



AGRIBUSINESS COOPERATIVES UNDER ATTACK, TAKE THE OFFENSIVE

Over the years since their meager beginnings, agribusiness cooperatives in the U.S. have compiled a checkered history of both praise and condemnation. Some observers have argued that cooperatives no longer communicate with, nor represent the best interests of their farmer members. Some critics suggest that cooperatives have stymied, or at least diffused, free market transactions in the agricultural economy. Still others have been so bold as to propose that cooperatives characterize the socialistic antithesis of a private free enterprise system. Despite such strong and diverse judgments by their critics, agribusiness cooperatives have, over the years, also received their fair share of compliments and plaudits. They have been referred to as the sole protectorate of the family farm concept, guardian of the small or marginal farmer during economically depressed periods, and the only remaining vehicle by which competition in the product and factor markets is enhanced and facilitated. Finally, it is not at all inconsistent that such statements of praise and condemnation could be heard concurrently.

Reviewing the long and interesting history of most agribusiness cooperatives, one must almost always conclude that a pro cooperative philosophy has proven to be the most prevailing. Most such organizations were born as a means for addressing a need, at least a perceived one. In addition, most cooperatives remain viable only as a result of their ability to fill such a need, and to do so effectively and efficiently. In the long-run, therefore, cooperative growth and performance become the final measures of their true

impact on the agricultural economy. However, even here in this public arena, where the survivor claims all the rewards, much recent concern is being expressed that cooperatives and their investor-owned corporate competitors do not enter the agricultural market under a uniform set of rules.

Charges by the National Commission

Anti-cooperative claims of competitive inequities and/or undue market influence are certainly not new. However, a recent report by the National Commission for the Review of Antitrust Laws and Procedures has substantially fueled the flames surrounding these long-standing charges against agribusiness cooperatives and their so-called market-place privileges.

In their report published in January 1979, the National Commission submitted three basic recommendations relating to agribusiness cooperatives. First, the commission acknowledged that farmers should continue to have the right to join and organize cooperatives. However, they suggest that once organized, the antitrust treatment of these cooperatives should be indistinguishable from that applied to their investor-owned corporate competitors. Under the proposed uniform application of antitrust regulations, cooperative mergers and/or consolidations would be permitted only if no substantial lessening of competition resulted, i.e., all such actions would be included under Section 7 of the Clayton Act.

Second, the commission recommended that Section 2 of the Capper-Volstead Act be amended or strengthened to define more precisely the terms "undue price enhancement." Further, it suggests that the

responsibilities for enforcing this provision be separated from the U.S. Department of Agriculture and its presumed responsibility to promote and assist agricultural cooperatives.

Third, the commission was unable to reach agreement on the current antitrust exemption enjoyed by agricultural marketing orders. Yet, it did suggest that in the future, the Secretary of Agriculture should be required to consider competitive factors and public benefits prior to the sanctioning of an order.

When read only in context and when reviewed only within a philosophical environment of equitability and general public welfare, each of the individual recommendations might be judged fair and reasonable. Yet such a judgment is cursory and void of a more realistic appreciation of the proposed regulatory impact on cooperatives. A much broader analysis of the suggested regulatory changes is needed if a true measure of their merits is to be made. The objective of this paper, therefore, is to broadly assess those merits and to consider the impacts such antitrust regulatory changes would have on cooperative operations and the benefits currently provided their member-patrons.

Another Look at Capper-Volstead

Should cooperatives' antitrust immunity now provided under the Capper-Volstead Act of 1922 be revoked? The National Commission suggests that this immunity provides cooperatives with an unwarranted privilege, one not available to their investor-owned corporate competitors. Indeed, such immunity is a privilege enjoyed only by agribusiness cooperatives and labor unions. The question, therefore, becomes whether or not such a privilege is justified. In seeking an answer to this question, one must trace the origins of the antitrust exemption clear back to the previous century.

