 million pounds [1] or more of Class I milk.

(38 Stat. 721; 15 U.S.C. 40)

By Direction of the Commission, dated June 19, 1973.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc. 73-13657 Filed 7-2-73; 9:52 am]

5—CAPPER-VOLSTEAD

Request 5. On page 160, Mr. Falco asked if Capper-Volstead Associations are exempt from the application of the antitrust laws?

Response. The following is a review of the purpose of the legislation, the exempting provisions and the important court decisions interpreting the Capper-Volstead Act.

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[4] If the time schedule of the acquisition or merger does not permit notification 60 days prior to consummation, the notification and special report should be submitted as promptly as possible.

LEGISLATIVE PURPOSE

Following the passage in 1890 of the Sherman Act (15 U.S.C. § 1 *et seq.*), fear was expressed by farm groups that the Act might be interpreted so that farmers organized into marketing cooperatives would be viewed as combinations "in restraint of trade". The Sherman Act was specifically directed to all combinations in restraint of trade and a combination of individual farmers into one association might well have been considered to be within the purview of the Act. Further, unfavorable state court decisions did nothing to allay these fears. Therefore, the desire to preserve the family farm and the need for off-setting the weakness of the individual farmer confronted with greater bargaining power in the markets where he bought and sold induced Congress and various state legislatures to approve and encourage the formation of associations of farmers for the purpose of collectively marketing their products.

In carrying out this objective, Congress enacted a series of statutory provisions favoring agricultural cooperatives. These provisions grant such cooperatives some exemption from the full scope of antitrust coverage but neither the language of the provisions nor the legislative histories surrounding their adoption are completely unequivocal as to the extent of the immunity being conferred.

The first exemption provision was the inclusion of Section 6 in the Clayton Act of 1914 (15 U.S.C. § 17), which declares that the antitrust laws do not forbid the "existence and operation" of nonprofit agricultural organizations without capital stock, nor do they forbid such organizations and their members from "lawfully carrying out the legitimate objectives thereof." It further declares that such organizations are not to be held illegal combinations or conspiracies in restraint of trade. Section 6 ostensibly assured agricultural organizations of the right to exist without violating the antitrust laws. But the language of that section was quite general and referred only to non-stock organizations. It was generally believed that it did not completely and effectively assure farmers of the right to form marketing cooperatives.

The Clayton Act treatment of agricultural cooperatives was subsequently broadened by enactment in 1922 of the Capper-Volstead Act (7 U.S.C. § 291–2) to include cooperatives with capital stock. It also specified activities in which either the stock or non-stock type of organization may engage. Farmers, planters, ranchmen, diarymen, and nut or fruit growers are authorized by Section 1 of the Act to combine in associations to collectively (1) process, (2) prepare for market, (3) handle, and (4) market in interstate and foreign commerce the products of their members. Such associations may employ common marketing agencies and "may make the necessary contracts and agreements" to carry out the enumerated activities. While the Capper-Volstead Act reaffirmed the right of farmers to associate, it does not embrace all agricultural cooperatives but only those engaged in marketing agricultural products. Section 2 of the Capper-Volstead Act imposes upon the Secretary of Agriculture the duty of instituting proceedings against an agricultural cooperative if the Secretary "shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof."

No association is required to meet the terms of the Act. That is entirely optional. However, in order to gain the immunities conferred by the Act it is necessary for an association to comply with its terms as enumerated in Section 1 thereof, as the statute has application only to associations that meet its conditions.

The legislative histories of the two acts are not completely unequivocal as to the extent of the immunity being conferred. However, case law has settled that question and has established that it is a limited, rather than a broad exemption. See *Maryland and Virginia Milk Producers Assn., Inc* v. *United States*, 362 U.S. 458 (1950).

THE COOPERATIVE EXEMPTION

There are limited decisional precedents dealing with the scope of the antitrust immunity of agricultural cooperatives. A brief review of the decisions of the United States Supreme Court involving farmer cooperative activities under the antitrust laws follows.

United States v. *Borden Co.*, 308 U.S. 188 (1939). In the first case to reach it, the Supreme Court was confronted with an alleged conspiracy among milk distributors, labor unions, an agricultural cooperative association, municipal officials and others to fix non-competiitve prices for milk in the Chicago area and to control and limit the supply of milk moving into that area. Upon demurrer to the indictment by the agricultural cooperative the District Court dismissed

it. The Court held that Capper-Volstead removes from the Sherman Act those organizations, cooperative in nature, which came within the purview of Capper-Volstead. The Court also held that by virtue of Section 2 of Capper-Volstead, primary jurisdiction was vested in the Secretary of Agriculture, observing, "Until the Secretary of Agriculture acts, the judicial power cannot be invoked." 28 F. Supp. 177, 183, 184 (N.D. Ill. 1939).

The Supreme Court unanimously declared itself unable to accept those views. It stated that it could not find in the Capper-Volstead Act "an intention to declare immunity for the combinations and conspiracies charged in the present indictment." The Court observed that Section 2 of Capper-Volstead contains no provision giving immunity from the Sherman Act in the absence of a proceeding by the Secretary of Agriculture:

"We think that the procedure under Section 2 of the Capper-Volstead Act is auxiliary, and was intended merely as a qualification of the authorization given to cooperative agricultural producers under Section 1, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary in monopolization or unduly enhanced prices, he may intervene and seek to control the action thus taken under Section 1.

Further, the Supreme Court ruled in *Borden*, that a farmer cooperative organized pursuant to Section 1 of the Capper-Volstead Act, may not act in concert with non-exempt or non-qualified persons and seek to avail itself of any protection afforded by the Act. The *Borden* case, proscribed only the conspiracy between the qualified cooperative and non-qualified ("outside") persons in violation of Section 1 of the Sherman Act. Yet *Borden* remained, until 1960, the only direct consideration of the Capper-Volstead Act by the United States Supreme Court.

United States v. *Maryland and Virginia Milk Producers Assn., Inc.*, 362 U.S. 458 (1960), constitutes the most important decision yet rendered concerning the antitrust status of agricultural cooperatives. In that case the Court had before it cross-appeals from District Court rulings (167 F. Supp. 45; 167 F. Supp. 799) that the defendant was exempt from prosecution under Section 2 of the Sherman Act, but susceptible to and guilty of violation of Section 3 of the Sherman Act and of Section 7 of the Clayton Act. The defendant cooperatvie, enjoying control of 80% to 85% of the milk produced for the Washington, D.C. metropolitan area, entered into an agreement with and subsequently purchased one of the market's largest distributing milk businesses which had not theretofore been one of its customers and which enjoyed a substantial share of the government purchases in the area. There were thus presented the questions of whether the agricultural cooperative had monopolized or attempted to monopolize in violation of Section 2 of the Sherman Act; had through contracts combined and conspired with the acquired milk distributor to restrain trade in violation of Section 3; and through the acquisition had violated Section 7 of the Clayton Act.

1. *Monopolization and Combinations.*—As the District Court dismissed the Section 2 charge that aspect of the case came before the Supreme Court upon the charges of the complaint and the statements of particulars. The complaint charged a wide variety of coercive, predatory, exclusionary price fixing and discriminatory practices on the part of the defendant cooperative. In that posture of the case the Supreme Court assumed, for the purpose of its decision, the truth of such averments.

The defendants association argued before the Supreme Court that Section 2 of the Capper-Volstead Act vested primary jurisdiction in the Secretary of Agriculture and thereby excluded prosecutions under the Sherman Act and, further Section 1 of the Act and Section 6 of the Clayton Act "demonstrate a purpose wholly to exempt agricultural associations from the antitrust laws." The Court observed that in the *Borden* case it had unequivocally rejected the contention and that it adhered to the views expressed in Borden.

The Supreme Court's decision in the *Maryland and Virginia Milk Producers* case holds that agricultural cooperatives are not immune from a charge of monopolizing or attempting to monopolize. Based on the question of whether, given the strongest possible set of assumed facts reflecting predatory and anti-competitive practices, the court found that a cooperative occupying a substantial share of the market in a locality could be found to have violated Section 2. The Department of Justice, which had filed the case, however, had carefully followed the distinction between the simple acquisition of monopoly through normal and proper membership activity and the acquisition of monopoly through anti-competitive and predatory practices.

2. *Acquisition of the Assets of a Competitor.*—This charge was based on a claimed violation of Section 7 of the Clayton Act. The trial court held that an incorporated agricultural cooperative is a corporation "subject to the jurisdiction of the Federal Trade Commission" and that the acquisition of the assets of a non-agricultural corporation had the effect of substantially lessening competition. The cooperative contended that it was immunized by the Capper-Volstead Act from prosecution under the anti-merger statute, that acquisitions by cooperatives are within the primary jurisdiction of the Secretary of Agriculture, and that the challenged acquisition had been approved by the Secretary of Agriculture. All of these contentions were rejected by the trial court.

On appeal, the Supreme Court sustained the District Court on this aspect of the case. The Court rejected the Association's contention that the transaction was exempt because the Secretary of Agriculture had approved the acquisition, pointing out that there was no statutory provision vesting authority in the Secretary to approve the merger.

Insofar as Section 7 of the Clayton Act is concerned, it has been suggested that the *Maryland and Virginia Milk Producers* opinion has a limited scope. One key question has been answered, however: Capper-Volstead cooperatives are subject to the provisions of Section 7 of the Clayton Act in those instances where they acquire the stock or assets of corporations which are not themselves qualified under Capper-Volstead.

Apart from this there remain a number of questions concerning the application of Section 7 to transactions involving agricultural cooperatives.

One question is whether the same rules apply in determining the application of Section 7 to a qualified cooperative which apply to an ordinary business corporation. It appears probable that a qualified association, because of the language of Section 1 of the Capper-Volstead Act regarding the making of "the necessary contracts and agreements" to process, handle and market its members' products, may have more freedom in the acquisition of assets than an ordinary business corporation.

A second question is whether mergers between competing cooperatives violate Section 7. The Supreme Court in *Maryland and Virginia* held "that the privilege Capper-Volstead grants producers to conduct their affairs collectively does not include a privilege to combine with competitors." This statement in the opinion then carries the footnote, "See *United States* v. *Maryland Cooperative Milk Producers, Inc.*, 145 F. Supp. 151." In the latter case the court held that it was not a violation of Sections 1 and 3 of the Sherman Act for two unincorporated qualified cooperatives to fix prices. The court there stated that cooperatives were free to do so "provided that no other person that is not such an organization or a member of such a group is a part of the combination. In view of the facts involved in *Maryland and Virginia*, the context in which the quoted language appears and the citation, it would appear that the court had reference to combining with non-cooperative competitors. If not, the statement of the court is dictum as no combination of cooperatives was involved in *Maryland and Virginia*.

Sunkist Growers, Inc. v. *Winckler & Smith Citrus Products Co.*, 284 F.2d 1 (9th Cir. 1960) *reversed on other grounds* 370 U.S. 19 (1962), is a decision on the antitrust status of agricultural cooperatives. This was a treble damage suit charging two agricultural cooperatives with conspiracy to restrain and monopolize interstate commerce in citrus fruits and with actual monopolization thereof in violation of Sections 1 and 2 of the Sherman Act. The court held that three cooperatives being made up of the same growers and association, cannot be charged with conspiracy among themselves. The Supreme Court pointed out that under Section 6 of the Clayton Act and the Capper-Volstead Act the 12,000 California-Arizona citrus growers ultimately involved could join together into one organization for the collective processing and marketing of their fruit and fruit products without being held combinations or conspiracies.

Case-Swayne Company, Inc. v. *Sunkist Growers, Inc.*, 389 U.S. 384 (1967), was a private treble damage action for alleged violations of Sections 1 and 2 of the Sherman Act. The Supreme Court decided that Sunkist Growers was not entitled to assert the Capper-Volstead Act as a defense to the suit based on Section 1 of the Sherman Act. No decision was reached as to the ultimate merits of the suit.

The Supreme Court held that the Capper-Volstead antitrust exemption of "persons engaged in the production of agricultural products" did not apply to the California organization which was composed of 80% growers, 5% corpo-

rate growers having their own packing houses, and 15% private corporations and partnerships owning and operating packing houses for profit, whose relationship to growers was defined not by a cooperative agreement but a cost-plus-fixed-fee marketing contract.

There is a lack of decisional law dealing squarely with the question of whether an agricultural cooperative may legally obtain a monopoly status. It is only the legality of the means used to achieve monopoly status or to exploit monopoly power that is being questioned in the principal cases. However, the view had been expressed that the enjoyment of a monopoly by an agricultural cooperative is not illegal in itself.

The Supreme Court in *United States* v. *du Pont & Co.*, 351 U.S. 377, 388 (1956), observed:

"It is true that Congress had made exceptions to the generality of monopoly prohibitions, exceptions, that spring from the necessities or conveniences of certain industries or business organizations, or from the characteristics of the members of certain groups of citizens,"

citing a number of statutes, including the Capper-Volstead Act. The Attorney General's Committee to Study the Antitrust Laws (1955), concluded:

"Thus, where cooperatives attempt to or actually obtain monopoly power by means not sanctioned by Section 1 of Capper-Volstead, the Sherman Act should apply even though the monopolized product's price is not unduly enhanced.

"This would allow a cooperative to acquire or retain monopoly power solely by the lawful means of attracting voluntary membership sufficient to obtain market control. But * * * it would proscribe attempts to monopolize or actual monopolitization apart from any undue enhancement of price, by conduct not sanctioned by Section 1 of Capper-Volstead." (p. 311).

There is support in logic for the conclusion of Judge Wyzanski, *Cape Cod Food Products* v. *National Cranberry Association*, 119 F. Supp. 900, 907 (D. Mass. 1954), that it would not be in violation of the antitrust laws for an agricultural cooperative to acquire "even a 100 percent position in a market if it does it solely through these steps which involve cooperative purchasing and cooperative selling." Congress in enacting legislation encouraging the growth of cooperatives and enumerating a battery of permissible activities, including the right to have marketing agencies in common and the apparent right to federate seemingly has sanctioned the fulfillment of the ultimate purpose of cooperatives. If a cooperative is to perform its function for its members it must strive for significant market power. The inclusion of Section 2 of the Capper-Volstead Act, which gives the Secretary of Agriculture authority to proceed if he shall have reason to believe that a cooperative monopolizes or restrains interstate trade to the extent that the price of an agricultural product is unduly enhanced, suggests that the Congress visualized this as a legal possibility and adopted a means of affording protection to the public from price exploitation.

From the foregoing it is clear that an agricultural cooperative enjoys no general or complete immunity under the antitrust laws. The exact scope of the cooperative exemption has not been fully delineated. This must await further judicial elucidation. However, on the basis of the decisions by the Supreme Court, certain conclusions can be made as to the antitrust status of agricultural cooperatives.

