CHANGING POWER RELATIONSHIPS IN THE U.S. FOOD INDUSTRY: BROKERAGE ARRANGEMENTS FOR PRIVATE LABEL PRODUCTS

by

Bruce W. Marion*

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* The author is a Professor at the Department of Agricultural Economics, University of Wisconsin-Madison. This paper was presented at a conference on Food Retailer-Manufacturer Competitive Relationships in the EU and USA, at the University of Reading, UK, July 17-19, 1995.

There are a few fairly simple points I'd like to make in this paper. First--I detect a fundamental shift in the power relationship between food manufacturers and food retailers in the U.S. over the last 15 years. Second, an important characteristic of this shift is the dramatic increase in the amount of "street money" paid by manufacturers to retailers, much of which goes directly to the retailers's bottom line. Third, some instruments for street money, particularly slotting fees and in-house brokerage arrangements, increase the comparative advantage of large manufacturers versus small manufacturers, and significantly increase the entry barriers for manufacturers. Finally, I find these developments of concern because I do not believe they encourage a consumer responsive food system, i.e., one in which manufacturers and retailers are rewarded on the basis of their efficiency, product innovations, and ability to satisfy consumer preferences. Rather, the size of a manufacturer's bank account has become a major requisite for gaining access to consumers.

Shift in Power Relationship

Although the main focus of this paper is on brokerage arrangements, I would like to make a few comments first about power relationships in general. "Vendor participation programs" is a synonym for the multitude ways retailers have found for manufacturers to contribute to the retailer's welfare. Some of these participation programs, such as cooperative advertising, in-store demonstrations and promotions, and product give-aways at grand openings have existed for a long time and serve manufacturer as well as retailer interests. What is new are programs like slotting and in-house brokerage that seem to mainly serve as a conduit for manufacturer contributions directly to the supermarket's bottom line. And--as these more blatantly one-sided arrangements have been accepted, retail chains have also become more

aggressive in asking for other contributions.[1] For example, if a product fails, many retailers now expect the vendor to pick up the product, reimburse the full cost, but not receive any rebate on the slotting allowance. Another example is the reported cost to participate in Lucky's "national brand event." For a one-week ad and two weeks of special displays in 220 stores, the cost per manufacturer this year is reported to be $60,000.

The fees for "participation programs" appear to be less and less tied to costs and more based upon what the "traffic will bear." For example, a small manufacturer of a specialty meat product told me that slotting fees they have encountered range from zero to $25,000 per item for a chain division, with the average $2500 to $5000. Slotting allowances range greatly depending on the product, the amount of shelf space involved and the region of the country.

Slotting allowances bear little relationship to the costs incurred by retailers for adding a new product and/or deleting an existing product. The Deloitte and Touche 1990 report[2] for the Joint Industry Task Force estimated total wholesaler and retailer costs as follows:

	Cost Per SKU Per Store	
	Wholesaler	Retailer
Product Introduction	2.02	13.51
Product Deletion	1.65	16.11

Based upon these estimates, if slotting fees covered the total wholesale and retail costs of both product introduction and deletions in a 50 store chain this would amount to $1664.

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[1] One example is the letter received by a supplier from a midwest grocery chain concerning sponsorship of the chain's annual golf tournament. The supplier was "assigned" the 18th hole to sponsor and informed that the cost was $12,000.

[2] Deloitte and Touche, "Managing the Process of Introducing and Deleting Products in the Grocery and Drug Industry," Groc. Mfter of America, Washington, D.C., 1990.

Slotting allowances vary greatly; hence, any generalization is hazardous. However, they seem to largely be used as a rental for retail shelf space. And--this often means there are terms in the agreement regarding the number of competing brands and the division of shelf space.[3] Thus, slotting arrangements can be used as a way of excluding competing brands. Since the process is akin to auctioning off store shelf space, slotting bids can be more effective than predatory pricing in building market share and raising entry barriers.

There has been an amazing lack of research on slotting allowances in the food industry. Yet, based upon the industry people I've talked with, slotting fees are by far the greatest entry barrier for most small and medium-sized manufacturers. And--increasingly, they seem to be used as an instrument for exclusion. The broad competitive consequences certainly warrant research. However, many manufacturers are reluctant to publicly criticize retailer use of slotting fees for fear of retribution.