In the late 1800s, Americans and their elected officials were greatly concerned

about the growth of industrial giants throughout the U.S. economy. Railroads, for example, had achieved such a position within our economy that monopolistic influences were being exerted. In an attempt to curb such monopolistic practices, Senator Sherman compiled legislation later known as the Sherman Act of 1890. A literal interpretation of this act prohibited the formation of organizations large enough to suppress the competitive vigor of a market. Such a literal interpretation also rendered agricultural cooperatives and labor unions illegal per se. Because Senator Sherman viewed cooperatives and labor unions to be the only means by which a countervailing presence could be established in competition with the feared corporate giants, he wished to include in his act, a special exemption for these two special organizational forms.

Unfortunately, the Senator's colleagues subsequently persuaded him that such an exemption was not needed insofar as cooperatives and unions would likely not be impacted by the act. This presumption proved incorrect, as cooperatives and unions became early targets of the act. Hence, it was not until 1914 when the Clayton Act was passed that cooperatives were given a degree of immunity.

The Capper-Volstead Act of 1922 further solidified this exemption and specified the limits of its applicability. Supporters of the Capper-Volstead Act argued, at the time, that cooperatives and labor unions represented the only reasonable means by which farmers and employees could deal equitably in the open market with the substantial powers then generated by the corporate giants. The obvious question one must ask next is whether this disparity in economic power, as was so pervasive in the 1920's, remains. Only with the elimination of such disparity could one argue for the termination of cooperative immunity.

To be sure, the number of active commercial farmers has diminished greatly since the 1920's. In the words of our

Secretary of Agriculture, "We have lost over half our farmers since 1940, average farm size has more than doubled, and control of agriculture's productive resources has been concentrated, bit by bit, in fewer and fewer hands. Of the more than 2 million farms counted by the agricultural census, 200,000 now produce nearly two-thirds of the nation's food and fiber."¹ Quite clearly, our farmers, while fewer in number, are no longer so small in size as to remain totally helpless in a marketplace dominated by corporate agribusiness firms. The question, what about market concentration on the other side, must also be considered?

Has the competitive disparity between the now-larger farmer and the modern corporate business firm widened or narrowed? According to W. F. Mueller, a mere .2 percent of all U.S. corporations (440) now control 73 percent of all manufacturing assets. This represents a 49 percent increase in concentration since 1950.² The cost to society of this monopoly power is estimated to be \$180 billion per year. Such market power found in the nation's food manufacturing industries alone imposes substantial cost penalties on food producers and consumers, alike. For example, John Connor of the USDA and Russell Parker of the FTC estimate that monopoly losses in the food manufacturing industries total \$12 billion annually, or 7 percent of its gross sales volume.

Hence, our analysis would suggest that the market environment has probably changed little since the 1920's. Farmers, while larger in size and smaller in number, are confronted in the marketplace with a corporate agribusiness structure containing fewer, but larger, corporations. In essence, the competitive disparity perceived by proponents of the Capper-Volstead Act in

¹ "Testimony Submitted by the Honorable Bob Bergland, Secretary of Agriculture," submitted to the National Commission for the Review of Antitrust Laws and Procedures, July 27, 1978.

² Mueller, W.F. "Cooperatives and the National Antitrust Commission." Speech given at the Annual Meeting of the National Council of Farmer Cooperatives, Las Vegas, January 11, 1979.

1922 remains in existence and may, in fact, have widened. Insofar as agribusiness cooperatives facilitated the origin of a farmer-controlled countervailing power in the nation's food and fiber markets of 1922, then it is likely that such a function is still being performed today. Given the magnitude of market power prevalent throughout our agricultural economy, any regulatory changes that would weaken the position of agribusiness cooperatives, while leaving unaffected the positions held by their investor-owned corporate competitors, would ultimately place U.S. farmers in a position of serious competitive disadvantage.

Undue Price Enhancement

As noted earlier, the second component of the Commission's attack on cooperatives relates to Section 2 of the Capper-Volstead Act. This section addresses the concept of prohibiting "undue price enhancement" as might result from a cooperative's specific activities in a given market. In the past, the responsibility for enforcing this prohibition rested with the Secretary of Agriculture. There has been a long history of institutional support for cooperatives from numerous agencies within the USDA. This potential conflict and a review of actual USDA issuance of cease and desist orders lends some credence to the charge that the various secretaries have been most reluctant to enthusiastically carry out their responsibilities under Section 2.

