National Commission on Food Marketing
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In this issue, we review the operation and findings of the National Commission on Food Marketing. The main article summarizes the Commission's general report of July 1966. The "In Perspective" page provides background on federal and state regulation of food marketing activity.

A departmental study is presently identifying and analyzing current issues and problems in the marketing of food products. Results will be published in a special issue of Minnesota Farm Business Notes.

LEGISLATIVE AUTHORITY AND OPERATION

For farmers, 1964 marked the 3rd year of declining product prices. For consumers, it was the 6th year of rising food prices. Congress, feeling pressure from both groups, enacted Public Law 88-354. This law established the National Commission on Food Marketing.

The Commission was established to identify "significant developments in the industry, to gauge their future course, to appraise their consequences, and to present findings and conclusions on the ways in which changes in public policy or the organization of the industry might lead to 'the kind of food industry that would assure efficiency of production, assembly, processing and distribution, provide appropriate services to consumers, and yet maintain acceptable competitive alternatives of procurement and sale in all segments of the industry from producer to consumer.'"

A bipartisan group of five Senators, five Representatives, and five public members appointed by the President made up the Commission. Its staff included 33 professional economists and lawyers. Staff work was organized around technical study reports. These studies, issued as background for the general Commission report, covered ten subject areas:

1. Livestock and meat.
2. Poultry and eggs.
3. Dairy products.
4. Fruits and vegetables.
5. Milling and baking.
7. Food retailing.
9. Farm-retail price spreads.
10. Special studies (private labels, food prices, and economic regulations).

Comprehensive analysis was based upon public hearings, private interviews, and data from private industry and government sources. At the end of their deliberations, the Commission was divided in opinion. So a "majority" report, supported by nine members, was issued along with a "minority" report supported by six members. Four of the nine "majority" members urged stronger action or continued study and analysis.

THE COMMISSION REPORT: FINDINGS

In general, the report suggests that performance of the food marketing industry has been fairly good. Findings of the Commission and majority opinions may be summarized into 14 areas.

Merchandising Orientation—According to the report, primary interest of food industry firms has shifted from production to selling. Emphasis on selling leads to product differentiation as an important business strategy. In turn, this emphasis leads to misleading packaging, trading stamps, and "special" sales instead of across-the-board price competition. High advertising and sales promotion costs result. An unknown part of the costs to "push" brand "Y" instead of brand "X" does not increase total food consumption or furnish meaningful information to buyers.

Although retailer-label products and discount food stores restrain the alleged evils, costs of promotion and differentiation must be added to most food prices.

Concentration—The report finds a growing concentration of large firms in most industry segments. Moreover, concentration of purchasing by retailers probably will rise. The report particularly criticizes concentration through merger. Without antimerger action by regulatory agencies, these trends may have been stronger.

The chief incentives for concentration are the selling and buying advantages of large firms. In most industries, scale economies in production and distribution are achieved by medium size firms.

The majority concluded that if competition is to regulate the food economy effectively, high concentration must be prevented even if immediate injury to competition cannot be identified. The most essential requirement in the food industry is a large number of retailers competing for suppliers' products.

Vertical Integration and Diversification—In much of the food industry, vertical integration has resulted in lower costs. Notable examples are the integration of retailing and wholesaling by chainstores, baking and fluid milk processing by retailers, broiler production by feed companies and processors, and some cattle feeding by meatpackers. Nevertheless, the report argues, integration by marketing firms into farm production shifts agriculture away from the family farm. Thus, it is undesirable.

Industry diversification also has grown, largely due to "conglomerate" merger (merger of firms producing unlike products). Some diversification has an acceptable basis. Since food retailers are diversified, some cost reductions accrue to a food processor who can supply a wide range of food products. Nevertheless, the major impetus for diversification is that a conglomerate firm has increased ability to survive intense competition by price cutting in some areas and in particular product fields. Thus, diversification may in the end weaken competition.

Market Power—Defined as the ability to influence prices or terms of trade in a way favorable to the firm, "market power" flows from several sources.