In-House Brokerage for Private Labels: Another Source of "Street Money"

Section 2c was included in the Robinson-Patman Act amendment to the Clayton Act to prevent retail chains from using dummy brokerage companies as a way to enjoy discriminatory prices without violating Section 2a. As written, Sec. 2c is a per se violation; however, the Federal Trade Commission (FTC) appears to be interpreting it as depending on proof of injury to consumers.

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[3] For example, a manufacturer of specialty baked goods agreed to pay a small retail chain $30,000, with the understanding the chain would stock only one other brand and would devote no more than 25 percent of two bakery shelves in each store to the rival brand. In this instance, slotting fees are sometimes paid annually.

The modern-day version of in-house brokers (IHB) originated on the east coast in the late 1960s and early 70s. The early IHBs were conceived to assist supermarket chains with their private label (PL) programs. The emphasis was on providing services, such as quality specifications and quality control, label design, inventory management, selection of suppliers, procurement, and private label pricing and merchandising. As IHBs evolved, more emphasis was placed on commission rebates and less on services. There is now a considerable range in the activities of IHBs. At one extreme are IHBs that do little more than collect commissions from private label manufacturers and pass along a major portion to their retail accounts. In these situations, 80 to 95 percent of the brokerage commission is rebated to retail accounts. At the other extreme are IHBs that still focus considerable attention on the services to retail accounts and that rebate 50 percent or less of the brokerage commission. In many cases, these IHBs give rebates "in-kind" by putting chain personnel on their payrolls, renting office space and buying reports from the chain, and performing service functions that were previously performed by chain personnel.

It is useful to compare IHBs with local (or independent) brokers. Local brokers are selected by the manufacturer, represent that manufacturer's interest in a particular geographic area, and are paid by the manufacturer. Local brokers handle a limited number of products and usually represent only one manufacturer ("principal") per product. They attempt to sell their principal's products to all the supermarket accounts in the area, and they specialize in knowing the consumers and wholesalers/retailers in a particular market.

Since a local broker generally represents only one manufacturer of a PL product, it is in their interest to build that manufacturer's business. The greater the sales, the larger the broker's commission.

By comparison, IHBs are selected by grocery chains or wholesalers. Although they receive brokerage commissions from manufacturers, IHBs primarily serve the interest of their retail accounts. There is usually one IHB that handles the bulk of the private label business (50-70 percent) for a given retail chain or division. Thus, IHBs "represent" a large number of products and frequently deal with more than one manufacturer per product.

In order to sell private label products to a retail account with an IHB, manufacturers usually must sell through the IHB. Thus, IHBs tend to be exclusive "gate-keepers" and wield substantial degrees of power. Either manufacturers agree to sell through them and pay them a commission, or they have no chance of supplying those retail accounts.

Leading "Master" Brokers

Trade sources estimate the four leading "master" brokers (or IHB) in the U.S. are:

1. Dayman Associates
2. Cal Growers Corp.
3. Marketing Management Inc (MMI)
4. Federated Foods

Of these, Dayman is by far the most service oriented. The other three generally pass on most of the brokerage commission to their retail accounts. A lawsuit in process against Albertsons and Federated Foods (for interference in the business of 13 Boise, Idaho brokers),

found that Federated Foods was passing on 96 percent of the brokerage commission to Albertsons.

Trade sources also estimate that these four companies account for roughly two-thirds of the in-house brokerage business. Further, that in-house brokerage arrangements now represent close to 60 percent of the outside supplier private label business (i.e., not self manufactured). These figures are admittedly rough estimates. The main point is that IHBs have become widespread. With no reining-in from the antitrust agencies, IHBs continue to grow. Some of the large chains, like Kroger and Safeway, have organized their own in-house brokerage arrangements (Safeway's IHB is called Pivotal Sales Co.).

Role of Private Label Products in Food System

Of the total shipments of U.S. food manufacturers, approximately 60 percent goes to food retailers; one-third of this (20 percent) is unbranded and private label products. Unbranded and private label manufactured food products make up 25 percent of supermarket sales. Roughly half of this is from fresh meat and poultry--products I will not deal with here. This leaves about 12 percent of supermarket sales that come from private label food products. In addition, about 10 percent of non-food sales are private label/generic. Thus, approximately 12 to 15 percent of supermarket sales are from private label food and non-food products, excluding unbranded and unprocessed products.