Farmers are permitted to join together in cooperatives, and such cooperatives into federations for the purpose of processing or marketing their products. Further, short of formal consolidation or federation, two or more coperatives may market their members' products through a marketing agent in common. In short and generally speaking, individual farmers collectively comprising agricultural cooperatives which act as entities are givn the same unified competitive advantage—and responisbility—available to businessmen acting through corporations as entities.

The exemption related primarily to the formation of cooperatives. Farmer cooperatives are not something above and beyond the rules of the business world in which they help their members compete. The restraints on the competitive activities of ordinary business corporations are of generally equal application against the cooperative. The cooperative, in other words, must also be a fair competitor.

The agricultural cooperative is fully accountable under the antitrust laws if it combines or conspires with a non-qualified cooperative to fix prices, limit production or to otherwise restrain trade. An agricultural cooperative acting alone and as an entity may not engage in predatory or anticompetitive practices in the

area in which it competes. An agricultural cooperative acquiring the stock or assets of a non-qualified corporation is subject to the formal prohibitions of Section 7 of the Clayton Act generally to the same extent as an ordinary business corporation which acquires or merges with a business corporation. However, there is some question as to mergers among cooperatives under Section 7 of the Clayton Act, unless they occur in a context indicating a predatory or anticompetitive purpose.

It would appear that it is not illegal for an agricultural cooperative to attain a 100% monopoly in the distribution of the products dealt with by the cooperative if that position was not attained or maintained through the use of predatory or anticompetitive practices or by means of the acquisition of an ordinary business corporation previously competing with it.

If the dominant or monopoly position were attained, and is maintained, without resort to predatory or anticompetitive practices, but through natural growth or the voluntary affiliation with or attraction of new members, no illegality would attach. Our interpretation is that if the monopoly position results from the use of predatory or anticompetitive practices, an antitrust action will lie irrespecive of the nature of the prices charged. If a monopoly position is attained and maintained by proper trade means no such action lies. In the latter event, if undue enhancement of price occurs, it becomes the sole responsibility of the Secretary of Agriculture to proceed pursuant to the authority and responsibility assigned to him by Section 2 of the Capper-Volstead Act. That, under the theory of Capper-Volstead, was the safeguard the Congress intended to provide to protect the public from possible price exploitation by legally formed aggregates of cooperative marketing power.

6—Supreme Court Decisions

Request 6. On page 167 Mr. Dennis requested the citations to and copies of the Supreme Court decisions referred to in Mr. Halverson's statement.

Response. Attached as exhibit E is a copy of the *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (1965) and as exhibit F a copy of *Federal Trade Commission* v. *Fred Meyer, Inc.*, 390 U.S. 341 (1968).

E–Von's Grocery

United States *v.* Von's Grocery Co. et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 303. Argued March 22, 1966.—Decided May 31, 1966

The United States charged that the acquisition in 1960 by Von's Grocery Company of Shopping Bag Food Stores, a competitor in the retail grocery market in the Los Angeles area, violated § 7 of the Clayton Act. After a hearing the District Court concluded that there was "not a reasonable probability" that the merger would tend "substantially to lessen competition" or "create a monopoly" in violation of § 7 and entered judgment for the appellees. *Held:* The merger of two of the largest and most successful retail grocery companies in a market area characterized by a steady decline, before and after the merger, in the number of small grocery companies, combined with significant absorption of small firms by larger ones, is a violation of § 7 of the Clayton Act. Pp. 274–279.

(*a*) By the enactment of the Celler-Kefauver amendment to § 7 in 1950 Congress sought to preserve competition among small businesses by halting a trend toward concentration in its incipiency and thus the courts must be alert to protect competition against increasing concentration through mergers especially where concentration is gaining momentum in the market. Pp. 276–277.

(*b*) This case presents the precise situation which Congress intended to prescribe, where two powerful companies merge to become more powerful in a market exhibiting a marked trend toward concentration. Pp. 277–278.

(*c*) Section 7 requires not only an appraisal of the immediate impact of the merger on competition but a prediction of the merger's effect on competitive conditions in the future, to prevent the destruction of competition. *United States* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 362. P. 278.

(*d*) Since the appellees were on notice of the antitrust charge, the judgment is reversed and the District Court is directed to order divestiture without delay. P. 279.

33 F. Supp. 976; reversed.

Richard A. Posner argued the cause for the United States. With him on the brief were *Solicitor General Marshall, Assistant Attorney General Turner, Robert B. Hummel, James J. Coyle* and *John F. Hughes.*

William W. Alsup argued the cause for appellees. With him on the brief were *Warren M. Christopher* and *William W. Vaughn.*

Henry J. Bison, Jr., argued the cause and filed a brief for the National Association of Retail Grocers of the United States, as *amicus curiae*, urging affirmance.

Mr. JUSTICE BLACK delivered the opinion of the Court.

On March 25, 1960, the United States brought this action charging that the acquisition by Von's Grocery Company of its direct competitor Shopping Bag Food Stores, both large retail grocery companies in Los Angeles, California, violated § 7 of the Clayton Act which, as amended in 1950 by the Celler-Kefauver Anti-Merger Act, provides in relevant part: "That no corporation engaged in commerce . . . shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." [1]

On March 28, 1960, three days later, the District Court refused to grant the Government's motion for a temporary restraining order and immediately Von's took over all of Shopping Bag's capital stock and assets including 36 grocery stores in the Los Angeles area. After hearing evidence on both sides, the District Court made findings of fact and concluded as a matter of law that there was "not a reasonable probability" that the merger would tend "substantially to lessen competition" or "create a monopoly" in violation of § 7. For this reason the District Court entered judgment for the defendants. 233 F. Supp. 976, 985. The Government appealed directly to this Court as authorized by § 2 of the Expediting Act.[2] The sole question here is whether the District Court properly concluded on the facts before it that the Government had failed to prove a violation of § 7.

The record shows the following facts relevant to our decision. The market involved here is the retail grocery market in the Los Angeles area. In 1958 Von's retail sales ranked third in the area and Shopping Bag's ranked sixth. In 1960 their sales together were 7.5% of the total two and one-half billion dollars of retail groceries sold in the Los Angeles market each year. For many years before the merger both companies had enjoyed great success as rapidly growing companies. From 1948 to 1958 the number of Von's stores in the Los Angeles area practically doubled from 14 to 27, while at the same time the number of Shopping Bag's stores jumped from 15 to 34. During that same decade, Von's sales increased fourfold and its share of the market almost doubled while Shopping Bag's sales multiplied seven times and its share of the market tripled. The merger of these two highly successful, expanding and aggressive competitors created the second largest grocery chain in Los Angeles with sales of almost $172,488,000 annually. In addition the findings of the District Court show that the number of owners operating single stores in the Los Angeles retail grocery market decreased from 5,365 in 1950 to 3,818 in 1961. By 1963, three years after the merger, the number of single-store owners had dropped still further to 3,590.[3] During roughly the same period, from 1953 to 1962, the number of chains with two or more grocery stores increased from 96 to 150. While the grocery business was being concentrated into the hands of fewer and fewer owners, the small companies were continually being absorbed by the larger firms through mergers. According to an exhibit prepared by one of the Government's expert witnesses, in the period from 1949 to 1958 nine of the top 20 chains acquired 126 stores from their smaller

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[1] 38 Stat. 731, as amended by 64 Stat. 1125, 15 U.S.C. § 18 (1964 ed.).

[2] 32 Stat. 823, as amended by 62 Stat. 989, 15 U.S.C. § 29 (1964 ed.).

[3] Despite this steadfast concentration of the Los Angeles grocery business into fewer and fewer hands, the District Court, in Finding of Fact No. 80, concluded as follows:

"There has been no increase in concentration in the retail grocery business in the Los Angeles Metropolitan Area either in the last decade or since the merger. On the contrary, economic concentration has decreased. . . ."

This conclusion is completely contradicted by Finding No. 23 which makes plain the steady decline in the number of individual grocery store owners referred to above. It is thus apparent that the District Court, in finding No. 80, used the term "concentration" in some sense other than a total decrease in the number of separate competitors which is the crucial point here.

competitors.[4] Figures of a principal defense witness, set out below, illustrate the many acquisitions and mergers in the Los Angeles grocery industry from 1954 through 1961 including acquisitions made by Food Giant, Alpha Beta, Fox, and Mayfair, all among the 10 leading chains in the area.[5] Moreover, a table prepared by the Federal Trade Commission appearing in the Government's reply brief, but not a part of the record here, shows that acquisitions and mergers in the Los Angeles retail grocery market have continued at a rapid rate since the merger.[6] These facts alone are enough to cause us to conclude contrary to the District Court that the Von's-Shopping Bag merger did violate § 7. Accordingly, we reverse.

From this country's beginning there has been an abiding and widespread fear of the evils which flow from monopoly—that is the concentration of economic power in the hands of a few. On the basis of this fear, Congress in 1890, when many of the Nation's industries were already concentrated into what it deemed too few hands, passed the Sherman Act in an attempt to prevent further concentration and to preserve competition among a large number of sellers. Several years later, in 1897, this Court emphasized this policy of the Sherman Act by calling attention to the tendency of powerful business combinations to restrain competition "by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves in their altered surroundings." *United States* v. *Trans-Missouri Freight Assn.*, 166 U.S. 290, 323.[7] The Sherman Act failed to protect the smaller businessmen from elimination through the monopolistic pressures of large combinations which used mergers to grow ever more powerful. As a result in 1914 Congress, viewing mergers as a continuous, pervasive threat to small business, passed § 7 of the Clayton Act which prohibited corporations under most circumstances from merging by purchasing the stock of their competitors. Ingenious businessmen, however, soon found a way to avoid § 7 and corporations began to merge simply by purchasing their rivals' assets. This Court in 1926, over the dissent of Justice Brandeis, joined by Chief Justice Taft and Justices Holmes and Stone approved this device for avoiding § 7[8] and mergers continued to concentrate economic power into fewer and fewer hands until 1950 when Congress passed the Celler-Kefauver Anti-Merger Act now before us.

Like the Sherman Act in 1890 and the Clayton Act in 1914, the basic purpose of the 1950 Celler-Kefauver Act was to prevent economic concentration in the American economy by keeping a large number of small competitors in business.[9] In stating the purposes of their bill, both of its sponsors, Representative Celler and Senator Kefauver, emphasized their fear, widely shared by other members of Congress, that this concentration was rapidly driving the small businessman out of the market.[10] The period from 1940 to 1947, which was at the center of

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[4] Appellees, in their brief, claim that 120 and not 126 stores changed hands in these acquisitions:

"It should be noted here that the exhibit is in error in showing an acquisition by Food Giant *from itself* of six stores doing an annual volume of $31,700,000. Actually this was simply a change of name by Food Giant. . . ."

[5] These figures as they appear in a table in the Brief for the United States show acquisitions of retail grocery stores in the Los Angeles area from 1954 to 1961: See Appendix, Table 1, substantially reproducing the above-mentioned table.

[6] See Appendix, Table 2.

[7] Later, in 1945, Judge Learned Hand, reviewing the policy of the antitrust laws and other laws designed to foster small business, said, "Throughout the history of these statutes it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other." *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 429.

[8] *Thatcher Manufacturing Co.* v. *Federal Trade Commission*, 272 U.S. 554, 560.

[9] See, *e.g.*, *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 362–363; *United States* v. *Alcoa*, 377 U.S. 271, 280.

[10] Representative Celler, in introducing the bill on the House floor, remarked:

"Small, independent, decentralized business of the kind that built up our country, of the kind that made our country great, first, is fast disappearing, and, second, is being made dependent upon monster concentration." 95 Cong. Rec. 11496.

Senator Kefauver expressed the same fear on the Senate floor:

"I think that we are approaching a point where a fundamental decision must be made in regard to this problem of economic concentration. Shall we permit the economy of the country to gravitate into the hands of a few corporations . . . ? Or on the other hand are we going to preserve small business, local operations, and free enterprise?" 96 Cong. Rec. 16450.

References to a number of other similar remarks by other Congressmen are collected in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 316, n. 28.

attention throughout the hearings and debates on the Celler-Kefauver bill, had been characterized by a series of mergers between large corporations and their smaller competitors resulting in the steady erosion of the small independent business in our economy.[11] As we said in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 315, "The dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy." To arrest this "rising tide" toward concentration into too few hands and to halt the gradual demise of the small businessman, Congress decided to clamp down with vigor on mergers. It both revitalized § 7 of the Clayton Act by "plugging its loophole" and broadened its scope so as not only to prohibit mergers between competitors, the effect of which "may be substantially to lessen competition, or to tend to create a monopoly" but to prohibit all mergers having that effect. By using these terms in § 7 which look not merely to the actual present effect of a merger but instead to its effect upon future competition. Congress sought to preserve competition among many small businesses by arresting a trend toward concentration in its incipiency before that trend developed to the point that a market was left in the grip of a few big companies. Thus, where concentration is gaining momentum in a market, we must be alert to carry out Congress' intent to protect competition against ever-increasing concentration through mergers.[12]

The facts of this case present exactly the threatening trend toward concentration which Congress wanted to halt. The number of small grocery companies in the Los Angeles retail grocery market had been declining rapidly before the merger and continued to decline rapidly afterwards. This rapid decline in the number of grocery store owners moved hand in hand with a large number of significant absorptions of the small companies by the larger ones. In the midst of this steadfast trend toward concentration, Von's and Shopping Bag, two of the most successful nad largest companies in the area, jointly owning 66 grocery stores merged to become the second largest chain in Los Angeles. This merger cannot be defended on the ground that one of the companies was about to fail or that the two had to merge to save themselves from destruction by some larger and more powerful competitor.[13] What we have on the contrary is simply the case of two already powerful companies merging in a way which makes them even more powerful than they were before. If ever such a merger would not violate § 7, certainly it does when it takes place in a market characterized by a long and continuous trend toward fewer and fewer owner-competitors which is exactly the sort of trend which Congress, with power to do so, declared must be arrested.

Appellees' primary argument is that the merger between Von's and Shopping Bag is not prohibited by § 7 because the Los Angeles grocery market was competitive before the merger, has been since, and may continue to be in the future. Even so, § 7 "requires not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future; this is what is meant when it is said that the amended § 7 was intended to arrest anticompetitive tendencies in their 'incipiency.'" *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 362. It is enough for us that Congress feared that a market marked at the same by both a continuous decline in the number of small businesses and a large number of mergers would slowly but inevitably gravitate from a market of many small competitors to one dominated by one or a few giants, and competition would thereby be destroyed. Congress passed the Celler-Kefauver Act to prevent such a destruction of competition. Our cases since the passage of that Act have faithfully endeavored to enforce this congressional command.[14] We adhere to them now.