To review this matter on a broader scale, one must look at Secretary Bergland's testimony before the Commission on July 27, 1978³. Secretary Bergland admits that the department has initiated few cease and desist investigations under this section. As underlying reasons, he cites the fact that during the period of 1922 to the early 1970's, farm prices were too low to suggest that any cooperative organization had achieved a position of undue price enhancement. Second, he states that until the 1960's, cooperatives were generally too

³ Bergland Testimony, op. cit.

small to have achieved a market position whereby the Section 2 provisions might have been exercised.

Regardless of the Secretary's reasons for their failure to support a rigorous enforcement of Section 2, the question remains as to whether a transfer of this responsibility to the FTC or the Department of Justice might be desirable. Two general arguments have been offered relating to this issue. The Secretary himself has indicated a willingness to reevaluate his role in this matter and more aggressively exercise his responsibilities within the following provisions. First, the USDA will attempt to expand its vigil over cooperative activities insofar as they might result in undue price enhancement. Second, this monitoring function will be placed in a part of the USDA where any conflict of interest might be avoided. Third, the department will accept and investigate allegations of undue price enhancement lodged by members of the public or private sector. Fourth, the Administrative Procedure Act, whereby a Judicial Officer may revise decisions by an Administrative Law Judge, will apply to these hearings conducted under Section 2 of the Capper-Volstead Act.

W. F. Mueller offers a second interesting argument in his testimony before the same Commission. Professor Mueller urged that the Section 2 responsibilities not be transferred unless a similar provision relating to undue price enhancement is enacted into existing Federal Trade Commission and Sherman Acts. His logic suggests that if there is reason to believe that any corporation, including a cooperative, is acting to unduly enhance prices, an agency must be empowered to act against the suspected culprit. At the present time, Mueller notes, many investor-owned corporations have the market power to unduly enhance prices, but are not being investigated under existing antitrust laws. To bring into the FTC provisions for enforcing Section 2 exclusively against cooperatives, organizations would be woefully unfair.

A final personal note on this point questions whether the conflict of interest charge is truly adjudicated with a transfer of Section 2 responsibilities to the FTC. If, in fact, the USDA has demonstrated its pro cooperative stance, then an equally convincing argument can be made that the FTC has already demonstrated its basic anti-competitive attitude via its previous investigation, staff reports and stands on "Congressional intent" related to cooperative legislation.

The Question of Cooperative Mergers

The Commission proposed to include cooperative mergers under Section 7 of the Clayton Act. The premise underlying this proposal suggests that cooperatives have already reached a large size such that a merger of two such organizations should immediately be suspect for its threat as a restraint of trade. Just how large and important (powerful) have cooperatives become? Does their size, alone, represent a threat to the desired competitive market conduct? While some exceptions can be found, a broad analysis of agribusiness markets would suggest that while cooperatives might actively encourage growth and/or merger in their search for enhanced market power, they have only rarely achieved a disproportionate market presence. The reasons underlying this historical account are simple. In Secretary Bergland's own testimony he acknowledges that, "Cooperatives cannot control production by either members or non-members, and cannot limit entry or exit of new producers into or from the market." As the price for a product increases, new or existing producers increase production, thereby reducing price enhancement. Hence, this general cooperative practice of open membership and freedom of member exit puts an effective lid on price enhancement regardless of cooperative size.

Under FTC practices most institutional barriers to organizational mergers are tied to a quantitative assessment of market shares. A natural question, which,

therefore, arises, is whether market share, alone, when held by a cooperative or its corporate competitor, exerts an equal influence. In fact, as long as a cooperative is unable to control industry supply (as its corporate competitors may), market share, alone, becomes a very poor indicator of market power. As a generalized rule, therefore, many authorities have argued that a large market share held by a cooperative does not confer market power comparable to that, which would result if the same market share were controlled by an investor-owned corporation.