The trend in private label market share during the 1980s, based upon SAMI data,[4] is shown in Fig. 1. From a high of 16.8 percent in 1982, private label share of store sales declined steadily to 12.3 percent in 1989. Changes in private label share are mainly driven by consumer income and employment. Private label share peaked during the recession of 1982. Private label share is also influenced by the level of competition in private label manufacturing, brokering, and retailing. If, over time, the price of private label products increased relative to advertised brand prices, private label share would be expected to decline.

Private label products play several important roles in the food system. Perhaps the most obvious role is that they provide an alternative to advertised brands that is often comparable in quality and significantly lower in price. "First line" private labels are often intended to match the quality of the leading manufacturer brand. Three studies during the 1970s and 1980s found private labels averaged 12 to 20 percent less in price than advertised brands.[5] For individual products, the range in price differences is much greater.

The presence of a lower priced alternative provides direct benefits to consumers who buy private labels. Private labels also introduce a degree of price competition for advertised brands.

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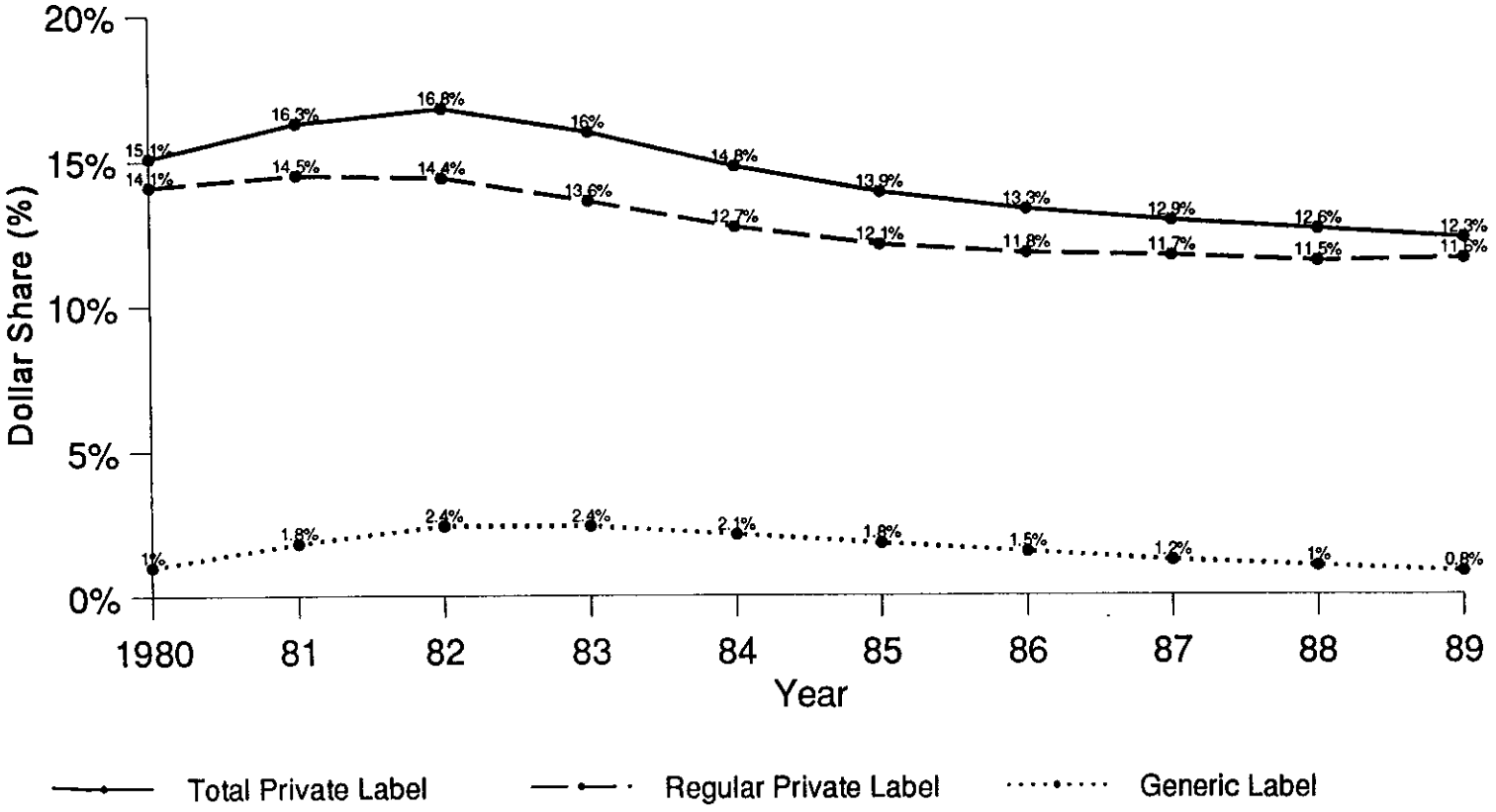
[4] Until it went out of business in 1991, SAMI collected data on warehouse shipments from a large number of food chains and general-line grocery wholesalers. Their data set does not include fresh meat and poultry, fresh fruits and vegetables, and products that are delivered directly to stores (e.g., soft drinks, fluid milk, crackers and cookies, ice cream, fresh baked goods). Roughly one-third of supermarket sales are missing from the SAMI data.