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[11] H.R. Rep. No. 1191, 81st Cong., 1st Sess., p. 3, described this characteristic of the merger movement as follows:

". . . the outstanding characteristic of the merger movement has been that of large corporations buying out small companies, rather than smaller companies combining together in order to compete more effectively with their larger rivals. More than 70 percent of the total number of firms acquired during 1940–47 have been absorbed by larger corporations with assets of over $5,000,000. In contrast, fully 93 percent of all the firms bought out held assets of less than $1,000,000. Some 33 of the Nation's 200 largest industrial corporations have bought out an average of 5 companies each, and 13 have purchased more than 10 concerns each."

[12] See, *e.g.*, *Brown Shoe Co.* v. *United States*, 370 U.S., at 346; *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. at 362. See also *United States* v. *du Pont & Co.*, 353 U.S. 586, 597, interpreting § 7 before the Celler-Kefauver Anti-Merger amendment.

[13] See *Brown Shoe Co.* v. *United States*, 370 U.S., at 319.

[14] See, *e.g.*, *Brown Shoe Co.* v. *United States*, 370 U.S. 294; *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321; *United States* v. *El Paso Gas Co.*, 376 U.S. 651; *United States* v. *Alcoa*, 377 U.S. 271; *United States* v. *Continental Can Co.*, 378 U.S. 441; *FTC* v. *Consolidated Foods*, 380 U.S. 592.

Here again as in *United States* v. *El Paso Gas Co.*, 376 U.S. 651, 662, since appellees "have been on notice of the antitrust charge from almost the beginning . . . we not only reverse the judgment below but direct the District Court to order divestiture without delay." See also *United States* v. *du Pont & Co.*, 366 U.S. 316; *United States* v. *Alcoa*, 377 U.S. 271, 281.

Reversed and remanded.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

APPENDIX TO OPINION OF THE COURT

TABLE 1.—FOOD STORE ACQUISITIONS IN THE LOS ANGELES METROPOLITAN AREA 1954-61

Year	Acquiring firm	Acquired firm	Number of stores acquired
1957	Piper Mart	Bi-Right & Big Bear	3
1958	Mayfair	Bob's Supermarket	7
1961	Better Foods	Border's Markets	3
1954	Kery's Markets	Carty Brothers	8
1958	Food Giant	Clark Markets	10
1956	Fox	Desert Fair	4
1959	Lucky	Hiram's	6
1958	Fox	Iowa Pork Shops	11
1961	Food Giant (and others)	McDaniel's Markets	16
1957	Food Giant	Panorama Markets	3
1958	Pix	Patten's Mkts	3
1958	Alpha Beta	Raisin Markets	13
1960	Piggly Wiggly	Rankins Markets	4
1959	Pix	S & K Markets	2
1960	Von's	Shopping Bag	37
1959	Pix	Shop Right Markets	3
1958	Yor-Way	C. S. Smith	5
1957	Food Giant	Toluca Marts	2
1957	Mayfair	U-Tell-Em Markets	10
Total			150

TABLE 2.—FOOD STORE ACQUISITIONS IN THE LOS ANGELES METROPOLITAN AREA 1961-64 [1]

Year	Acquiring company	Acquired company (or stores)			Type of acquisition	
		Name	Number of stores	Sales (thousands) [2]	Horizontal	Other
1961	Acme Markets	Alpha Beta Food Markets	45	$79,042		X
	Boys Markets	Korys Markets	5	10,000	X	
	Food Giant Markets	McDaniels Markets	9	21,500	X [3]	
	Mayfair Markets	Yorway Markets	1	1,500	X	
		Alpha Beta Food Markets	1	1,700	X	
1962	Mayfair Markets	Schaubs Market	1	1,800	X	
		Fox Markets	1	2,200	X	
	Ralph's Grocery Co	Imperial Supreme Markets	1	916	X	
1963	Food Fair Stores	Fox Markets	22	44,419		X
	Kroger	Market Basket	53	110,860		X
	Mayfair Markets	Bi Rite Markets	1	2,569	X	
		Dales Food Market	1	2,200	X	
		Food Giant Markets	1	1,700	X	
1964	Albertson's, Inc	Greater All American	14	30,308		X
	Mayfair Markets	Gateway Market	4	8,000	X	
		Pattons Markets	4	10,400	X	
	Ralph's Grocery Co	Cracker Barrel Supermarket	1	1,000	X	
	Food Giant Markets	McDaniels Markets	7	18,350	X	
	Total horizontal mergers		38	83,835		
	Total market extension mergers		134	264,629		

[1] Consists of Los Angeles and Orange Counties. (1953 census defined the Los Angeles metropolitan area as Los Angeles County only.)

[2] In most cases, sales are for the 12-month period prior to acquisition.

[3] According to a statement made by Von's counsel at oral argument, this acquisition did not take place in 1961, but instead Food Giant bought 7 of McDaniel's stores in 1964. The acquisition in 1964 is listed in this table.

MR. JUSTICE WHITE, concurring.

As I read the Court's opinion, which I join, it does not hold that in any industry exhibiting a decided trend towards concentration, any merger between

competing firms violates § 7 unless saved by the failing company doctrine; nor does it declare illegal each and every merger in such an industry where the resulting firm has as much as a 7.5% share of the relevant market. But here, in 1958 before the merger, the largest firm had 8% of the sales, Von's was third with 4.7% and Shopping Bag was sixth with 4.2%. The four largest firms had 24.4% of the market, the top eight had 40.9% and the top 12 had 48.8% as compared with 25.9%, 33.7% and 38.8% in 1948. All but two of the top 10 firms in 1958 were very probably also among the top 10 in 1948 or had acquired a firm that was among the top 10. Further, all but three of the top 10 had increased their market share between 1948 and 1958 and those which gained, gained more than the three lost. Also, although three companies declined in market share their total sales increased in substantial amounts.

Given a trend towards fewer and fewer sellers which promises to continue, it is clear to me that where the eight leading firms have over 40% of the market, any merger between the leaders or between one of them and a lesser company is vulnerable under § 7, absent some special proof to the contrary. Here Von's acquired Shopping Bag. Both were among the eight largest companies, both had grown substantially since 1948 and they were substantial competitors. After the merger the four largest firms had 28.8%, the eight largest had 44% and the 12 largest had 50%. The merger not only disposed of a substantial competitor but increased the concentration in the leading firms In my view the Government sufficiently proved that the effect of this merger may be substantially to lessen competition or to tend to create a monopoly.

MR. JUSTICE STEWART, with whom MR. JUSTICE HARLAN joins, dissenting.

We first gave consideration to the 1950 amendment of § 7 of the Clayton Act *in Brown Shoe Co.* v. *United States*, 370 U.S. 294. The thorough opinion THE CHIEF JUSTICE wrote for the Court in that case made two things plain: First, the standards of § 7 require that every corporate acquisition be judged in the light of the contemporary economic context of its industry.[1] Second, the purpose of § 7 is to protect competition, not to protect competitors, and every § 7 case must be decided in the light of that clear statutory purpose.[2] Today the Court turns its back on these two basic principles and on all the decisions that have followed them.

The Court makes no effort to appraise the competitive effects of this acquisition in terms of the contemporary economy of the retail food industry in the Los Angeles area.[3] Instead, through a simple exercise in sums, it finds that the market has decreased over the years, and, apparently on the theory that the degree of competition is invariably proportional to the number of competitors, it holds that this historic reduction in the number of competing units is enough under § 7 to invalidate a merger within the market, with no need to examine the economic concentration of the market, the level of competition in the market, or the potential adverse effect of the merger on that competition. This starling *per se* rule is contrary not only to our previous decisions, but contrary to the language of § 7, contrary to the legislative history of the 1950 amendment, and contrary to economic reality.

Under § 7, as amended, a merger can be invalidated if, and only if, "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." No question is raised here as to the tendency of the present merger to create a monopoly. Our sole concern is with the question whether the effect of the merger may be substantially to lessen competition.

The principal danger against which the 1950 amendment was addressed was the erosion of competition through the cumulative centripetal effect of acquisitions by large corporations, none of which by itself might be sufficient

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[1] "[A] merger had to be functionally viewed, in the context of its particular industry." *Brown Shoe Co.* v. *United States*, 370 U.S., at 321–322. "[B]oth the Federal Trade Commission and the courts have, in the light of Congress' expressed intent, recognized the relevance and importance of economic data that places any given merger under consideration within an industry framework almost inevitably unique in every case." *Id.*, at 322, n. 38.

[2] "Taken as a whole, the legislative history illuminates congressional concern with protection of *competition*, not *competitors*, and its desire to restrain mergers only to the extent that such combinations may tend to lessen competition." *Brown Shoe Co.* v. *United States*, *supra*, at 320.

[3] This is the first case to reach the Court under the 1950 amendment to § 7 that involves a merger between firms engaged solely in retail food distribution. Kaysen & Turner, Antitrust Policy 40 (1959), have discussed this industry in the following terms: "As a guess, we can say that the most important distributive trades, especially the food trades, are structurally unconcentrated in the metropolitan areas. . . . [T]he significance of structural oligopoly in terms of policy is far different in [these trades] than in manufacturing and mining. . . . [T]he traditional view that the local-market industries are essentially competitive in character is probably correct. . . ."

to constitute a violation of the Sherman Act. Congress' immediate fear was that of large corporations buying out small companies.[4] A major aspect of that fear was the perceived trend toward absentee ownership of local business.[5] Another, more generalized, congressional purpose revealed by the legislative history was to protect small businessmen and to stem the rising tide of concentration in the economy.[6] These goals, Congress thought, could be achieved by "arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency." *Brown Shoe Co.* v. *United States, supra*, at 317.

The concept of arresting restraints of trade in their "incipiency" was not an innovation of the 1950 amendment. The notion of incipiency was part of the report on the original Clayton Act by the Senate Committee on the Judiciary in 1914, and it was reiterated in the Senate report in 1950.[7] That notion was not left undefined.

The legislative history leaves no doubt that the applicable standard for measuring the substantiality of the effect of a merger on competition was that of a "reasonable probability" of lessening competition.[8] The standard was thus more stringent than that of a "mere possibility" on the one hand and more lenient than that of a "certainty" on the other.[9] I cannot agree that the retail grocery business in Los Angeles is in an incipient or any other stage of a

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[4] See, *e.g.*, H.R. Rep. No. 1191, 81st Cong., 1st Sess., p. 3, quoted in footnote 11 of the Court's opinion. Mention of the retail food industry is notably absent in the legislative history. Although it is clear that in addition to the already highly oligopolized industries, Congress was also concerned with trends toward concentration in industries that were still highly fragmented, this case involves not even a remote approach to the "monster concentration" of which Representative Celler spoke in introducing the 1950 amendment in the House of Representatives. 95 Cong. Rec. 11486.

[5] See, *e.g.*, Hearing before Subcommittee No. 3 of the House Committee on the Judiciary on H.R. 2734, 81st Cong., 1st Sess., p. 12 (remarks of Senator Kefauver).

[6] Much of the fuel for the congressional debates on concentration in the American economy was derived from a contemporary study by the Federal Trade Commission on corporate acquisitions between 1940 and 1947. See Report of the Federal Trade Commission on the Merger Movement: A Summary Report (1948). A critical study of the FTC report, published while the 1950 amendment was pending in Congress, concluded that the effect of the recent merger movement on concentration had been slight. Lintner & Butters, Effect of Mergers on Industrial Concentration, 1940–1947, 32 Rev. of Econ. & Statistics 30 (1950). Two economists for the Federal Trade Commission later acquiesced in that conclusion. Blair & Houghton, The Lintner-Butters Analysis of the Effect of Mergers on Industrial Concentration, 1940–1947, 33 Rev. of Econ. & Statistics 63, 67, n. 12 (1951).

[7] See S. Rep. No. 698, 63d Cong., 2d Sess., p. 1:

"Broadly stated, the bill, in its treatment of unlawful restraints and monopolies, seeks to prohibit and make unlawful certain trade practices which, as a rule, singly and in themselves, are not covered by the act of July 2, 1890 [the Sherman Act], or other existing antitrust acts, and thus, by making these practices illegal, to arrest the creation of trusts, conspiracies, and monopolies in their incipiency and before consummation."

See also S. Rep. No. 1775, 81st Cong., 2d Sess., pp. 4–5: "The intent here, as in other parts of the Clayton Act, is to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding;" *id.*, p. 6: "The concept of reasonable probability conveyed by these words ['may be'] is a necessary element in any statute which seeks to arrest restraints of trade in their incipiency and before they develop into full-fledged restraints violative of the Sherman Act."

Thus, the Senate Reports on both the original Clayton Act and the 1950 amendment carefully delineate the "incipiency" with which the provisions are concerned as that of monopolization or classical restraints of trade under the Sherman Act. The notion that "incipiency" might be expanded to refer also to a lessening of competition first appeared in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 317.

[8] The Senate Report is clear on this point:

"The use of these words ['may be substantially to lessen competition'] means that the bill, if enacted, would not apply to the mere possibility but only to the reasonable probability of the prescribed [*sic*] effect. . . . The words 'may be' have been in section 7 of the Clayton Act since 1914. The concept of reasonable probability conveyed by these words is a necessary element in any statute which seeks to arrest restraints of trade in their incipiency and before they develop into full-fledged restraints violative of the Sherman Act." S. Rep. No. 1775, 81st Cong., 2d Sess., p. 6.

See also 96 Cong. Rec. 16453 (remarks of Senator Kefauver). Cf. 51 Cong. Rec. 14463–14464 (amendment of Senator Reed).

[9] Although Congress eschewed exclusively mathematical tests for assessing the impact of a merger, it offered several generalizations indicative of the sort of merger that might be proscribed, *e.g.*: Whether the merger eliminated an enterprise that had been a substantial factor in competition; whether the increased size of the acquiring corporation threatened to give it a decisive advantage over competitors; whether an undue number of competing enterprises had been eliminated. H.R. Rep. No. 1191, 81st Cong., 1st Sess., p. 8. See *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 321, n. 36. Only the first of these generalizations is arguably applicable to the present merger; the market-extension aspects of the merger, as well as the evidence of Shopping Bag's declining profit margin and weak price competition, suggest that any conclusion under this test would be equivocal. See *infra*, pp. 295–296; 298, n. 30. Senator Kefauver stated explicitly on the Senate floor that the mere elimination of competition between the merged firms would not make the acquisition illegal; rather, "the merger would have to have the effect of lessening competition generally." 96 Cong. Rec. 16456.

trend toward a lessening of competition, or that the effective level of concentration in the industry has increased. Moreover, there is no indication that the present merger, or the trend in this industry as a whole, augurs any danger whatsoever for the small businessman. The Court has substituted bare conjecture for the statutory standard of a reasonable probability that competition may be lessened.[10]

The Court rests its conclusion on the "crucial point" that, in the 11-year period between 1950 and 1961, the number of single-store grocery firms in Los Angeles decreased 29% from 5,365 to 3,818.[11] Such a decline should, of course, be no more than a fact calling for further investigation of the competitive trend in the industry. For the Court, however, that decline is made the end, not the beginning, of the analysis. In the counting-of-heads game played today by the Court, the reduction in the number of single-store operators becomes a yard-stick for automatic disposition of cases under § 7.