In some rare cases, cooperatives gain a greater degree of supply control through their participation in a federal or state market order. If, within this environment the cooperative secures prices above those minimums established by the order, and accomplishes this through anti-competitive practices, then their Capper-Volstead immunity is sacrificed and they are fully exposed to antitrust charges. The records show that such charges have been brought and proven against numerous agricultural cooperatives. Hence, when supply control is facilitated, cooperatives are already subject to the same antitrust treatments, which confront their corporate counterparts demonstrating similar supply control capabilities.

Where this analogy is questionable is when one finds that a cooperative's membership is comprised of large non-farm corporations. A valid question then arises as to the true objectives of the cooperative organization. When individual agricultural producers are no longer the direct beneficiaries of cooperative activity, then some real doubt arises as to the legitimacy for any antitrust immunity. Our cooperatives, themselves, must become the vehicle through which non-producer interests are specifically excluded from amongst their ranks.

How Dominant Have Our Cooperatives Become?

In one of the latest reports on U.S. cooperative operations, Dunn, Ingalsbe, and Armstrong report that the nation's farmers held 5,906,379 memberships in 7,535 marketing, farm supply, and related service cooperatives in 1976⁴. Five of every six farmers were members of at least one agribusiness cooperative that year. As shown in Table 1, these agribusiness firms grossed \$55.9 billion in 1976, of which 74.3 percent was attributed to marketing cooperatives, 23.4 percent to farm supply, and 2.2 percent to service cooperatives.

Most agricultural cooperatives remain small as almost 82 percent reported sales of less than \$5 million. Fewer than 0.1 percent of the nation's cooperatives reported 1976 revenues of over \$1 billion.

Cooperative's share of the farm level activity varied widely by commodity and supply category (see Table 2). In dairy, for example, cooperatives accounted for 74 percent of total dairy products marketed, but only 8 percent of total poultry products marketed.

A good perspective on cooperative's position in the agricultural markets is provided by comparing sales of the nation's four largest cooperatives with those for the four largest non-cooperative firms by specific commodity product (see Table 3). As shown, sales for large cooperatives and non-cooperatives grew significantly over recent years. However, in value of products sold, the cooperatives remain considerably smaller than their non-cooperative competitors.

As a general rule, it was found that cooperatives tend to concentrate their efforts at the point of production while non-cooperatives diversify into other areas. In fact, Dunn, Ingalsbe, and Armstrong

⁴ Dunn, John R., Gene Ingalsbe, J.H. Armstrong, "Cooperatives and the Structures of U.S. Agriculture." *Structure Issues of American Agriculture*, ESCS, USDA, Ag. Econ. Report 438, November 1979, pp. 241-248.

concluded that, "Cooperatives are more committed to and supportive of the peculiar needs of producers." It appeared cooperatives continued with their producer-supportive activities even during those periods when economic and financial conditions would have encouraged a market exit by the non-cooperative competitors.

Don't Antitrust Our Co-Ops

"Don't Antitrust Our Co-ops" represents the "battle cry" of an offensive movement in support of cooperatives recently initiated by the Field Services Department of the National Farmers Union. Other cooperative organizations and associations are launching their own programs in response to the 1979 report by the National Commission to Review Antitrust Laws and Procedures. As a broad pro cooperative movement, it appears to be one of the first characterized as an offensive or positive program. It is not directed at a specific problem and/or piece of legislation. Rather, its attempt is to convey the general message that cooperatives are ultimately concerned with securing economic justice for farmers in the marketplace, and that it

is economic justice rather than immunity from the antitrust laws that will secure for cooperatives an equitable position within the various markets.

In my opinion, this offensive program will be successful. Within the context of exerting countervailing power, cooperatives will retain both their "uniqueness" and their competitive positions vis-à-vis investor-owned corporations. At the same time, however, cooperatives will become evermore aware that those market influences, which appear so beneficial to producers, cannot be misused and/or abused to measurably lessen the competitive attributes of a free market or the general benefits to the consuming public.

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Table 1 — Farm marketing, supply, and related service cooperatives, by dollar volumes, 1975-76.