[5] See, for example, B.W. Marion, W. Mueller, R. Cotterill, F.E. Geithman and J. Schmelzer. *The Food Retailing Industry: Market Structure, Profits and Prices*, Praeger Press, 1979, p. 115; R. Wills and W.F. Mueller. "Brand Pricing and Advertising," *S. Econ. J.*, Oct 1987; and J. Connor, R. Rogers, B. Marion and W. Mueller. *The Food Manufacturing Industries: Structure, Strategies, Performance and Policies,* Lexington Books, 1985.

FIGURE 1. FOOD STORES
PRIVATE LABEL & GENERIC DOLLAR SHARES
ALL DEPARTMENTS COMBINED



Source: SAMI Food Store Service. "Private Label & Generic Analysis." Period ending 12/29/89, The Arbitron Co.

Indeed, Wills and Mueller found that brand prices in 133 product categories were negatively and significantly related to private label share. The higher the market share held by private labels, the lower were brand prices.

In another major study, Parker and Connor found that private label share in 1975 was inversely related to product class CR4 and the advertising to sales ratio.[6] These authors also found that monopoly power in food manufacturing was positively related to product class CR4 and the advertising to sales ratio. The tracking of causality in these studies is admittedly not totally clear. However, there is definite support for the notion that private labels tend to have higher market shares in more price competitive product markets. And, I believe it is reasonable to contend that PL prices and market share have a significant effect on brand prices.

One of the inferences from the above findings is that the performance of private label products is important in and of itself but also because it may stimulate competition among branded products. A healthy viable PL segment is important to consumers and to the health of the food industry. The need for increased competition among branded products is generally the greatest where private labels have small market shares--products such as baby food, breakfast cereals, soft drinks, cigarettes, chewing gum and cake mixes. In most of these cases, the branded product segment has substantial market power. In addition, the private label share is so small (usually less than 5 percent) that there may be only room for one or a few efficient size private label manufacturers. Economies of scale barriers into the private label strategic group

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[6] Parker, Russell and John Connor. "Estimates of Consumer Loss Due to Monopoly in the U.S. Food Manufacturing Industries," *AJAE*, Nov. 1979.

may be quite high. Thus, in these cases, there may be a lack of effective competition in the private label strategic group as well as in the branded product strategic group.

Underlying Causes of IHBs

The shift in power to food retailers that has occurred over the last 15 to 20 years is in part an outgrowth of increased concentration in the U.S. supermarket industry. Nationally, the concentration of sales in the supermarket industry has increased slowly and remains relatively low (top 20 chains did 38 percent of U.S. grocery store sales in 1987). However, at the local metropolitan level, the concentration of sales has increased substantially and is now very high, on average. In 1987, the average four-firm supermarket concentration (SCR4) was 77.9 percent in 321 Metropolitan Statistical Areas (MSAs).[7] For 177 MSAs with identical definitions in 1977 and 1987, Figure 2 indicates high and sharply increasing levels of concentration. SCR4 was less than 60 percent in only 9 percent of these MSAs and exceeded 80 percent in almost one-half of the MSAs.