I believe that even the most superficial analysis of the record makes plain the fallacy of the Court's syllogism that competition is necessarily reduced when the bare number of competitors has declined.[12] In any meaningful sense, the structure of the Los Angeles grocery market remains unthreatened by concentration. Local competition is vigorous to a fault, not only among chain stores themselves but also between chain stores and single-store operators. The continuing population explosion of the Los Angeles area, which has outrun the expansion plans of even the largest chains, offers a surfeit of business opportunity for stores of all sizes.[13] Affiliated with cooperatives that give the smallest store the buying strength of its largest competitor, new stores have taken full advantage of the remarkable ease of entry into the market. And, most important of all, the record simply cries out that the numerical decline in the number of single-store owners is the result of transcending social and technological changes that positively preclude the inference that competition has suffered because of the attrition of competitors.

Section 7 was never intended by Congress for use by the Court as a charter to roll back the supermarket revolution. Yet the court's opinion is hardly more than a requiem for the so-called "Mom and Pop" grocery stores—the bakery and butcher shops, the vegetable and fish markets—that are now economically and technologically obsolete in many parts of the country. No action by this Court can resurrect the old single-line Los Angeles food stores that have been run over by the automobile or obliterated by the freeway. The transformation of American society since the Second World War has not completely shelved these specialty stores, but it has relegated them to a much less central role in our

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[10] Eighteen years ago, a dictum in *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 46, adverted to a "reasonable possibility" as the appropriate standard for the corresponding language ("may be to substantially lessen competition") under § 3 of the Clayton Act, 15 U.S.C. § 14. The dictum provoked a sharp dissent in that case, *id.*, at 55, 57–58, and the Court subsequently withdrew it, *Standard Oil Co.* v. *United States*, 337 U.S. 293, only to reinstate it again today. This issue, which appeared settled at the time of the 1950 amendment, provoked an acrimonious exchange during the Senate hearings. Hearings before a Subcommittee of the Senate Committee on the Judiciary on H.R. 2734, 81st Cong., 1st & 2d Sess., pp. 160–168.

[11] The decline continued at approximately the same rate to 1963, the last year for which data are available, when there were 3,500 single-store grocery firms in the area. The record contains no breakdown of the figures on single-store concerns. In an extensive study of the retail grocery industry on a national scale, the Federal Trade Commission found that between 1939 and 1954 the total number of grocery stores in the United States declined by 100,000, or 28%. The entire decrease was suffered by stores with annual *gross* sales of less than $50,000. During the same period, the number of stores in all higher sales brackets increased. The Commission noted that the census figures, from which its data were taken, included an undetermined number of grocery firms liquidating after 1948 that merely closed their grocery operations and continued their remaining lines of business, such as nongrocery retailing, food wholesaling, food manufacturing, etc. Staff Report to the Federal Trade Commission, Economic Inquiry Into Food Marketing, Part I, Concentration and Integration in Retailing 48, 54 (1960).

[12] The generalized case against the Court's numerical approach is stated in Bok, Section 7 of the Clayton Act and the Merging of Law and Economics, 74 Harv. L. Rev. 226, 312, n. 261:

"[T]here are serious problems connected with the use of this yardstick. First, not every firm contributes equally to competition. In particular, there may be a fringe of firms too small to be able to affect price and production policies in the market as a whole. Alternatively, certain firms may be marginal in the sense that their costs and financial situations preclude them from having much, if any, impact on market conditions; indeed they may be able to remain in operation only because excessive profits are being earned by the stronger firms. An [exit] of companies of this sort would have much less significance than a counting of corporate heads would imply."

[13] Between 1953 and 1961, the population of the Los Angeles metropolitan area increased from 4,300,000 to 6,800,000 and the average population per grocery store increased from 695 to 1,439. Additional opportunity for new stores in the area results from the geographical division of the city into numerous suburbs, as well as from the lack of specific store loyalty among new residents.

food economy. Today's dominant enterprise in food retailing is the supermarket. Accessible to the housewife's automobile from a wide radius, it houses under a single roof the entire food requirements of the family. Only through the sort of reactionary philosophy that this Court long ago rejected in the Due Process Clause area can the Court read into the legislative history of § 7 its attempt to make the automobile stand still, to mold the food economy of today into the market pattern of another era.[14]

This is not a case in which the record is equivocal with regard to the status of competition in the industry in question. To the contrary, the record offers abundant evidence of the dramatic history of growth and prosperity of the retail food business in Los Angeles.

The District Court's finding of fact that there was no increase in market concentration before or after the merger is amply supported by the evidence if concentration is gauged by any measure other than that of a census of the number of competing units. Between 1948 and 1958, the market share of Safeway, the leading grocery chain in Los Angeles, declined from 14% to 8%. The combined market shares of the top two chains declined from 21% to 14% over the same period; for the period 1952–1958, the combined shares of the three, four, and five largest firms also declined. It is true that between 1948 and 1958, the combined shares of the top 20 firms in the market increased from 44% to 57%. The crucial fact here, however, is that seven of these top 20 firms in 1958 were not even in existence as chains in 1948. Because of the substantial turnover in the membership of the top 20 firms, the increase in market share of the top 20 as a group is hardly a reliable indicator of any tendency toward market concentration.[15]

In addition, statistics in the record for the period 1953–1962 strongly suggest that the retail grocery industry in Los Angeles is less concentrated today than it was a decade ago. During this period, the number of chain store firms in the area rose from 96 to 150, or 56%. That increase occurred overwhelmingly among chains of the very smallest size, those composed of two or three grocery stores. Between 1953 and 1962, the number of such "chains" increased from 56 to 104, or 86%. Although chains of 10 or more stores increased from 10 to 24 during the period, seven of these 24 chains were not even in existence as chains in Los Angeles in 1953.[16]

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[14] Cf. *Ferguson* v. *Skrupa*, 372 U. S. 726. In criticizing a recent decision of the Federal Trade Commission, one commentator has stated, in terms applicable *mutatis mutandis* to the Court's decision in the present case:

". . . Any child alive in the 1950's could see that a restructuring of food retailing was then going on. The business was adjusting itself, through market mechanisms that included merger, to vast and profound changes in the American way of life. There is not a word in the FTC majority opinion that relates changes in the number of stores and chains to the proliferation of suburbs, the construction of shopping centers, and the final triumph of the supermarket—an innovation in retailing that has since spread across the Western world. The most important single cause of these changes was the automobile revolution . . . which not even the FTC can stop.

". . . Plenty of living men and women remember an era when virtually all groceries were sold through very small stores none of which had 'any significant market share.' Was this era the high point of competition in food retailing? Many little towns had, in fact, only one place where a given kind of food could be bought. In a typical city neighborhood, defined by the range of a housewife's willingness to lug groceries home on foot, there might be three or four relaxed 'competitors.' If she did not like the price or quality offered by them, she could take her black-string market bag, board a trolley car, and try her luck among the relaxed 'competitors' of some other neighborhood." Ways, A New "Worst" In Antitrust, Fortune, April 1966, pp. 111–112.

In the present case, the District Court found that in the era preceding the rise of the supermarkets, "the area from which the typical store drew most of its customers was limited to a block or two in any direction and if a particular grocery store happened to be the only one in its immediate neighborhood, it had a virtual monopoly of local trade." Thus, the Court's aphorism in *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 363—that "[c]ompetition is likely to be greatest when there are many sellers, none of which has any significant market share"—is peculiarly maladroit in the historic context of the retail food industry. See also Hampe & Wittenberg, The Lifeline of America: Development of the Food Industry 313–372 (1961); Lebhar, Chain Stores in America 1859–1962, pp. 348–390 (1963).

[15] See Joskow, Structural Indicia: Rank-Shift Analysis as a Supplement to Concentration Ratios, VI Antitrust Bulletin 9 (1961). In addition, the overall market share of the top 20 firms in fact showed a slight decline between 1958 and 1960. The statement in the concurring opinion in the present case, that "All but two of the top 10 firms in 1958 were very probably also among the top 10 in 1948 or had acquired a firm that was among the top 10," is based on conjecture. The record demonstrates only that the top four firms in 1948 were among the top 10 firms in 1958; the record neither identifies the remaining six of the top 10 firms in 1948 nor charts their subsequent history.

[16] For a similar study of the retail food industry at the national level, see Lebhar, Small Chain Virility a Bar to Monopoly, Chain Store Age, Jan. 1962, p. E20. See also Gould, The Relation of Sales Growth to the Size of Multi-Store Food Retailers 6 (1966) (inverse correlation found between sales growth and size of chains with four or more stores).

Yet even these dramatic statistics do not fully reveal the dynamism and vitality of competition in the retail grocery business in Los Angeles during the period. The record shows that at various times during the period 1953–1962, no less than 269 separate chains were doing business in Los Angeles, of which 208 were two- or three-store chains. During that period, therefore, 173 new chains made their appearance in the market area, and 119 chains went out of existence as chain stores.[17] The vast majority of this market turbulence represented turnover in chains of two or three stores; 143 of the 173 new chains born during the period were chains of the size. Testimony in the record shows that, almost without exception, these new chains were the outgrowth of successful one-store operations.[18] There is no indication that comparable turmoil did not equally permeate single-store operations in the area.[19] In fashioning its *per se* rule, based on the net arithmetical decline in the number of single-store operators, the Court completely disregards the obvious procreative vigor of competition in the market as reflected in the turbulent history of entry and exit of competing small chains.

To support its conclusion the Court invokes three sets of data regarding absorption of smaller firms by merger with larger firms. In each of the acquisitions detailed in the Appendix, Tables 1 and 2 of the Court's opinion, the acquired units were grocery *chains*. Not one of these acquisitions was of a firm operating only a single store.[20] The Court cannot have it both ways. It is only among single-store operators that the decline in the unit number of competitors so heavily relied upon by the Court, has taken place. Yet the tables reproduced in the Appendix show not a trace of merger activity involving the acquisition of single-store operators. And the number of *chains* in the area has in fact shown a substantial net increase during the period, in spite of the fact that some of the chains have been absorbed by larger firms. How then can the Court rely on these acquisitions as evidence of a tendency toward market concentration in the area?

The Court's use of market-acquisition data for the period 1954–1961,[21] prepared by the Government from the work sheets of a defense witness, is also questionable for another reason. During that period, Food Giant Alpha Beta, Fox, and Mayfair were ranked 7th, 8th, 9th, and 10th, respectively, on the basis of the percentage of their sales in Los Angeles in 1958, so that the impact of their acquisitions, made in the face of competition by the top six chains, is considerably blunted. The remarkable feature disclosed by these data is that none of the top six firms in the area expanded by acquisition during the period.[22]

The Court's reliance on the fact that nine of the top 20 chains acquired 120 stores in the Los Angeles area between 1949 and 1958 does not withstand analysis in light of the complete record. Forty percent of these acquisitions, representing 48 stores with gross sales of more than $71,000,000, were made by Fox, Yor-Way, and McDaniels, which ranked 9th, 11th, and 20th, respectively, according to 1958 sales in the market. Each of these firms subsequently went into bankruptcy as a result of overexpansion, undercapitalization, or inadequate managerial experi-

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[17] Of these latter 119 chains, 66 went out of business altogether, 28 reduced their operations to a single store, and 25 were eliminated as separate competitors as a result of acquisitions by other chains.

[18] On the basis of these facts, one witness concluded:
"The apparent willingness and ability of grocers to expand and create new chain entities at the staggering rate of more than 17 a year, and the growth potential of new chains, precludes in my opinion the possibility that the retail grocery business in Los Angeles will become either monopolistic or oligopolistic in the foreseeable future. It must be remembered that in 1953, only 10 chains with as many as 10 stores each were operating in the area. These chains are recognized as being among the best managed, most successful and most aggressive supermarket operators in the country. They themselves have engaged in expansion programs of significant proportions since 1953. Yet, 10 years later, instead of having swept aside all competition and being left alone to compete among themselves, these same 10 chains are now faced with the necessity of competing against no less than 14 new chains of 10 or more stores each, a significantly greater number of smaller chains and a host of successful single store operators, of whom many are affiliated with powerful voluntary chains or other cooperative groups. . . . The growth of independents into chains and of small chains into larger ones . . . demonstrates convincingly that small concerns don't have to remain small in Los Angeles."

[19] Data for 1960, the only year for which such figures are available in the record, reveal a comparable agitation of entry and exit among operators of single stores. Although there was a net loss of 132 single-outlet stores in 1960, 128 new single-outlet stores opened during the year.

[20] As to Table 1 in the Appendix of the Court's opinion, this fact is obvious on the face of the table. As to Table 2 in the Appendix, examination of the record discloses that each of the nine acquisitions listed as involving a single store represented purchases of single stores from chains ranging in size from two to 49 stores.

[21] See Table 1 in the Appendix of the Court's opinion.

[22] Table 1 in the Appendix of the Court's opinion is somewhat misleading in that it weights the data from which it is drawn in favor of the acquisition by grocery chains of other chains consisting of relatively larger numbers of store units. The complete data of the witness included several acquisitions of one- and two-store concerns, together with the disposition of one ten-store chain to various individuals.

ence. This substantial post-acquisition demise of relatively large chains hardly comports with the Court's tacit portrayal of the inexorable march of the market toward oligopoly.

Further, the table relied on by the Court to sustain its view that acquisitions have continued in the Los Angeles area at a rapid rate in the three-year period following this merger indiscriminately lumps together horizontal and market-extension mergers.[23] Only 29 stores, representing 13 acquisitions, were acquired in horizontal mergers, and the records reveals that nine of these 29 stores were acquired in the course of dispositions in bankruptcy. Such acquisitions of failing companies, of course, are immune from the Clayton Act. *International Shoe Co.* v. *Federal Trade Commission*, 280 U.S. 291, 301–303. Thus, at a time when the number of single-store concerns was well over 3,500, horizontal mergers over a three-year period between going concerns achieved at most only the *de minimis* level of 10 acquisitions involving 20 stores. It cannot seriously be maintained that the effect of the negligible market foreclosed by these horizonal mergers may be substantially to lessen competition within the meaning of § 7. Cf. *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 329.

The great majority of the post-merger acquisitions detailed in Table 2 in the Appendix of the Court's opinion, *ante*, were of the market-extension type, involving neither the elimination of direct competitors in the Los Angeles market nor increased concentration of the market. There are substantial economic distinctions between such market-extension mergers and classical horizontal mergers.[24] What ever the wisdom or logic of the Court's assumed arithmetic proportion between the number of single-store concerns and the level of competition within the meaning of § 7 as applied to horizonal mergers, it is simply not possible to make the further assumption that the mere occurrence of market-extension mergers is adequate to prove a tendency of the local market toward decreased competition.