The press of abundant food supplies from agriculture gives a bargaining advantage to retailers. They also have direct contact with consumers, the source of demand. Retailers control the shelves from which they buy. By handling many items, a typical retailer is independent of any particular item or supplier. Chainstores also have market power because they sell through many stores in many local markets.
Nevertheless, food processors are not totally without power. Since many processors have strong brand names, retailers may feel compelled to carry their branded products. But in this system, farmers have no bargaining power. They must depend on vigorous competition among buyers to obtain the full market value for their products. So competition must be nurtured.

Trade Practices—Many types of discretionary practices exist. Price discrimination by sellers, a persistent problem, often is buyer-induced. Product rejection is a common means of price renegotiation. Some farm produce markets are characterized by informal agreements and poor records. Distributors use their buying power in private label procurement.

The Commission found evidence of kickbacks and other commercial bribery, deceptive advertising, and misleading packaging. These practices almost always reflect strength of buyers over sellers.

Changing Marketing Channels—In most trade channels, direct movement is increasing, thereby reducing the number of transaction points and, generally, reducing cost. The notable exception is in Midwest livestock marketing where too many local establishments buy and sell livestock. The report concludes that these establishments may be inefficient and may cause marketing confusion.

Commodity Pricing Systems—The food pricing system has been modified in important ways. With increased incomes, consumers allegedly grow reluctant to modify their purchasing habits in response to small price changes. Great volumes of commodities are sold under formula pricing, thereby reducing the volume on which to establish "genuine" market prices. With widening farm-retail margins, a given change in farm prices has a proportionately smaller effect on retail prices. Therefore, a farm oversupply must drive farm prices down sharply before consumer prices are reduced sufficiently to induce purchase of the larger supply.

Efficiency and Progressiveness—Although the food industry generally is efficient, the majority felt that: (1) some practices, such as bread distribution and meat cutting practices in retail stores, are excessively expensive, and (2) substantial costs are built into prices through selling expenditures.

Profits—In recent years, food industry profits have been approximately in line with averages for the economy. However, the report argues, the rate of return achieved by the 50 largest food retailers was high considering that they almost never lost money.

Farm-Retail Price Spreads—Most marketing functions are efficiently performed. Inefficiencies of too small operators usually reduce their earnings rather than add to the price spread. Nevertheless, the majority concluded that decreased price spreads are possible without reducing consumer services or unreasonably lowering profits.

Food Imports—Food imports contribute to domestic food supplies while creating only moderate, short-lived disturbances. The Commission held that an industrial, high income economy such as the United States can best remain competitive in agriculture by emphasizing mechanization of production rather than by precluding imports.

Position of Consumer—The Commission concluded, in what has become a well-known sentence, that "the consumer is, indeed, a sovereign; but she is not, as she is often told, an all-knowing, all-powerful, and fully served sovereign." This situation results because of misleading advertising and packaging as well as lack of consumer education and awareness.

Position of Producers—The new orientation in merchandising calls for steady flows of standardized products. Among other effects, this orientation holds prices down and intensifies competition in agriculture. In some instances, the bargaining power of farmers may be increased in agriculture by emphasizing mechanization of production rather than by precluding imports.

For any substantial changes, group action is necessary. Cooperatives are not strong enough for effective pricing and production decisions. According to the Commission, governmental sanction for collective action is needed.

Regulatory Practice and Policy—Most controversy has arisen around these Commission conclusions. The majority reported that control of concentration is essential for a competitive environment. Furthermore, they argued that numerous competitive alternatives in the system must be maintained, that discriminatory practices must be regulated, and that trading in perishable food, especially at early marketing stages, must be supervised.

THE COMMISSION REPORT:
CONCLUSIONS

To correct undesirable characteristics and trends in food marketing, the Commission report advances the following proposals:

1. Regulatory agencies need power to require premerger notification and to issue temporary cease and desist orders.

2. Each public corporation having annual sales exceeding a specified amount should report to the Securities and Exchange Commission, for publication, its annual sales and profits in each field of operation.

3. The Federal Trade Commission should continually review market structure and competition in the food industry. It should annually report findings to Congress.

4. The Robinson-Patman Act should be studied for possible revision.

5. Regulatory jurisdiction over transactions in meats, dressed poultry, and their products should be transferred from the Department of Agriculture to the Department of Justice and the Federal Trade Commission.

6. An agency should be established to administer laws regulating competition in perishable product marketing. It should report directly to the Secretary of Agriculture.