There have been few scholarly efforts to examine the monopsony power of buyers. However, I believe there is considerable anecdotal evidence that supermarket chains and wholesalers do exercise buying power, and that local market concentration affects buying

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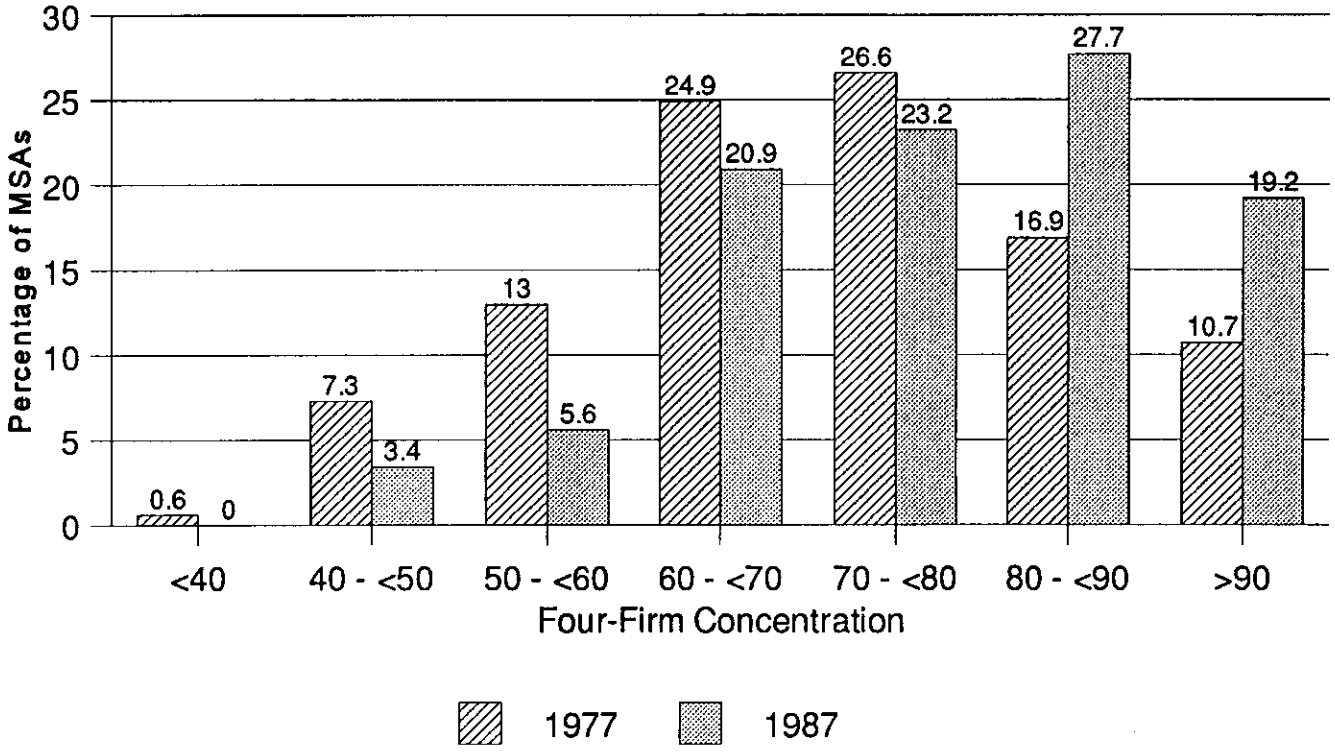
[7] Franklin, Andrew and R. Cotterill, "An Analysis of Local Market Concentration Levels and Trends in U.S. Grocery Retailing Industry," Food Marketing Policy Center Res. Rept 19, University of Connecticut, May 1993.

FIGURE 2. SUPERMARKET CR4, 177 MSAs, 1977-1987



Source: Franklin and Cotterill, 1993

power. Procurement in grocery retailing takes place one division at a time. Thus, although Kroger has over 2000 stores and may occasionally buy certain products for all stores--this is generally not their modus operandi. The 12 divisions of Kroger each tend to buy independently.

Similarly, food manufacturers tend to sell their products metropolitan area by metropolitan area. Manufacturers recognize that if they are to develop sales in a particular Metropolitan Statistical Area (MSA), they must be on the shelves of the leading retailers. If a manufacturer aims to penetrate the Washington, D.C. market, for example, it is imperative to sell Giant and Safeway, who together account for nearly three-fourths of the D.C. market. Many MSAs now have a dominant firm or dominant duopolies. Because retailers can largely determine whether a manufacturer's product has a chance to be sold in an MSA, the higher the level of MSA supermarket concentration--all else the same--the stronger the buying position of the leading supermarket firms.

