

Dairymen, Inc. case

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various markets therein in violation of the Sherman Antitrust Act," explained Beshore.

The evidence in the District Court focused on D.I.'s dealings with handlers who desired to purchase a portion of their Grade A milk needs from non-D.I. sources, including independent producers and other cooperatives.

"In several instances, said Beshore, the other producers and competitors lost markets after D.I. instituted its contracts."

The reason D.I. gave for imposing exclusive hauling contracts was to prevent the co-mingling of its members' milk with lower quality milk.

The lower court previously dismissed the attempt to monopolize charge because the Government failed to prove that D.I.'s anticompetitive practices rose to the "predatory" level and also failed to prove a dangerous probability that a monopoly would result from D.I.'s practices.

The District Court also found

that D.I.'s exclusive hauling contracts were over restrictive. The minimum-two-year membership agreements, however, were found by the District Court to not be unreasonable.

The Appeals Court decided, however, that the Government contention, that the district court erred in holding that the Capper-Volstead Act exempted the agricultural cooperative from liability for attempts to monopolize unless its anticompetitive conduct was deemed "predatory," was sound.

"The Capper-Volstead Act was intended to permit agricultural producers to join together to process, prepare, and market agricultural products without fear of prosecution under the antitrust laws. It permits an agricultural cooperative to be formed solely to fix the price at which its members products are sold.

"Two or more cooperatives can voluntarily join together solely for the purpose of setting uniform prices for their members. As a

result, an agricultural cooperative can willfully attain a monopoly through the voluntary enrollment of its members, or through a voluntary combination with other cooperatives.

"The mere accretion of monopoly power through voluntary combination is immunized by the Capper-Volstead Act," was the Appeals Court opinion, citing various legal cases including the recent Fairdale Farms, Inc. versus Yankee Milk, Inc.

In this case, the Second Circuit court "cautioned that a cooperative may neither acquire nor exercise monopoly power in a predatory fashion by the use of such tactics as picketing and harassment ... boycotts ... coerced membership ... and discriminatory pricing." However, a co-op can grow to any size by additional membership as long as no predatory conduct is involved.

In the case of D.I., the Appeals Court said the Government should not have been required by the District Court to prove "predatory" actions (anticompetitive practices without any business justification).

"The offense of attempt to

monopolize requires only that the defendant has engaged in anticompetitive conduct with a specific intent to monopolize and that there was dangerous probability that the attempt would be successful," they ruled.

The Appeals Court remanded the case back to the District Court to: determine if D.I. used its supply and hauling contracts with the specific intent to monopolize; whether these contracts were intended to stifle competition or were intended to meet legitimate business purposes; determine the relevant geographic submarkets on the basis of commercially significant areas in which D.I. operated and in which D.I.'s customers could turn to other suppliers.

"Once this factual determination is made it will be possible to evaluate whether D.I. ever achieved a dangerous probability of success of monopoly in any significant market.

"After the District Court determines the relevant geographic submarkets, it will be possible to determine whether the

full and committed supply contracts used by D.I. foreclose a substantial share of the market from its competitors and 'tends to create a monopoly in any line of commerce' in violation of Section 3 of the Clayton Act," ruled the Appeals Court judges.

According to D.I. spokesman Don Davis, the milk cooperative has made no decision at the present time on whether to petition for a rehearing in the Appeals Court or to appeal to the Supreme Court. "We are presently analyzing the decision in order to go forward with the best course of action," he said.

What impact will this court decision have on other farm cooperatives?

Attorney Beshore states, "This decision iterates the principle that the Capper-Volstead Act does not provide total immunity to cooperatives from the federal antitrust laws and suggests that the courts will look closely at the intent surrounding alleged monopolistic practices to determine their legality."

Jim Krzyminski, associate general council of the National Council of Farmer Cooperatives, said he felt it was "too early to assess the impact.

"Our initial reaction was alarm that this decision might undermine the Fairdale Farms decision. This court ruled there's something less than predatory in anticompetitive practices which makes co-op's susceptible to the Sherman Antitrust Act.

"As we have the opportunity to digest the decision further, it becomes apparent there are factual differences between D.I.'s case and Fairdale Farms. We feel this leaves the Fairdale case undisturbed."