7. The Perishable Agricultural Commodities Act should be strengthened and vigorously enforced. Furthermore, regulatory activities concerning perishable commodities should be supported by general funds, not license fees.

8. Where feasible, consumer grades should be developed and required.

9. The Food and Drug Administration should establish standards of identity for all foods in definite product categories.

10. Packages and labels should give an accurate impression of contents and prices.

11. A centralized consumer agency should be established in the executive branch of the government.

12. Federal marketing agreements and orders should be authorized for any commodity produced in a local area or region.

13. Legislation should allow the establishment of Agricultural Marketing Boards, upon vote of producers, for negotiating terms of sale when products first enter market channels.

14. All marketing participants involved in interstate trade should be prohibited from obstructing formation or influencing operation of a producer's bargaining association or cooperative.

15. The Department of Agriculture should give high priority to timely reports of prospective market supplies of selected perishable food products.

16. The Department of Agriculture should explore means of reporting forward prices, contract terms, and other forms of pricing.

17. Through a concerted effort, state
regulations affecting trade across state lines should be made more uniform.

18. The Department of Agriculture should study economic effects of interstate trade barriers and means of eliminating them.

19. Concerning fluid milk, state and local governments should adopt standard U.S. Public Health Service regulations, accept reciprocal inspections, and study practices that hurt selling competition.

20. In cooperation with affected states, the Department of Agriculture should develop a model code for licensing and operating local livestock markets.


22. The impact of changes in transportation methods and costs should be studied.

23. The Bureau of Labor Statistics should improve the accuracy of its reported food prices.

24. The Department of Agriculture, with the assistance of the food industry, should strive to improve the accuracy of its price spread data.

25. The Commodity Exchange Authority should supervise futures trading in meats and livestock.

THE MINORITY REPORT

Although the entire Commission agreed on findings of fact and information, the minority objected to conclusions of the majority. According to the minority, the majority overstepped the bounds of the Congressional mandate by recommending specific action and legislation. Moreover, the minority felt that many conclusions were not adequately supported and sometimes conflicted with findings of fact.

Two minority reports were submitted, each signed by three dissenting members. While each report stressed different areas of conflict with the majority, they did not specifically disagree with each other.

Whether bounds of Congressional intent were overstepped is, of course, a controversial issue. The minority argued that Congress did not desire policy recommendations and that legislative recommendations now clouded potential policymaking. The minority held that when they objected to making recommendations, the majority merely relabeled their “recommendations” as “conclusions.” They also held that since many similar legislative proposals had not been passed by Congress, they were politically, if not economically, unsound.

Three dissenting members felt that the Commission report should have included these four major findings:

1. The food marketing industry provides consumers with the highest quality and lowest priced food in history as well as a wide variety of choice and convenience. Hence, its performance is very good.

2. The food marketing industry is highly competitive and innovative, has average profit levels, and is unhindered by excessive concentration.

3. The food marketing industry, being responsive, flexible, and efficient, likely will continue performing well if unhindered by additional regulations.

4. Although some trends require watchfulness, most majority proposals are unwarranted.

With some majority conclusions the minority took particular exception. They believed that the Agricultural Marketing Boards were geared to a past agriculture characterized by commodity surpluses. But projected world food supply and needs made this an unwise and unnecessary proposal. The minority also argued that data disclosure requirements and increased industry surveillance were unsound because of the high cost involved.

Other minority exceptions concerned interpretation of industry concentration data. Minority members felt that:

- Many separate “industries” were too narrowly defined by the majority. Therefore, a larger than indicated number of firms really participated in some markets where high industry concentration was alleged.

- Concentration ratios revealed only a limited scope of industry structure. Many other factors, including ease of entry, should have been considered.

- As presented, concentration ratios were misinterpreted. Using a definition of “high concentration” as an industry wherein more than 50 percent of the business is accounted for by the four largest firms, the minority found only two highly concentrated industries.

The minority argued that some majority inferences from concentration to industry performance were wrong because the industries have high research and development expenditures and modest profit rates.

Furthermore, minority members saw the “selling orientation” of the food industry in a different light than did the majority. They reasoned that advertising and promotion are natural methods by which the industry can “hold its own” in the economy.