The shift in power from manufacturers to retailers may be, in part, due to the vast increase in the information controlled by retailers due to computerized scanning data. Retailers now have enormous power to evaluate manufacturer tactics. Reflecting the shift in power, manufacturers now spend 70 percent of their promotional budgets on the retail trade (cooperative advertisements, special displays, in store demonstrations, buying deals [e.g., one case free with ten] and 30 percent on consumer advertising/promotions. Fifteen years ago, these figures were reversed.

One industry observer believes the large number of LBOs in the supermarket industry in the mid 1980s contributed to the environment in which slotting allowances, IHBs and other street money devices blossomed. Chains that had gone through LBOs needed cash to service

their debt; slotting allowances and IHBs satisfied that need. And--once retailers discovered they could successfully demand cash payments, they became bolder (and some say more greedy).

Effects of IHBs

The impacts of IHBs depend upon the companies involved and one's point of view. At least in come cases, IHBs provide clear benefits to the private label programs of their retail clients. Dayman Assoc., in particular, is often identified with enhanced and stronger PL programs. Dayman employees help plan and execute store-brand strategies, including product specifications, package design, procurement, pricing and merchandising.

However, Burt Flickinger III, a retail consultant, estimates that only one out of four chains retain IHBs in order to gain access to more sophisticated management of their store-brand programs.[8] The remaining three-fourths of the chains are mainly seeking the brokerage kickback by Flickinger's estimate.

The possible benefits from IHB programs are acknowledged even by critics. However, who should pay for such benefits is a major point of contention. Although IHBs are "contracted" as representatives of private label manufacturers (with considerable encouragement by retail chains), they function primarily as service providers to retailers and wholesalers. If the retail chain is the main beneficiary, should not they be the one paying the bill?

Steve Howell, a west coast local broker and persistent critic of IHBs, contends that IHBs are part of a systematic effort by the retail industry to move accounting costs backwards in the system. Howell contends that retailers are willing to accept price increases from suppliers in return for cash payments (slotting etc.) and shifting of costs. IHB commissions, slotting fees and

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[8] Dowdell, Stephen, "Masters of the House," *Supermarket News*, March 13, 1995, p. 39.

other street monies have become a profit center within many chains to which more and more attention is paid.

The Competitive Effects of IHBs

I emphasize that my conclusions here are preliminary. I have personally discussed or received information about IHBs from ten PL manufacturers and approximately the same number of local brokers. While such a sample provides some tentative conclusions, there is clearly a need for much further study and investigation. I have considered several possible effects of the IHB system.

1. Effects on costs and efficiency--

In many cases, IHBs add another middleman to the food marketing system. Since the IHB is not truly the manufacturer's representative, many PL manufacturers find it necessary to employ an independent broker or maintain their own sales force. Where this is the case, manufacturer selling expenses tend to increase. Either double brokerage payments occur or IHBs and manufacturer sales force are both involved.

This is not always the case, however. A few of the manufacturers I interviewed felt there was no difference in their selling costs with or without IHBs. These manufacturers largely considered IHBs as substitutes for local brokers on a given account. The manufacturers who had this reaction were the leading PL suppliers of their products. If a company is the dominant supplier of a PL product, they may be able to sell through IHBs without having additional sales representation.

2. Effects on manufacturer selling price--

There were clearly two responses to this question. 1) For products in which the manufacturer has somewhat more control over price, increased selling expenses are passed on through higher product prices. 2) In some of the intensely competitive commodity type industries, however, this apparently is not possible. Here, any increase in manufacturer selling expense reduces manufacturer profits. Manufacturers involved in these product markets maintain that they charge the same price with or without IHBs; that the "market" won't allow them to pass on higher costs. IHBs sell their programs to retailers on the basis that manufacturer prices will be no higher with the IHB program. Thus, at least initially, there will be pressure to keep manufacturer prices the same.

One wonders whether this can persist in the long run. As long as there is excess capacity in an industry, some companies may be willing to "eat" the increase in selling costs. Eventually, excess capacity will leave an industry and higher costs are likely to be passed on through higher prices.