Moreover, contrary to the assumption on which the Court proceeds, the record establishes that the present merger itself has substantial, even predominant, market-extension overtones. The District Court found that the Von's stores were located in the southern and western portions of the Los Angeles metropolitan area, and that the Shopping Bag stores were located in the northern and eastern portions. In each of the areas in which Von's and Shopping Bag stores competed directly, there were also at least six other chain stores and several smaller stores competing for the patronage of customers. On the basis of a "housewife 10-minute driving time" test conducted for the Justice Department by a government witness, it was shown that slightly more than half of the Von's and Shopping Bag stores were not in a position to compete at all with one another in the market.[25] Even among those stores which competed at least partially with one another, the overlap in sales represented only approximately 25% of the combined sales of the two chains in the overall Los Angeles area. The present merger was thus three parts market-extension and only one part horizontal, but the Court nowhere recognizes this market-extension aspect that exists within the local market itself. The actual market share foreclosed by the elimination of Shopping Bag as an independent competitor was thus slightly less than 1% of the total grocery store sales in the area. The share of the market preempted by the present merger was therefore practically identical with the 0.77% market foreclosure accepted as "quite insubstantial" by the Court in *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 331–333.

The irony of this case is that the Court invokes its sweeping new construction of § 7 to the detriment of a merger between two relatively successful, local, largely family-owned concerns, each of which had less than 5% of the local market and neither of which had any prior history of growth by acquisition.[26] In a

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[23] See Table 2 in Appendix of the Court's opinion. This table, not a part of the record, was submitted by the Government in its reply brief, filed on the eve of oral argument.

[24] See *Foremost Dairies, Inc.*, 60 F.T.C. 944; *Beatrice Foods Co.*, F.T.C. Docket No. 6653 (April 26, 1965); *National Tea Co.*, F.T.C. Docket No. 7453 (March 4, 1966); Cf. *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158; *Procter & Gamble Co.*, F.T.C. Docket No. 6901 (Nov. 26, 1963), rev'd 358 F. 2d 74 (C.A. 6th Cir.); Turner Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv. L. Rev. 1313.

[25] Evidence introduced by the defendants indicated that the overlap between the Von's and Shopping Bag stores was significantly smaller than that proposed by the government witness.

[26] At the time of the merger in 1960, Von's operated 28 retail grocery stores in the Los Angeles area. It commenced operation as a partnership of the Von der Ahe family in 1932, during the depression, with a food concession in a small grocery store. Shopping Bag operated 36 stores in Los Angeles at the time of merger; it commenced operation as a partnership in a small grocery store in 1930. So far as the record reveals, the competitive

(Continued)

sense, the defendants are being punished for the sin of aggressive competition.[27] The Court is inaccurate in its suggestions, *ante*, pp. 277–278, that the merger makes these firms more "powerful" than they were before, and that Shopping Bag was itself a "powerful" competitor at the time of the merger. There is simply no evidence in the record, and the Court makes no attempt to demonstrate, that the increment in market *share* obtained by the combined stores can be equated with an increase in the market *power* of the combined firm. And, although Shopping Bag was not a "failing company" within the meaning of our decision in *International Shoe Co.* v. *Federal Trade Commission*, 280 U.S. 291, 301–303, the record at least casts strong doubt on the contention that it was a powerful competitor.[28] The District Court found that Shopping Bag suffered from a lack of qualified executive personnel[29] and that, although overall sales of the chain had been increasing, its earnings and profits were declining.[30] Further, the merger clearly comported with "the desirability of retaining 'local control' over industry" that the Court noted in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 315–316.

With regard to the "plight" of the small businessman, the record is unequivocal that his competitive position is strong and secure in the Los Angeles retail grocery industry. The most aggressive competitors against the larger retail chains are frequently the operators of single stores.[31] The vitality of these independents is directly attributable to the recent and spectacular growth in California of three large cooperative buying organizations. Membership in these groups is unrestricted; through them, single-store operators are able to purchase their goods at prices competitive with those offered by suppliers even to the largest chains.[32] The rise of these cooperative organzations has introduced a significant new

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behavior of these firms was impeccable throughout their expansion, which took place solely by internal growth. In discussing the success of comparable firms *vis-a-vis* the Sherman Act, Judge Learned Hand stated, "[T]he Act does not mean to condemn the resultant of those very forces which it is its prime object to foster: finis opus coronat. The successful competitor, having been urged to compete, must not be turned upon when he wins." *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 430.

[27] Nor is it altogether easy to escape the feeling that it is not so much this merger, but Los Angeles itself, that is being invalidated here. Cf. Adelman, Antitrust Problems: The Antimerger Act, 1950–60, 51 Am. Econ. Rev. 236, 243 (May 1961): "In the antitrust dictionary, 'powerful' has no necessary connection with monopoly power or market control or even market share. It means . . . one four-letter word: size." Los Angeles is, to be sure, a big place. Although Shopping Bag's share of the Los Angeles market was only 4.2%, its sales in 1958 totaled $84,000,000. Compare the Court's statement in *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 333–334:

"It is urged that the present contract pre-empts competition to the extent of purchases worth perhaps $128,000,000, and that this 'is, of course, not insignificant or insubstantial.' While $128,000,000 is a considerable sum of money, even in these days, the dollar volume, by itself, is not the test. . . ."

[28] This is not a "merger between two small companies to enable the combination to compete more effectively with larger corporations dominating the relevant market," *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 319; cf. House Hearing, *supra*, n. 5, pp. 40–41; Senate Hearings, *supra*, n. 10, pp. 6, 51; 95 Cong. Rec. 11486, 11488, 11506; 96 Cong. Rec. 16436; H.R. Rep. No. 1191, 81st Cong., 1st Sess., pp. 6–8; S. Rep. No. 1775, 81st Cong., 2d Sess., p 4. However, the Court today in a gratuitous dictum, *ante*, p. 277, undercuts even that principle by confining it to cases in which competitors are obliged to merge to save themselves from *destruction* by a larger and more powerful competitor.

[29] Mr. Hayden, the president and principal stockholder of Shopping Bag, was advanced in years and was concerned over the absence of a strong management staff that could take over his responsibilities.

[30] Von's was a considerably more successful competitor than Shopping Bag. Shopping Bag's net income as a percentage of total sales declined from 1.6% in 1957 to 0.9% in 1959, and its net profit as a percentage of total assets declined from 6.6% to 3.2%. During the same period, the net income of Von's increased from 2.1% to 2.3%, and its net profits declined from 12.7% to 10.8%.

[31] One single-store operator, located adjacent to one supermarket and within a mile of two others, testified, "I have often been asked if I could compete successfully against this sort of competition. My answer is and always has been that the question is not whether I can compete against them, but whether they can compete against me."

Another single-store operator testified, "Competition in the grocery business is on a store-by-store basis and any aggressive and able operator like myself can out-compete the store of any of the chains because of personalized service, better labor relations, and being in personal charge of the store and seeing that it is run properly."

A third single-store operator testified, "The chains in this area are good operators, but when they grow too large, they are actually easier to compete with from an independent's viewpoint. If I had a choice, I would rather operate a store near a chain unit than near another independent."

[32] See generally Staff Report to the Federal Trade Commission, Economic Inquiry Into Food Marketing, Part I, Concentration and Integration in Retailing, c. VI, "Retailer-owned Cooperative Food Wholesalers"; c. VII, "Wholesaler-sponsored Voluntary Retail Groups" (1960). The annual sales of Certified Grovers of California, Ltd. a retailer-owned cooperative whose members do business principally in the Los Angeles area rose fourfold from $87,000,000 in 1948 to $345,000,000 in 1962 and the volume of its purchases exceeded that of all but the largest national chains doing business in Los Angeles. Most of the leading

source of countervailing power against the market power of the chain stores, without in any way sacrificing the advantages of independent operation. In the face of the substantial assistance available to independents through membership in such cooperatives, the Court's implicit equation between the market power and the market share resulting from the present merger seems completely invalid.

Moreover, it is clear that there are no substantial barriers to market entry. The record contains references to numerous highly successful instances of entry with modest initial investments. Many of the stores opened by new entrants were obtained through the disposition of unwanted outlets by chains; frequently the new competitors were themselves chain-store executives who had resigned to enter the market on their own. Enhancing free access to the market is the absence of any such restrictive factors as patented technology, trade secrets, or substantial product differentiation.

Numerous other factors attest to the pugnacious level of grocery competition in Los Angeles, all of them silently ignored by the Court in its emphasis solely on the declining number of single-store competitors in the market. Three thousand five hundred and ninety single-store firms is a lot of grocery stores. The large number of separate competitors and the frequent price battles between them belie any suggestion that price competition in the area is even remotely threatened by a descent to the sort of consciously interdependent pricing that is characteristic of a market turning the corner toward oligopoly. The birth of dynamic new competitive forces—discount food houses and food departments in department stores, bantams and superettes, deli-liquor stores and drive-in dairies—promises unremitting competition in the future. In the more than four years following the merger, the District Court found not a shred of evidence that competition had been in any way impaired by the merger. Industry witnesses testified overwhelmingly to the same effect. By any realistic criterion, retail food competition in Los Angeles is today more intense than ever.

The harsh standard now applied by the Court to horizontal mergers may prejudice irrevocably the already difficult choice faced by numerous successful small and medium-sized businessmen in the myriad smaller markets where the effect of today's decision will be felt, whether to expand by buying or by building additional facilities.[33] And by foreclosing future sale as one attractive avenue of eventual market exit, the Court's decision may over the long run deter new market entry and tend to stifle the very competition it seeks to foster.

In a single sentence and an omnibus footnote at the close of its opinion, the Court pronounces its work consistent with the line of our decisions under § 7 since the passage of the 1950 amendment. The sole consistency that I can find is that in litigation under § 7, the Government always wins. The only precedent that is even within sight of today's holding is *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321. In that case, in the interest of practical judicial administration, the Court proposed a simplified test of merger illegality: "[W]e think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects." *U.S.* v. *Philadelphia Nat. Bank*, *supra*, at 363.[34] The merger between Von's and Shopping Bag produced a firm with 1.4% of the grocery stores and 7.5% of grocery sales in

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(Continued)
chains in the area began development in association with Certified Grocers called the "mother" of the industry. In some cases the cooperatives were able to offer even lower prices to their members than competing chains could obtain. The District Court found that the cooperatives also provided their members with assistance in merchandising advertising, promotions, inventory control, and even the financing of new entry.

[33] See Bok, Section 7 of the Clayton Act and the Merging of Law and Economics, 74 Harv. L. Rev. 226, 302–303 (1960).

[34] In a footnote, the Court emphasized the corollary principle that, "if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 365, n. 42. That corollary, of course, has no application here, since the Los Angeles retail grocery market can in no sense be characterized as one in which "concentration is already great." Compare *United States* v. *Aluminum Co. of America*, 377 U.S. 271; *United States* v. *Continental Can Co.*, 378 U.S. 441. The importance of a trend toward concentration in the particular industry in question was recognized in *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 332. See also *Pillsbury Mills, Inc.*, 50 F.T.C. 555, 572–573; *United States* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576, 604–607 (D.C.S.D. N.Y.); U.S. Atty. Gen. Nat. Comm. to Study the Antitrust Laws, Report 124 (1955).

Los Angeles, and resulted in an increase of 1.1% in the market share enjoyed by the two largest firms in the market and 3.3% in the market share of the six largest firms. The former two figures are hardly the "undue percentage" of the market, nor are the latter two figures the "significant increase" in concentration, that would make this merger inherently suspect under the standard of *Philadelphia Nat. Bank*. Instead, the circumstances of the present merger fall far outside the simplified test established by that case for precisely the sort of merger here involved.[25]

The tests of illegality under § 7 were "intended to be similar to those which the courts have applied in interpreting the same language as used in other sections of the Clayton Act." H. R. Rep. No. 1191, 81st Cong., 1st Sess., p. 8. In *Philadelphia Nat. Bank*, the Court was at pains to demonstrate that its conclusion was consistent with cases under § 3 of the Clayton Act. See *U.S.* v. *Philadelphia Nat. Bank*, 374 U.S. 321, 365–366. The Court distains any such effort today. Untroubled by the language of § 7, its legislative history and the cases construing either that section or any other provision of the antitrust laws, the Court grounds its conclusion solely on the impressionistic assertion that the Los Angeles retail food industry is becoming "concentrated" because the number of single-store concerns has declined.

The emotional impact of a merger between the third and sixth largest competitors in a given market, however fragmented, is understandable, but that impact cannot substitute for the analysis of the effect of the merger on competition that Congress required by the 1950 amendment. Nothing in the present record indicates that there is more than an ephemeral possibility that the effect of this merger may be substantially to lessen competition. Section 7 clearly takes "reasonable probability" as its standard. That standard has not been met here, and I would therefore affirm the judgment of the District Court.

F–Fred Meyer

FEDERAL TRADE COMMISSION *v.* FRED MEYER, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 27. Argued November 6, 1967.—Decided March 18, 1968

The Federal Trade Commission (FTC) ruled that respondents, the corporate owner of a chain of supermarkets (Meyer) and two of its officers, had unlawfully induced suppliers to engage in discriminatory pricing and sales promotion activities prohibited by §§ 2(a) and 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. The FTC held that § 2(d) prohibits a suppliers from granting promotional allowances to a direct-buying retailer like Meyer, unless the allowances are also made available to wholesalers who purchase from the supplier and resell to the direct-buying retailer's competitors. The Court of Appeals adopted respondents' view that the statutory requirement of proportional equality among "customers competing in the distribution" of products concerned competition at the same functioned level of distribution, which did not include competition between direct-buying retailers and wholesalers, and that retailers com-

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[25] As a result of the merger, the market share of the two largest firms increased from 14.4% to 15.5%, and the share of the six largest firms increased from 32.1% to 35.4%. The merger involved in *Philadelphia Nat. Bank* produced a single firm controlling 30% of the market, and resulted in an increase from 44% to 59% in the market share of the two largest firms in the market. The Court's opinion is remarkable for its failure to support its conclusion by reference to even a single piece of economic theory. I shall not dwell here on the barometers of competition that have been suggested by the commentators. But it seems important to note that the present merger falls either outside, or at the very fringe of the various mechanical tests that have been proposed. See *e.g.*, Kaysen & Turner, Antitrust Policy 133–136 (1959) (horizontal merger with direct competitor is prima facie unlawful where acquiring company accounts for 20% or more of the market, or where merging companies together constitute 20% or more of the market; acquisitions producing less than 20% market control unlawful only where special circumstances are present, such as serious barriers to entry or substantial influence on prices by the acquired company); Stigler, Mergers and Preventive Antitrust Policy, 104 U. Pa. L. Rev. 176, 179–182 (1955) (acquisition unlawful if it produces a combined market share of 20% or more; acquisition permitted if the combined share is less than 5–10%); Bok, Section 7 of the Clayton Act and the Merging of Law and Economics, 74 Harv. L. Rev. 226, 308–329 (1960) (no merger by the dominant firm in an industry if its market share is increased by more than 2–3%; no merger by other large firms in the industry where the combined market shares of the two-to-eight largest firms after the merger are increased by 7–8% or more over the shares that existed at any time during the preceding 5–10 years; no merger where acquired firm has 5% market share or more). See also Markham, Merger Policy Under the New Section 7: A Six-Year Appraisal, 43 Va. L. Rev. 489, 521–522 (1957). The 40% rule promoted by the concurring opinion in the present case seems no more than an *ad hoc* endeavor to rationalize the holding of the Court.

peting with Meyer were not customers of the suppliers but were customers of the wholesalers. The court set aside that portion of the FTC order which barred respondents from inducing suppliers to grant them promotional allowances not available to "customers who resell to purchasers who compete with respondents in the resale of such supplier's products." *Held:* On the facts of this case, § 2(d) reaches only discrimination between customers competing for resales at the same functional level. Pp. 348–358.