According to the minority, research and promotion expenditures are necessary for new product development and marketing and the industry has performed well in this respect. Brand names have value because they are a form of consumer protection—the manufacturer’s good name is at stake when the product is labeled. Misleading, unrepresentative labeling and packaging were not judged to be problems because the consumer is not usually confused and, if misled, quickly discovers the error.

ISSUES IN FOOD MARKETING

The Commission majority and minority disagreed on numerous points. In a broad sense, these conflicts arose from fundamental issues in food marketing. The major issues in the report of the National Commission on Food Marketing may be grouped into four areas:

1. Market Power for Producers—Involves conflicting ideas on: the impact of decentralizing markets on producers, the role of marketing boards when domestic agriculture is characterized by oversupply, and the types of market power accruing to producers when domestic agriculture is characterized by shortage.

2. Role of Consumers—Involves conflicting ideas about increased consumer protection and information, and proposals for an identifiable voice for consumers in government.

3. Merchandising Orientation of Food Processors—Involves conflicting opinions on the extent that expenditures for advertising, product development, and built-in consumer services add to the value of food products and alter patterns of demand and price for farm products.

4. Performance of the Food Industry—Involves not only the empirical validity of numbers, but also conflicting opinion on less tangible issues such as: What is justifiable profit? What is a barrier to entry of new firms? Which group of firms constitutes an industry?

The study and findings of the Commission provide an important basis for identifying current issues and prospective problems in food marketing. The work of the Commission raises questions about the analytical approaches used and suggests additional fact-finding research. Many differences of opinion, however, are based upon conflicting value judgments.

Conclusions for additional research will serve as a basis for future food marketing research. Those based upon conflicting value judgments need to be openly explored in group discussion and through our political structure.
Regulation of Food Industries

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Food industries—their assembly, storage, transportation, processing, distribution, and competition—are regulated by both federal and state law. Some federal legislation is general in character, applying to activities of all industries. Other federal legislation specifically concerns food industries. Within this legislative framework, the National Commission on Food Marketing issued its findings and conclusions.

GENERAL FEDERAL REGULATIONS

General federal regulatory law is based upon three major pieces of legislation and supporting amendments.

The Sherman Anti-trust Act prohibits “every contract, combination or conspiracy in restraint of trade and every attempt to monopolize any part of trade or commerce” that are unreasonable or undue. Price-fixing, boycotts, and consumer or market allocation lines for private industry are absent from these laws and unavailable from the governmental agencies that administer them.

SPECIFIC FEDERAL LEGISLATION

Two major types of specific federal legislation concern the food industries:

- Those lessening opportunities for price discrimination or anticompetitive practices.
- Those encouraging such practices as a countervailing influence.

Although apparently contradictory, the rationale underlying each set of laws and the resulting effects are not.

The Packers and Stockyards Act leads the list of laws in the first category. In essence, this Act transferred regulatory authority over livestock assemblers, packers, and distributors from the Federal Trade Commission to the U.S. Department of Agriculture. “It operates as a meat industry countervailing part of the Sherman, Robinson-Patman, and Federal Trade Commission Acts, with similar scope and responsibility.”

Other specific federal legislation that are procompetitive in effect include those concerned with the establishment of quality, sanitation, and quantity standards (e.g., Grain Standards Act, Federal Seed Act, Meat Inspection Act, etc.) and those that protect producers or handlers from unfair trade practices (Commodity Exchange Act, U.S. Warehouse Act, Perishable Agricultural Commodities Act).

A second group of laws is directed at countervailing market power. They are opposite in approach to the general regulation prevailing in most industries. Farmer cooperative organizations were exempted from antitrust action under the Clayton Act and were encouraged to merge and concentrate under the Capper-Volstead Act. Farmer cooperatives were also exempted from federal income taxation on grounds that they did not have “income” but “excess receipts over costs” which are returned to farmer members.

The Agricultural Marketing Act of 1937 expanded this protectionistic philosophy by permitting farmer groups to fix prices for certain products—mainly perishables—with the processors to whom they sold. Such price-fixing was justified in the name of efficiency and “fair” returns to parties involved.

STATE REGULATION

Although variable, state regulatory law follows a pattern similar to federal law. Due to particular interests of each state, food shippers face a maze of legislation. The extent to which various state laws impede or enhance trade has not been comprehensively studied.

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