3. Effects on retail prices of PL products--

This depends, in part, on how the brokerage commission rebate is handled by retailers. Is it treated as a reduction in the cost of PL products or does it go straight to the bottom line as "other income"? From my research, it appears to be solely the latter. Rebate cash or checks are periodically sent to retail accounts and are not traceable to the cost of merchandise. Thus, retail prices are largely determined by manufacturer invoice price, not invoice price minus rebates. In those cases where higher manufacturer selling costs are passed on in higher manufacturer prices, the retail price of these products is also

likely to be increased. This is particularly likely for products such as health and beauty aids, breakfast cereals and gelatin desserts in which private labels have a small share of the concentrated markets. There is relatively little price competition within the branded segments of these product markets. Private labels sell at substantial discounts from the advertised brands of these products and should have more flexibility to increase prices than is the case for products like milk, bread and concentrated orange juice. On the latter items, consumers are sufficiently aware of retail prices that cost increases are more difficult to pass on unless competitors make similar price increases.

It is important to note that consumers apparently do relatively little comparison checking of private label prices. Data on private label prices in certain California markets shows substantial variations across competitors. It is relatively easy to compare the price of Campbell's soup or Miracle Whip salad dressing across stores. It is more difficult to compare different store brands (private labels) of a particular product, such as Kroger, Safeway, and Food Club corn flakes. Thus, retailers probably have more discretion in pricing private label products than in pricing their branded counterparts.

4. Effects on structure of PL manufacturing--

IHBs tend to prefer large manufacturers. Transaction costs are less with one supplier than with two or three. Fewer suppliers requires less negotiation time for IHBs, less uncertainty regarding performance, less time to monitor quality and less time to manage labels. In addition, there appears to be some multi-market reciprocity between IHBs and manufacturers; i.e., you work with me in this market and I'll work with you in that market. Thus, the IHB system appears to favor financially powerful and national manufacturers and may hasten the demise of less financially powerful or regional manufacturers. Hence, I expect it to increase concentration in PL manufacturing. I also expect the IHB system to increase entry barriers. Established ties between IHBs and manufacturers are difficult to break.

The competitive effects of increasing concentration and entry barriers will vary from product to product. In some products, the private label strategic group is sufficiently concentrated that any increase may be anti-competitive and lead to higher prices in the long run. In other products, this may not yet be the case. Unfortunately, we have relatively poor information about the structure of most private label strategic groups. We do know that there are several products in which one firm dominates private label manufacturing.

5. Effects on structure of food retailing--

Supermarket chains that use IHBs are likely to realize some decline in PL procurement and management expenses and/or an increase in profitability from commission rebates, despite possibly higher manufacturer prices. Hence, retailers that

use IHBs will be at a competitive advantage over those that do not--at least in the short run.

IHBs prefer large chains and wholesalers. According to one estimate, an account with $1 billion in sales is a marginal account for IHBs. By this estimate, chains smaller than the top 50 U.S. supermarket chains might have difficulty attracting IHBs and hence would be at a competitive disadvantage vis a vis larger chains.

If IHBs tend to favor chains or wholesalers with large sales in a metropolitan area or region, they will facilitate the growth in market share of the leading firms. Thus, I would expect IHBs to be a factor in the continuing trend toward increased supermarket concentration in local markets. And, in time, it will become more difficult for small retailers (including new entrants) to find suppliers for a PL program. This would mean higher entry barriers into grocery retailing. These consequences would be of less concern if supermarket concentration were not already high and increasing. Any increase in retail concentration or entry barriers caused by IHBs is likely to result in higher consumer prices.

6. **Effects on management and performance of private label programs--**

The evidence here is mixed. Some IHBs are apparently successful in improving the management of PL programs. This is particularly the case with retailers that did not have strong PL programs prior to the use of IHBs.

In other cases--particularly those with very high rebates--the IHB is little more than a fee collector and tends, if anything, to weaken the PL program.

There are at least two ways in which IHBs can weaken PL programs in the long-run. First, because IHBs "represent" (deal with) competing manufacturers of the same product, they stifle the flow of merchandising ideas and other information. PL manufacturers and their local brokers may be afraid to share information lest it be passed on to a competitor. Second, at least some manufacturers believe the IHB system encourages complacency in PL procurement and PL manufacturing. Their rationale is that once an IHB and PL manufacturers are selected to serve a particular retail account, incumbency leads to security and complacency. As long as a retail account seems secure, there may be little incentive for an IHB to shop as diligently for the best terms. And for manufacturers who develop a symbiotic relationship with IHBs, they also may be under less pressure to improve products and reduce costs and prices.