Cooperatives' Sales	Cooperatives		Gross Sales*	
	Number	Percent of Total	Dollars	Percent of Total
Less than \$100,000	1,497	19.9	74,672,873	0.1
\$100,000 to \$999,999	1,660	22.0	815,390,607	1.5
\$1 million to \$4.9 million	2,998	39.8	7,176,876,337	12.9
\$5 million to \$9.9 million	796	10.6	5,454,965,401	9.8
\$10 million to \$24.9 million	355	4.7	5,298,669,753	9.5
\$25 million to \$49.9 million	129	1.7	5,540,915,916	9.9
\$50 million to \$99.9 million	18	0.2	1,574,236,311	2.8
\$100 million to \$199.9 million	34	0.5	4,706,649,572	8.4
\$200 million to \$249.9 million	15	0.2	3,474,438,022	6.2
\$250 million to \$499.9 million	18	0.2	6,964,973,293	12.4
\$500 million to \$999.9 million	8	0.1	5,404,670,912	9.7
\$1 billion and over	7	0.1	9,378,834,258	16.8
TOTAL	7,535	100.0	55,865,293,255	100.0

* Includes inter-cooperative volume.

Table 2 — Number of cooperatives and percentage of U.S. cash receipts for products marketed and farm supplies purchased.⁵

Item	1950-51		1960-61		1965-66		1970-71		1975-76	
	No.	%.	No.	%	No.	%	No.	%	No.	%
Products marketed:										
Cotton and products	550	12	561	22	572	32	528	26	619	26
Dairy products	2,072	53	1609	61	1273	65	847	71	579	74
Fruits & Vegetables	951	20	697	21	577	32	475	26	436	30
Grain & Soybeans ⁵	2864	29	2787	38	2696	36	2741	35	2713	40
Livestock & product	1011	15	816	14	692	11	817	11	654	10
Poultry Products	760	7	567	10	396	9	226	10	151	8
Other ⁷	510	16	421	22	348	21	264	15	214	16
Total	7276	20	6548	23	5842	26	5515	25	4840	29
Farm Supplies Purchased:										
Feed	4406	19	4412	18	4301	18	4078	16	3819	19
Seed	3636	17	3192	19	3942	19	3871	16	3526	15
Fertilizer & lime	3352	15	4276	24	4363	30	4134	30	3949	36
Petroleum	2677	19	2798	24	2733	27	2701	32	2983	28
Farm Chemicals	NA	11	3014	18	3330	16	3556	20	3597	33
Other Supplies & Equipment ⁸	5937	5	4558	7	4810	6	4663	8	4432	8
Total	7409	12	7016	15	6568	15	5906	16	5538	18
Total number of cooperatives	7409	NA	7016	15	8329	NA	7995	NA	7535	NA
	10051	NA	9163	NA	8329	NA	7995	NA	7535	NA

NA=Not Applicable

¹ Revised. Cooperative date for a fiscal year compared with average of data for 2 U.S. calendar years involved, except for dairy products where only first calendar year was used.

² Includes rice, dry beans, and peas.

³ Includes tobacco, sugar products, peanuts, tree nuts, seed, and other specialty crops.

⁴ Includes building materials, farm machinery, farmstead equipment, containers, and general farm supplies.

Table 3—Value of sales of the four largest cooperatives and the four largest non-cooperatives for selected commodity groups.

Product and year	Sales of four largest cooperatives	Sales of four largest non-cooperatives	Cooperatives' sales as percentage of non-cooperatives' sales
	----- Million Dollars -----		Percent
Dairy products:			
1960	555	2,613	21.8
1965	675	2,890	23.4
1970	1,793	3,604	49.8
1975	3,197	5,829	54.9
Fruits and vegetables:			
1960	368	879	41.9
1965	439	1164	37.7
1970	561	1634	34.3
1975	981	2308	42.6
Poultry products:			
1973	351	524	67.0
1975	521	1032	50.5

Source: USDA, ESCS. *Growth of Cooperatives in Seven Industries*. Cooperative Research Report No. 1, July 1978.