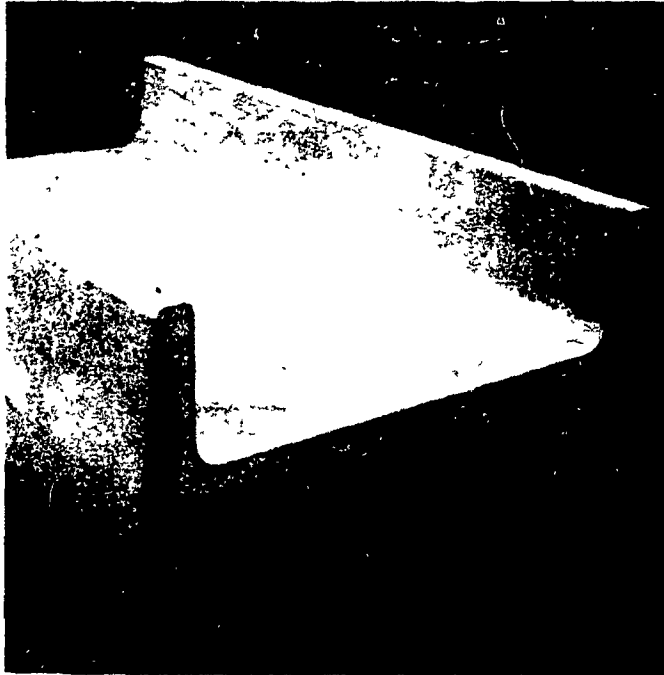
Jim Baarda of the Agricultural Cooperative Service echoed these feelings, voicing his concern over the different standards being applied to co-op behavior and monopolies. He too said this ruling was not in technical conflict with the Fairdale case.

"This ruling may open a few avenues and may give people who want to bring actions against cooperatives some new approaches," he said. "Whether it's significant depends on what the District Court decides.

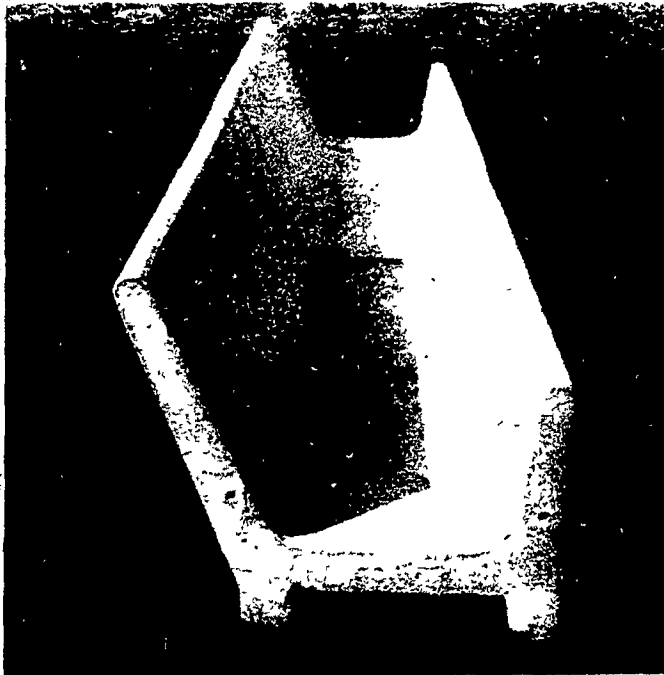
"It's not a disaster. However it may change the way things are done for awhile. But no co-op will run out and change their specific operations because of this case."

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Broiler placements

up 5 percent

HARRISBURG — Placements of broiler chicks in the Commonwealth during the week ending October 3 were 2,353,000, according to the Pennsylvania Crop Reporting Service.

The placements were five percent above the corresponding week a year earlier and three percent above the previous week. Average placements during the past nine weeks were slightly below a year ago.

Placements in the 19 key poultry producing states were 73,202,000, three percent below the previous week but two percent above the same week a year earlier. Average placements in the key states during the past nine weeks were nine percent above a year ago.

Broiler-fryers slaughtered in Pennsylvania under federal inspection during the week ending September 23 totaled 2,211,000, with an average liveweight of 4.07 pounds.