Many food chains went through LBOs or internal restructuring during the 1980s that substantially increased debt loads. Cash hungry food chains may be particularly receptive to the appeal of IHBs that promise either a reduction in retail procurement expenses or an increase in income from rebates, or both. And, apparently--the proposals of IHBs have tended to focus more and more on brokerage commission rebates and less on services as various IHBs bid to take accounts from one another. Supermarket executives may perceive IHBs as a method of increasing cash flow without increasing prices--at least in the short run. However, the short run gains in cash flow may be at the expense of long run competitiveness in their private label program.

I recognize that some of these conclusions may appear contradictory. If the IHB system results in higher manufacturer and retail prices in the long run, restricts the flow

of information to retailers, and encourages complacency, how can I also conclude that the retail chains using IHBs will benefit? I confess that initially, I could not accept the logic of this argument. However, after hearing these conclusions from enough industry participants, I realized IHBs may yield consequences in the short run that are very different from those in the long run.

The IHB programs are generally sold to the top management of chains and wholesalers. If top management is under pressure to increase cash flow and earnings in the *short run*, they may not give much weight to the consequences 5 or 10 years from now. And, if the IHB system helps chains using it in the short run, in the long run these chains may have sufficiently strong market positions to pass on higher prices and to prosper even with complacency in their private label programs. Thus, it is entirely plausible that IHBs may provide competitive advantages to participating chains in the short run, but may weaken a chain's PL program and the viability of the PL system in the long run.

7. Effects on incentives in food marketing system--

The IHB system tends to pervert some of the incentives in the food marketing system. Manufacturers of a particular product are selected not primarily on the basis of product quality, price and service, but first and foremost on whether they will sell through a particular IHB. The "best" manufacturer may find himself on the sidelines because he refuses to deal with the "power brokers" as they are sometimes called.

Although IHBs are being paid by manufacturers, they are selected by retailers. Those who pay the piper do not call the tune. IHBs have no incentive to build the

business of a particular manufacturer. Next month or next year, the IHB may choose a different manufacturer-supplier of a particular product.

PL manufacturers in the IHB system are unable to select brokers on the basis of who does the best job for them. A considerable degree of coercion now influences the patronage of IHBs. The price of admission to some accounts is selling through the selected IHB. Most manufacturers resent being forced to sell through and pay commissions to IHBs when they do not represent the manufacturer's interests. Private label manufacturers that sell through IHBs often retain the use of their own sales force or of local brokers in order to have someone that represents their interest.

The IHB system also encourages supermarket executives to emphasize this year's brokerage rebates and the size of "other income," while placing less emphasis on PL prices and the integrity and long-run viability of their PL program.

The IHB system appears to distort the incentives in food manufacturing, brokering and retailing away from efficiency, product quality and price and toward coercion, brokerage rebates and short run cash flow.

Concluding Comments

The IHB system for private label products appears to be spreading rapidly. There are also early reports of IHBs expanding to include branded product procurement. If this becomes prevalent, it will compound the problems outlined above.

Independent brokers' business is threatened. Manufacturers too are concerned. Although there is widespread concern about the IHB system, most manufacturers are reluctant to voice

their concerns out of fear that they might lose some accounts. Emotions are strong however. Comments from manufacturers included:

- "IHBs--if they are not illegal, they should be. They're just a way of extending the procurement power of chains."
- "They're parasites. They perform no significant service to justify their commission."

There is little question but that IHBs violate the letter and the spirit of Section 2c of the Robinson-Patman Act. However, there has been little enforcement of the Robinson-Patman Act in the last 15 to 20 years. The FTC has apparently adopted a rule of reason approach to Sec. 2c, with the main question whether consumers are injured as a result of IHBs. With the relatively limited evidence available to me at this time, the injury to consumers is difficult to assess. However, I see little evidence that, on balance, the IHB system will serve the public interest. And, in the long run, I believe IHBs will have significant negative effects on the U.S. food system. However, there is little in the way of hard facts on IHBs.

Slotting allowances that are agreements to exclude competitors may be violations of Sherman, Sec 1. At least in some cases, slotting arrangements are used for exclusionary purposes. IHBs, slotting allowances and similar campaigns to solicit street monies warrant much more attention than they have received by both academic researchers and the antitrust agencies.

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