(*a*) The Act does not mandate proportional equality between the direct-buying retailer, Meyer, and the wholesalers. Pp. 348–349, 355–357.

(*b*) "Customer" in § 2(d) includes a retailer who buys through wholesalers and competes with a direct-buying retailer in the resale of the supplier's products. Pp. 348–352.

(*c*) The FTC found that Meyer competed in the resale of certain suppliers' products with other retailers in the area who purchased the products through wholesalers, and the Court of Appeals did not disturb this finding. P. 354.

(*d*) Since in this case the direct impact of the discriminatory promotional allowances is felt by the disfavored retailers, the most reasonable construction of § 2(d) is one which places on the supplier the responsibility for making promotional allowances available to those resellers who compete directly with the favored buyer. P. 357.

(*e*) A supplier may, consistently with the other provisions of the antitrust laws, utilize his wholesalers to distribute payments or administer promotional programs, as long as the supplier assumes responsibility, under the FTC's rules, for seeing that the allowances are made available to all who compete in the resale of his products. P. 358.

359 F. 2d 351, reversed in part and remanded.

Daniel M. Friedman argued the cause for petitioner. On the brief were *Solicitor General Marshall, Assistant Attorney General Turner, Francis A. Beytagh, Jr., James McI. Henderson* and *E. K. Elkins.*

Edward F. Howrey argued the cause for respondents. With him on the brief were *Terrence C. Sheehy* and *George W. Mead.*

Morris B. Abram filed a brief for the Atlantic Coast Independent Distributors Association, Inc., as *amicus curiae*, urging reversal.

Gilbert H. Weil filed a brief for Clairol Incorporated, as *amicus curiae*, urging affirmance.

Mr. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The Federal Trade Commission, after extensive proceedings, ruled that respondents, the corporate owner of a chain of supermarkets and two of its officers, had unlawfully induced certain suppliers to engage in discriminatory pricing and sales promotional activities prohibited by §§ 2(a) and 2(d) of the Clayton Act, as amended by the Robinson-Patman Act.[1] 63 F.T.C.—(1963). The Court of Appeals for the Ninth Circuit disagreed with the Commission's construction of § 2(d) and reversed in part its ruling that the section had been violated. 359 F. 2d 351 (1966). We granted certiorari, 386 U.S. 907 (1967), because the case presents important questions concerning the scope of a key provision of the Robinson-Patman Act.

I.

Section 2(d) makes it unlawful for a supplier in interstate commerce to grant advertising or other sales promotional allowances to one "customer" who resells the supplier's "products or commodities" unless the allowances are "available on proportionally equal terms to all other customers competing in the distribu-

[1] 38 Stat. 730, as amended, 49 Stat. 1526, 1527, 15 U.S.C. §§ 13(a), 13(d). Section 2(a) provides in pertinent part:

"[I]t shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, . . . where the effect of such discrimination may be . . . to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them : . . ."

Section 2(d) provides in full :

"[I]t shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

tion of such products or commodities." [2] Although we have limited our review of this case to one aspect of the alleged § 2(d) violations,[3] full understanding of the issues requires a brief exposition of the facts from which the Commission concluded that respondents had induced violations of both §§ 2(a) and 2(d). The relevant facts found by the Commission were not disturbed by the Court of Appeals.

Respondent Fred Meyer, Inc., operates a chain of 13 supermarkets in the Portland, Oregon, area which engage in the retail sale of groceries, drugs, variety items, and a limited line of clothing. In 1957 Meyer's sales exceeded $40,000,000. According to its 1960 prospectus, it made one-fourth of the retail food sales in the Portland area and was the second largest seller of all goods in that area. Since 1936 Meyer has conducted annually a four-week promotional campaign in its stores based on the distribution of coupon books to consumers. The books usually contain 72 pages, each page featuring a single product being sold by Meyer at a reduced price. The consumer buys the book for the nominal sum of 10¢ and must surrender the appropriate coupon when making his purchase of goods. A coupon often represents a reduction of one-third or more from Meyer's regular price for the featured item, and the cover of the 1957 book stated that the use of all 72 coupons would result in total savings of more than $54. The promotional campaign is highly successful. Meyer sold 138,700 books in 1957 and 121,270 in 1958. Aside from the nominal 10¢ paid by consumers for the coupon books, Meyer finances the promotion by charging the supplier of each featured product a fee of at least $350 for each coupon-page advertising his product.[4] Some participating suppliers further underwrite the promotion by giving Meyer price reductions on its purchases of featured items, by replacing at no cost a percentage of the goods sold by Meyer during the campaign, or by redeeming coupons in cash at an agreed rate.

The Commission concluded that this promotional scheme, as conducted in the years 1956 through 1958, violated §§ 2(d) and 2(a) in the following respects: First, the $350 paid to Meyer by each of four suppliers participating in the campaigns represented promotional allowances paid in violation of § 2(d) because similar allowances were not made available on proportionally equal terms to competing customers. Second, the additional value given Meyer by these suppliers in the form of discounts, free replacements of goods sold and coupon redemptions amounted to price discrimination prohibited by § 2(a).[5] The Commission held that by inducing the suppliers to discriminate in price, respondents had violated § 2(f) of the Act,[6] and that by inducing them to grant discriminatory promotional allowances, respondents had engaged in an unfair method of competition in violation of § 5(a) of the Federal Trade Commission Act.[7]

Both before the Commission and in the Court of Appeals, respondents argued that it was not established that two participating suppliers, Tri-Valley Packing Association and Idaho Canning Company, had violated § 2(d). Meyer purchased directly from both of these suppliers. Tri-Valley participated in the 1957 promotion by paying Meyer $350 for a coupon-page featuring Tri-Valley's brand

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[2] See n. 1, *supra*.

[3] The Commission and respondents filed separate petitions for certiorari to review different rulings of the Court of Appeals. Respondents contended (1) that the Commission had failed to show that respondents' inducement of §§ 2(a) and 2(d) violations had been knowing and (2) that the Commission's order prohibiting future inducement of § 2(d) violations was too broad. The Commission's petition raised the question "[w]hether a supplier's granting to a retailer who buys directly from it promotional allowances that are not made available to a wholesaler who resells to retailers competing with the direct-buying retailer violates Section 2(d) of the Robinson-Patman Act." The Commission also presented an additional question which it sought to reserve only if respondents' petition were granted. We denied respondents' petition, 380 U.S. 908 (1967), and specifically limited our review on the Commission's petition to the issue of statutory interpretation therein presented. 386 U.S. 907 (1967).

[4] The Commission found that the total of $25,200 received by Meyer from 72 participating suppliers in each of the years 1956 and 1957 more than covered Meyer's cost of publishing, distributing, and publicizing the coupon books in those years. The Commission characterized as "clear profit" the $13,870 paid Meyer by consumer purchasers of the books in 1957.

[5] See n. 1, *supra*.

[6] 15 U.S.C. § 13(f):

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this secton."

[7] 38 Stat. 719, as amended, 66 Stat. 632, 15 U.S.C. § 45(a):

"(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

* * * * * * *

"(6) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

of canned peaches and by replacing in merchandise every third can sold by Meyer on the coupon's offer of three cans for the price of two. Idaho Canning participated in the 1957 promotion on substantially identical terms, except that the coupon-page it purchased offered three cans of corn for the price of two. The Commission found that two wholesalers, Hudson House and Wadhams & Co., both of which resold to Meyer's retail competitors, had been disfavored in these transactions in that Hudson House had purchased canned peaches from Tri-Valley and both Hudson House and Wadhams had purchased canned corn from Idaho Canning, but neither of the two wholesalers had been accorded promotional allowances comparable to those received by Meyer. Respondents argued that, purely as a matter of statutory construction, Tri-Valley and Idaho Canning could not have violated the requirement of proportional equality among "customers competing in the distribution" of their products because (1) Meyer, a retailer, was not "competing" in the distribution of canned corn and peaches with the disfavored wholesalers, Hudson House and Wadhams, and (2) the retailers found by the Commission to be competing with Meyer in the resale of these products were not "customers" of Tri-Valley and Idaho Canning but were customers of Hudson House and Wadhams.

The Commission rejected this reading of § 2(d), noting that, if respondents' view prevailed, a retailer buying from a wholesaler and having no direct dealings with his supplier would receive no protection against discriminatory promotional allowances given his competitor who purchased directly from the supplier. The Commission held that § 2(d) prohibits a supplier from granting promotioal allowances to a direct-buying retailer, such as Meyer, unless the allowances are also made available to wholesalers who purchase from the supplier and resell to the direct-buying retailer's competitors. Accordingly, the Commission's cease-and-desist order included a provision barring respondents from inducing suppliers to grant them promotional allowances not available to "customers who resell to purchasers who compete with respondents in the resale of such supplier's products." 63 F. T. C., at —. One Commissioner, while agreeing with the majority that respondents had induced Tri-Valley and Idaho Canning to violate § 2(d), dissented in part on the ground that the order should have required the promotional allowances to be made available to the retailers competing wth Meyer rather than to wholesalers who resold to them.[8] Thus, in his view, the competing retailers were "customers" of Tri-Valley and Idaho Canning within the meaning of the statute. The Court of Appeals adopted the interpretation of § 2(d) urged by respondents. Consequently, it set aside the portion of the Commission's order set out above.

We agree with the Commission that the proscription of § 2(d) reaches the kind of discriminatory promotional allowances granted Meyer by Tri-Valley and Idaho Canning. Therefore, we reverse the judgment of the Court of Appeals on this point. However, because we have concluded that Meyer's retail competitors, rather than the two wholesalers, were competing customers under the statute, we also remand the case for appropriate modification of the Commission's order. We deal first with respondents' arguments, second with the opinion of the Court of Appeals, and third with the Commission's order.

II.

Respondents press upon us a view of § 2(d) which leaves retailers who buy from wholesalers for the most part unprotected from discrminatory promotional allowances granted their direct-buying competitors. We are told that § 2(d) in specific terms requires this result. To benefit from the statute's requirement of proportional equality, it is urged, a buyer must be a "competing customer" within the narrowest sense of that phrase. Thus, the wholesalers in this case are not competing customers because they do not compete with Meyer, and the retailers who do compete with Meyer in the resale of the suppliers' products are outside the protection of § 2(d) because they are not customers of the suppliers. For reasons stated below, we agree with respondents that, on the facts of this case, § 2(d) reaches only discrimination between customers competing for resales at the same functional level and, therefore, does not mandate proportional equality between Meyer and the two wholesalers.[9] But we cannot accept the second half of this argument, for it rests on a narrow definition of "customer" which becomes wholly

[8] 63 F.T.C., at — (Commissioner Elman, concurring in part and dissenting in part).

[9] This case, in its present posture, does not present the question whether the functional label used by a manufacturer or reseller reflects his actual position in the distributive chain. Compare *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 475 (1952); cf. *FTC* v. *Simplicity Patern Co.*, 360 U.S. 55, 62–63 (1959).

untenable when viewed in light of the central purpose of § 2(d) and the economic realities with which its framers were concerned.

Conceding that the Robinson-Patman amendments by no means represent an exemplar of legislative charity,[10] We cannot, in the absence of an unmistakable directive, construe the Act in a manner which runs counter to the broad goals which Congress intended it to effectuate. See, *e.g.*, *FTC* v. *Sun Oil Co.*, 371 U.S. 505, 516–521 (1963); *Elizabeth Arden Sales Corp.* v. *Gus Blass Co.*, 150 F. 2d 988, 991–993 (C. A. 8th Cir.), cert. denied, 326 U.S. 733 (1945). We start with the proposition that "[t]he Robinson-Patman Act was enacted in 1936 to curb and prohibit all devices by which large buyers gained discriminatory preferences over smaller ones by virtue of their greater purchasing power." *FTC* v. *Henry Broch & Co.*, 363 U.S. 166, 168 (1900). The role within the statutory scheme which Congress intended for § 2(d) is well documented in the legislative history. An investigation of chain store buying practices undertaken by the Federal Trade Commission, at Congress' request,[11] had indicated that § 2 of the Clayton Act was an inadequate deterrent against outright price discrimination.[12] The investigation also revealed that certain practices by which large buyers induced concessions which their smaller competitors could not obtain were wholly beyond the reach of § 2.[13] It is significant that congressional concern had focused on the buying practices of large retailers, particularly the chain stores, because it was felt that they were threatening the continued existence of the independent merchant.[14] Indeed, before Congress acted, some States had attempted to limit the growth of retail chains through express prohibitions against further extensions and through taxation.[15] One of the practices disclosed by the Commission's investigation was that by which large retailers induced concessions from suppliers in the form of advertising and other sales promotional allowances.[16] The daftsman of the provision which eventually emerged as § 2(d) explained that, even when such payments were made for actual sales promotional services, they were a form of indirect price discrimination because the recipient of the allowances could shift part of his advertising costs to his supplier while his disfavored competitor could not.[17] That Congress adopted this view of the practice it sought to eliminate by § 2(d) is demonstrated by the words used by the Senate Judiciary Committee in recommending enactment of the section:

"Still another favored medium for the granting of oppressive discriminations is found in the practice of large buyer customers to demand, and of their sellers to grant, special allowances in purported payment of advertising and other sales promotional services, which the customer agrees to render with reference to the seller's products, or sometimes with reference to his business generally. Such an allowance becomes unjust when the service is not rendered as agreed and paid for, or when, if rendered, the payment is grossly in excess of its value, or when in any case the customer is deriving from it equal benefit to his own business and is thus enabled to shift to his vendor substantial portions of his own advertising cost, while his smaller competitor, unable to command such allowances, cannot do so." [18]

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[10] *Automatic Canteen Co.* v. *FTC*, 346 U.S. 61, 65 (1953); see F. Rowe, Price Discrimination Under the Robinson-Patman Act 20 (1962).

[11] S. Res. No. 224, 70th Cong., 1st Sess., 69 Cong. Rec. 7857 (1928).

[12] Federal Trade Commission, Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess., 63–65, 90–91, 96–97 (1935).

[13] *Id.*, at 57–65. See also Hearings before the Special House Committee on Investigation of American Retail Federation, 74th Cong., 1st Sess. (1935).

[14] See C. Austin, Price Discrimination and Related Problems under the Robinson-Patman Act 6–11 (2d rev. ed. 1959). In presenting his bill to the House Judiciary Committee, Representative Patman stated:

"I believe it is the opinion of everyone who has studied this subject, that the day of the independent merchant is gone unless something is done and done quickly. He cannot possibly survive under that system. So we have reached the crossroads; we must either turn the food and grocery business of this . . . country over to a few corporate chains, or we have got to pass laws that will give the people, who built this country in time of peace and who saved it in time of war, an opportunity to exist—not to give them any special rights, special privileges, or special benefits, but just to deny their competitors the special benefits that they are getting, that they should not be permitted to have." Hearings on H.R. 8442, 4995, and 5062 before the House Committee on the Judiciary, 74th Cong., 1st Sess., 5–6 (1935).

[15] See Federal Trade Commission, Final Report on the Chain-Store Investigation, *supra*, n. 12, at 78–82.

[16] *Id.*, at 44–46, 61. See also Hearings before the Special House Committee on Investigation of American Retail Federation, 74th Cong., 1st Sess., Vol. 3, No. 1, at 66–88 (1935).

[17] Hearings on Bills to Amend the Clayton Act before a Subcommittee of the House Committee on the Judiciary, 74th Cong., 2d Sess., 464 (1936) (Mr. Teegarden).

[18] S. Rep. No. 1502, 74th Cong., 2d Sess., 7 (1936). The House Judiciary Committee reported the provision favorably in identical terms. H.R. Rep. No. 2287, 74th Cong., 2d Sess., 15–16 (1936).

Congress chose to deter such indirect price discrimination by prohibiting the granting of sales promotional allowances to one customer unless accorded on proportionally equal terms to all competing customers.

Of course, neither the Committee Report nor other parts of the legislative history in so many words define "customer" to include retailers who purchase through wholesalers and compete with direct buyers in resales. But a narrower reading of § 2(d) would lead to the following anomalous result. On the one hand, direct-buying retailers like Meyer, who resell large quantities of their suppliers' products and therefore find it feasible to undertake the traditional wholesaling functions for themselves, would be protected by the provision from the granting of discriminatory promotional allowances to their direct-buying competitors. On the other hand, smaller retailers whose only access to suppliers is through independent wholesalers would not be entitled to this protection. Such a result would be diametrically opposed to Congress' clearly stated intent to improve the competitive position of small retailers by eliminating what was regarded as an abusive form of discrimination. If we were to read "customer" as excluding retailers who buy through wholesalers and compete with direct buyers, we would frustrate the purpose of § 2(d). We effectuate it by holding that the section includes such competing retailers within the protected class.

III.

The Commission did not press in the Court of Appeals the position of one Commissioner that retailers who purchased through Hudson House and Wadhams and competed with Meyer in resales were customers of Tri-Valley and Idaho Canning. Consequently, that court gave almost no consideration to the construction of § 2(d) which we hold to be the proper one. Citing its prior ruling in *Tri-Valley Packing Assn.* v. *FTC*, 329 F. 2d 694, 709–710 (C. A. 9th Cir. 1964), the court merely stated that a § 2(d) violation could not be made out unless (1) Tri-Valley and Idaho Canning had in some way dealt directly with retailers competing with Meyer, and (2) canned peaches and corn sold by the two suppliers could be traced through Hudson House and Wadhams to the shelves of the competing retailers. 359 F. 2d, at 359–360, 362–363. In the view of the Court of Appeals, these two requirements compose the elements of the "indirect customer" doctrine under which the Commission and the courts impose § 2(d) liability when a supplier in effect supplants his intermediate distributors in dealings with those to whom the distributors resell and favors some of the distributors' accounts over others. See *American News Co.* v. *FTC*, 300 F. 2d 104, 109 (C.A. 2d Cir.), cert. denied, 371 U.S. 824 (1962); *K. S. Corp.* v. *Chemstrand Corp.*, 198 F. Supp. 310, 312–313 (D.C.S.D. N.Y. 1961); *Kay Windsor Frocks, Inc.*, 51 F.T.C. 89, 95–96 (1954); F. Rowe, Price Discrimination Under the Robinson-Patman Act 398–399 (1962), 90 (1964 Supp.). We need not and do not question the validity of this doctrine as applied to pierce a supplier's unrealistic claim that a reseller favored by him is actually the customer of an intermediate distributor. Nor do we reach the question whether a retailer succeed in a private action based on § 2(d) without proving that he in fact resold the supplier's product in competition with a favored buyer. In the case before us, it is conceded that Meyer was a customer of Tri-Valley and Idaho Canning. Moreover, as indicated by its approval of the Commission's § 2(a) ruling, the Court of Appeals did not question the Commission's finding that Meyer competed in the resale of Tri-Valley and Idaho Canning products with retailers who purchased through Hudson House and Wadhams.[19] Given these findings, it was unnecessary for the Commission to resort to the indirect customer doctrine. Whether suppliers deal directly with disfavored competitors or not, they can, and here did, afford a direct buyer the kind of competitive advantage which § 2(d) was intended to eliminate. In light of our holding that "customers" in § 2(d) includes retailers who buy through wholesalers and compete with a direct buyer in the resale of the supplier's product, the requirement of direct dealing between the supplier and disfavored competitors imposed by the Court of Appeals rests on too narrow a reading of the statute. Further, in light of the Commission's finding that Meyer competed in the resale of the Idaho Canning and Tri-Valley products with other retailers in the area who purchased through Hudson House and Wadhams and in light of the fact that the Court of Appeals did not disturb this finding the court misapprehended the Com-

[19] The Commission's § 2(a) and § 2(d) rulings were both based on findings that retailers in the Portland area who purchased through Hudson House and Wadhams competed with Meyer in the resale of Idaho Canning corn and Tri-Valley peaches. The Court of Appeals could not have consistently set aside these findings with regard to the § 2(d) violations while upholding them with respect to § 2(a).

mission's burden in requiring it to trace those products to the shelves of the disfavored retailers.

IV.

The Commission's view of the impact of respondents' argument in no way conflicts with our own. In rejecting respondents' construction of § 2(d), the Commission observed:

"The net result of this argument is that the entire structure of 'independent' food merchants—including the traditional wholesaler and his numerous, small retailer-customers—are placed completely outside the pale of Section 2(d) of the amended Clayton Act insofar as their competition with the direct-buying 'chains' is concerned.

"We are not persuaded that Congress either intended or effected any such result when it passed Section 2(d). In the first place, such a construction goes squarely against the well-known purposes of the Act itself, namely, to give the 'independent' food sellers an even break in their competition with the 'chains'." [20]

But rather than concluding, as we have, that retailers who purchased through Hudson House and Wadhams and competed with Meyer in resales were disfavored customers of Tri-Valley and Idaho Canning, a majority of the Commission held that the wholesalers, Hudson House and Wadhems, were the cusotmers entitled to promotional allowances on proportionally equal terms with Meyer. Although we approach the Commission's ruling with the deference due the agency charged with day-to-day administration of the Act, we hold that, at least on the facts before us, § 2(d) does not require proportional equality between Meyer and the two wholesalers.

The Commission believed it found support for its position in the language of § 2(d) itself, which requires that promotional allowances be accorded on proportionally equal terms to "customers competing in the *distribution*" of a supplier's product, rather than merely to customers competing in resales. The majority reasoned that Hudson House and Wadhams, when they resold to Meyer's retail competitors, were competing with Meyer in the distribution of Tri-Valley and Idaho Canning products because the two wholesalers were "seeking exactly the same consumer dollars that respondents are after." 63 F.T.C., at —. While it cannot be doubted that Congress reasonably could have employed such a broad concept of competition in § 2(d), we do not believe that the use of the word "distribution" rather than "resale" is a clear indication that it did, and what discussion there was of the promotional allowance provision during the congressional hearings indicates that the section was meant to impose proportional equality only where buyers competed on the same functional level. Thus, in reporting the provision, both the Senate and House Judiciary Committee used the following example:

"To illustrate: Where, as was revealed in the hearings earlier referred to in this report, a manufacturer grants a particular chain distributor an advertising allowance of a stated amount per month per store in which the former's goods are sold, a competing customer with a smaller number of stores, but equally able to furnish the same service per store, and under conditions of the same value to the seller, would be entitled to a similar allowance on that basis." [21]

This illustration and others which could be cited are not conclusive, but they do strongly suggest that the competition with which Congress was concerned in § 2(d) was that between buyers who competed in resales of the supplier's products. And, as stated above, Congress' objective was to assure that all sellers, regardless of size, competing directly for the same customers would receive evenhanded treatment from their suppliers.[22] We noted in *FTC* v. *Sun Oil Co.*, 371 U.S. 505 (1963), that when Congress wished to expand the meaning of competition to include more than resellers operating on the same functional level, it knew how to do so in unmistakable terms. It did so in § 2(a) of the Act by prohibiting price discrimination which may "injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them." *Id.*, at 514–515; see *FTC* v. *Morton Salt Co.*, 334 U.S. 37, 55 (1948). We stated in *Sun Oil* that:

"There is no reason appearing on the face of the statute to assume that Congress intended to invoke by omission in § 2(b) the same broad meaning of competition or competitor which it explicitly provided by inclusion in § 2(a); the reasonable inference is quite the contrary." [23]

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[20] 371 U.S., at 515.
[20] 63 F.T.C., at —.
[21] S. Rep. No. 1502, 74th Cong., 2d Sess., 8 (1936); H.R. Rep. No. 2287, 74th Cong., 2d Sess., 16 (1936).
[22] See n. 14 *supra*.

In the present case, too, we think "the reasonable inference" is that Congress did not intend such a broad meaning of competition in § 2(d). We recognize that it would be both inappropriate and unwise to attempt to formulate an all-embracing rule applying the elusive language of the section to every system of distribution a supplier might devise for getting his product to the consumer. But, on the concrete facts here presented, it is clear that the direct impact of Meyer's receiving discriminatory promotional allowances is felt by the disfavored retailers with whom Meyer competes in resales. We cannot assume without a clear indication from Congress that § 2(d) was intended to compel the supplier to pay the allowances to a reseller further up the distribution chain who might or might not pass them on to the level where the impact would be felt directly. We conconclude that the most reasonable construction of § 2(d) is one which places on the supplier the responsibility for making promotional allowances available to those resellers who compete directly with the favored buyer.

The Commission argues here that the view we take of § 2(d) is impracticable because suppliers will not always find it feasible to bypass their wholesalers and grant promotional allowances directly to their numerous retail outlets. Our decision does not necessitate such bypassing. We hold only that, when a supplier gives allowances to a direct-buying retailer, he must also make them available on comparable terms to those who buy his products through wholesalers and compete with the direct buyer in resales. Nothing we have said bars a supplier, consistently with other provisions of the antitrust laws, from utilizing his wholesalers to distribute payments or administer a promotional program, so long as the supplier takes responsibility, under rules and guides promulgated by the Commission for the regulation of such practices,[24] for seeing that the allowances are made available to all who compete in the resale of his product.

The judgment of the Court of Appeals, insofar as it held that the promotional allowances granted Meyer by Tri-Valley and Idaho Canning did not violate § 2(d), is reversed. The case is remanded to the Court of Appeals with directions to remand to the Commission for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

MR. JUSTICE FORTAS, concurring.

I agree with the result in this case and I join the Court's opinion. The net of our decision, as I see it, is this. The statute permits a supplier to make payment to retailers for services and facilities only if such payment or its equivalent is made available to all competing retailers handling the supplier's product. If they choose to render the same or equivalent service or furnish the same or equivalent facilities, they are entitled to the same payment.* I believe that this result, obviously intended by the Congress, can best be squared with the language of § 2(d) by the device of regarding the wholesaler and his retail customer as a unit for purposes of that section. The Court is clearly correct in my view in requiring that the opportunity to participate be afforded to the competing retailer, and not merely to the wholesaler. This is the plain thrust and purpose of the section. The supplier may satisfy this obligation by direct dealing with the competing retailer or by arrangement with the wholesaler reasonably designed to transmit to the retailer participation in the program if the retailer chooses to accept.

MR. JUSTICE HARLAN, dissenting.

I dissent because I believe the time has come for a change in approach to Robinson-Patman Act cases that, as here, can only be decided by a judicial *tour de force*. No doubt, the broad purpose of the Act was to protect small sellers from the advantages their larger competitors can obtain through greater buying power. In implementing this purpose, however, the statute imposes a hodgepodge of confusing,[1] inconsistent,[2] and frequently misdirected [3] restrictions. In such a situation it seems to me the wiser course for this Court to hew as closely as possible to the wandering line that the statute has drawn (with due deference to the expertise of the Commission charged with enforcing the statute) and not to read into the Act its own notions of how best to protect "little people" from "big people."

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[24] See 16 CFR §§ 1.55–1.56; cf. "Guides for Allowances and Services," 1 CCH Trade Reg. Rep. ¶ 3980, at 6073–6079.

*We need not here consider refinements of the problem—*e.g.*, the duty of the supplier to tailor his offer so that it is within the practical capability of all competing retailers; or negatively, to avoid making an offer which does not permit fair participation by all types of retailers of the product, as a practical matter.

[1] See, *e.g.*, F. Rowe, Price Discrimination Under the Robinson-Patman Act 534; Stedman, Twenty-four Years of the Robinson-Patman Act, 1960 Wis. L. Rev. 197, 218.

In this case, certain suppliers made promotional allowances to the company, a direct-buying retailer. The Act provides that if promotional allowances are made to one customer they must also be made, on a basis of proportional equality, to all other "customers competing in the distribution" of the supplier's product. The suppliers here involved did not make the promotional allowances given to the company available to certain retailers who compete with it but who buy not from the suppliers themselves but from wholesalers who in turn buy from the suppliers. The Court now holds, for the first time, 32 years after the passage of the Act, that although these disfavored retailers are not literally "customers" of the suppliers, the "broad goals" of the Act require them to be treated as if they were.

Unfortunately, nothing in the Act and not one word of legislative history the Court has found suggest that Congress meant the word "customers" to mean "non-customers who the Court thinks need protection." The Federal Trade Commission refused to accept the suggestion of one Commissioner that this unexpected nonliteral reading of the word would best effectuate the Act's purposes, so that Commission expertise cannot in this instance be brought to bear in support of the Court's construction.

Furthermore, the failure of the Act to extend explicit protection in the present situation cannot be dismissed as mere legislative oversight. Compelling suppliers to make promotional allowances available to retailers with whom they do not deal is no simple matter. The supplier could deal through his wholesalers, imposing restrictions on them to guarantee that an "allowance" is actually passed through to retailers, only by running afoul of the Sherman Act.[4] Nor would it simplify matters to make the allowances directly available to retailers: by hypothesis, the retailers in question are too small to make direct dealing efficient, and in any event the suppliers and retailers would constantly risk a Sherman Act charge, by the wholesaler in the middle that they were conspiring in restraint of him.[5]

In addition, under the present circumstances the very idea of "proportional equality" is almost meaningless. The supplier is asked to offer "equal" promotional alowances to a direct-buying chain and a set of small retailers who buy through wholesalers who presumably carry much of the promotion load: the supplier risks treble damages if his guess as to what is even-handed treatment turns out to be erroneous. Even if it were desirable to force suppliers to submit every promotion to the FTC for advance approval, the Commission's refusal to require equality between customers and noncustomers here does not indicate that the experts are sanguine about the possibility of working out a rational definition of proportional equality under these circumstances.

The supplier can, of course, resolutely refuse to enter into promotional programs, a course of action that would effectively avoid favoring large distributors. In doing so, however, he would be abandoning one significant form of competition with his fellow suppliers, and would risk the disfavor of retailers who might prevail on differently situated and less timorous competitive suppliers for assistance.

Congress, concerned as it was for small retailers, did not explicitly impose the particular restriction on suppliers announced today. Since, for all we know, the omission may have been deliberate in light of practical considerations, I prefer to take the statute as we find it. This course of action here and in similarly opaque cases might at least encourage the Congress to give this notoriously amorphous statute the thorough overhauling that has long been due.[6] On this basis I consider that this case should go for the respondents.

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[2] See, *e.g.*, Levi, The Robinson-Patman Act—Is It in the Public Interest? 1 ABA Antitrust Section 60 (1952–1953). As Professor Levi noted, published criticism of the Act is unsportingly easy to find: "the literature on the Act has become something of a contest of witticisms to relieve an otherwise dreary picture." *Ibid.* An example is Eine Kleine Juristische Schlummergeschichte, 79 Harv. L. Rev. 921.

[3] See, *e.g.*, Shniderman, The Impact of the Robinson-Patman Act on Pricing Flexibility, 57 Nw. U. L. Rev. 173; Austern, Presumption and Percipience About Competitive Effect Under Section 2 of the Clayton Act, 81 Harv. L. Rev. 773. The confusion is all the more unfortunate in a field where actual conflicting objectives are many: "competitive" purposes are often at odds with "protective" purposes: the defense of traders at one level of distribution may be inconsistent with the liberty of traders at another level, and with the interests of consumers.

[4] Under *Albrecht* v. *Herald Co.*, *ante*, p. 145, it would presumably be unlawful *per se* for a supplier to attempt to prevent his wholesalers from absorbing the allowance by charging higher prices.

[5] Under *Albrecht*, *supra*, n. 4, it is difficult to see why an agreement between supplier and retailer sufficient to insure that wholesalers in the middle do not absorb promotional allowances would not constitute a combination in restraint of these wholesalers.

[6] See Friendly, The Gap in Lawmaking—Judges Who Can't and Legislators Who Won't, 63 Col. L. Rev. 787, 794: "The tiniest fraction of the time spent by lawyers, legal writers, administrators,an d judges in an unsuccessful endeavor to elucidate the obscurities of this

(Continued)

Mr. JUSTICE STEWART, dissenting.

Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act, makes it unlawful for a supplier to grant a customer a promotional allowance which is not available to "all other customers competing in the distribution of such products or commodities." The Federal Trade Commission held that the respondent retailer had violated § 2(d) by inducing certain of its direct suppliers to grant it promotional allowances which were not available to wholesalers who sold the suppliers' products to retailers competing with the respondents. The Court of Appeals refused to enforce this part of the Commission's order on the ground that the wholesalers were not customers "competing" with the respondent. We granted certiorari limited to a single question:

"Whether a supplier's granting to a retailer who buys directly from it promotional allowances that are not made available to a wholesaler who resells to retailers competing with the direct-buying retailer violates Section 2(d) of the Robinson-Patman Act." 386 U.S. 907.

The Court today agrees with the Court of Appeals' answer to this question and holds that wholesalers are not customers "competing" with the respondent.[1] But the Court nevertheless goes on to hold that § 2(d) was violated upon a theory not argued here by either party. The theory is that retailers who are in fact customers of independent wholesalers are somehow also "customers" of the suppliers of those wholesalers. The Commission has never suggested that this case sholuld turn on any such construction of the term "customer." [2] Cf. *SEC* v. *Chenery Corp.*, 318 U.S. 80.

Because the Court of Appeals was correct in rejecting the Commission's construction of § 2(d). I would affirm its judgment. But, at the very least, the case should be remanded in order to give the respondent notice and an opportunity to defend against the novel construction of § 2(d) under which the Court today finds the respondent to be a violator of the law. Due process requires no less. Cf. *Cole* v. *Arkansas*, 333 U.S. 196.

7—ANTITRUST EXEMPTIONS

Request 7. On page 171, Mr. Hutchinson requested a list and our interpretation of all legislative antitrust exemptions applicable to the food industry.

Responses. Other than the Capper-Volstead Act and a parallel act, The Fishermen's Collective Marketing Act of 1934 (15 U.S.C. §§ 521–522) authorizing independent fishermen to organize collectively for the sale of fish and other aquatic products, there are several other limited legislative exemptions. The Packers and Stockyards Act discussed in exhibit G.

The Cooperative Marketing Act of 1925, 7 U.S.C. § 451 *et seq.* provides for the exchange of "past, present, and prospective crop market, statistical, economic, and other" information among producers of agricultural products.

Section 4 of the Robinson-Patman Act, 15 U.S.C. § 13b, provides limited immunity in favor of agricultural cooperatives from liability for certain internal activities. The statute provides that nothing in the Act shall prevent a cooperative association from returning to its members the whole, or any part of the net earnings or surplus resulting from its trading operations.

The statutory immunity applies only to the payment of earnings to members; Section 4 does not provide cooperatives, agricultural or other, with a blanket exemption from the prohibitions of the antitrust laws. Thus, cooperative associations have been held not to be insulated from liability for illegal discriminatory pricing practices under the Robinson-Patman Act.

It should also be noted that the Senate has passed S. 978, 93rd Congress, 1st Session a new exemption involving territorial allocations among soft drink bottlers.

G—PACKERS ACT

Under the Packers and Stockyards Act, the Secretary of Agriculture has plenary jurisdiction over packers of meat, meat food products, and the other specified products, subject to the following limitations supplied by the 1958 amendment, P.L. 85-909 (7 U.S.C. 227):

(Continued)
statute would have sufficed to put the house in order once the problems were revealed; but that time has not been spent."

[1] In this opinion the term "respondent" refers to Fred Meyer, Inc.

[2] One Commissioner attempted in vain to persuade the Commission to accept the theory which the Court today adopts: "What made this practice illegal, as I see it, is that the allowances were not also made available on proportionally equal terms to Meyer's retail competitors. But that is not the Commission's view of the law." 63 F.T.C., at — (Commissioner Elman, concurring in part and dissenting in part).

(1) All transactions in commerce involving non-meat products are subject to the jurisdiction of the Federal Trade Commission.

(2) All transactions in commerce in margarine or oleomargarine and retail matters involving meat, meat products, and the other specified products are subject to the jurisdiction of the Commission.

(3) The Commission can proceed beyond the retail level, i.e., to the wholesale level and further in "hot pursuit" of a violator where "if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction under all acts or transactions involving such commodities in such investigation or proceeding."

The "hot pursuit" provision states that the Commission shall have power and jurisdiction over any matters involving meat or the other specified commodities that are by the Packers Act made subject to the Secretary's power or jurisdiction—

"(2) In any investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission, arising out of acts or transactions involving meat, meat food products, livestock products in unmanufactured form, or poultry products, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Commission shall notify the Secretary of such determination, the reasons therefore, and the acts or transactions involved, and shall not exercise power or jurisdiction with regard to acts or transactions (other than retail sales) involving such commodities if the Secretary within ten days from the date of receipt of the notice notifies the Commission that there is pending in his Department an investigation of, or proceeding for the prevention of, an alleged violation of this chapter involving the same subject matter."

To assume jurisdiction over the activities of a packer under the foregoing, the Commission must first determine formally that effective exercise of its power or jurisdiction with respect to retail sales of (canned poultry products, for example) is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in the investigation or proceeding. The main difficulty here seems to be in relating the proposed proceeding to the *retail* sales of the packer's products, so that the Commission could positively ascertain that its power with respect to such retail sales would be impaired by the absence of power or jurisdiction over the transactions giving rise to the proceeding against the packer.

The amendment conferred upon the Secretary of Agriculture a "hot pursuit" power corresponding to that described above, with respect to margarine and retail sales of meat and the other specified products.

The amendment additionally provides that the Commission shall have power and jurisdiction over any matter involving meat, etc., which is made subject to the power or jurisdiction of the Secretary of Agriculture—

"(1) When the Secretary in the exercise of his duties requests of the Commission that it make investigations and reports in any case."

There had been some questions as to whether the Commission might obtain adjudicative jurisdiction over a packer under the above quoted provision, thereby obviating the necessity of invoking the far more involved procedure set out in the "hot pursuit" subsection, 7 U.S.C. 227(a). However, the above quoted provision also appeared in the original Packers Act for the limited purpose of enabling the Commission to conduct investigations (with the aid of its compulsory processes) in order to obtain evidence for use in the Department of Agriculture's administrative proceedings. From the legislative history of the 1958 amendment it is apparent that the provision was retained for the original purpose, and not to furnish the Secretary of Agriculture wih a handy means of transferring to the Commission his Department's adjudicative powers over a particular packer.

Thus, the Commission's jurisdiction with respect to retail sales refers to antitrust practices which have an adverse effect upon competition at the retail level. With Commission administered statutes, the Commission's jurisdiction would normally obtain at the retail level, insofar as general trade restraints are concerned.

There is some question however, as to whether it is appropriate for the Commission to establish jurisdiction under the "hot pursuit" clause of the 1958 amendment in a merger or acquisition involving a meat packer.

Of paramount importance in determining the appropriateness of the Commission relying upon the "hot pursuit" provisions of the 1958 amendment, 7 U.S.C. 227(a) (2) (1964), is whether the original Act in 1921 removed from the Commission its jurisdiction to enforce Section 7 of the Clayton Act. If the Packers and Stockyards Act of 1921, 42 Stat. 159, did not transfer to the Secretary of Agriculture authority to proceed against mergers involving meat packers which may violate Section 7 of the Clayton Act, the Commission remains the respository of that authority, and need not rely upon the "hot pursuit" provision of the 1958 amendment which requires a letter from the Commission to the Secretary of Agriculture setting out cerain jurisdictional findings.

The source of any authority which the Secretary of Agriculture may have to proceed against mergers is in Section 202 of the Act, 7 U.S.C. 192 (1964), which provides as follows:

It shall be unlawful with respect to livestock, meats, meat food products livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to:

(e) Engage in any course of business or *do any act* for the purpose or *with the effect* of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or *of restraining commerce; or*

(g) Conspire, *combine*, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a)-(d), or (e) of this section. (emphasis added)

Section 406 (b) of the original Packers and Stockyards Act of 1921 provided that the Federal Trade Commission, on and after its enactment "shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary." It has not been judicially decided whether the broad language of Section 202 above includes merger activity. In the Matter of *Frito-Lay, Incorporated*, Docket 8606, the respondent attacked the Commission's jurisdiction to challenge the merger on the ground that it involved companies engaged in the production and sale of meat or meat products, and hence jurisdiction over the matters alleged in the Commission's complaint was lodged exclusively with the Secretary of Agriculture. The hearing examiner denied respondent's motion to dismiss for lack of jurisdiction for the folowing reasons:

"The provisions of Section 202 of the Packers and Stockyards Act (7 U.S.C.A. 192) although comparable to the provisions of § 1 of the Sherman Act (15 U.S.C.A. § 1) and § 5 of the Federal Trade Commission (15 U.S.C.A. § 45) do not encompass the prevention or dissolution of mergers which have not risen to the level of those restraints of trade or monopoly prohibited by the Sherman Act (15 U.S.C.A. §§ 1, 2). *United States* v. *Columbia Steel Co.*, 334 U.S. 495, (1950); see *Brown Shoe Company* v. *United States*, 370 U.S. 294, fn. 33, (1962).

Section 7 of the Clayton Act was intended to reach incipient monopolies and trade restraints outside the scope of the Sherman Act (see *United States* v. *E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 589 (1957); *Brown Shoe Company* v. *United States*, 370 U.S. 294, fn. 32 (1962) and thus to dissolve mergers which would not be illegal under the Sherman Act, The Federal Trade Commission Act or the Packers and Stockyards Act. Such matters hence would not be subject to the jurisdiction of the Secretary of Agriculture.

The grant of authority to the Federal Trade Commission to prevent mergers under § 7 and § 11 of the Clayton Act (15 U.S.C.A. §§ 18, 21) excluded only those "duly consummated pursuant to authority given by * * * the Secretary of Agriculture * * *." The phrase "subject to the jurisdiction of the Federal Trade Commission in § 7 was not to limit the amalgamations to be covered * * * but to make explicit the role of the Federal Trade Commission in administering the section." *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1964). Congress intended clearly to remove all questions concerning the Federal Trade Commission's remedial power over corporate acquisitions, and therefore explicitly enlarged the FTC's jurisdiction.

"There is no conflict between the jurisdiction of the Federal Trade Commission and the Secretary of Agriculture because the latter has been given no jurisdiction under § 7 of the Clayton Act. . . ."

The respondent's later interlocutory appeals to the Commission and to the courts were dismissed for failure to exhaust its administrative remedies and, therefore, never resolved the jurisdictional question raised by respondent.

Congress has exempted packers from the Commission's enforcement of the antitrust laws only "insofar as they are subject to the Packers and Stockyards Act." 15 U.S.C. 45(a)(6) (1964). A packer's antitrust activity which is not prohibited by that Act can, therefore, be regulated by the Commission. Exemptions from the antitrust law must be clearly and precisely expressed. *United States* v. *Southeastern Underwriters Association*, 322 U.S. 533, 556 (1944). For these reasons it is believed that the Commission has jurisdiction over packers for the purpose of investigating mergers which involve packers.

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