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An Agricultural Law Research Article

Book Review: Mueller, Willard F., Peter G. Helmberger, and Thomas W. Paterson. *The Sunkist Case: A Study in Legal-Economic Analysis*

by

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Book Review

Mueller, Willard F., Peter G. Helmberger, and Thomas W. Paterson. *The Sunkist Case: A Study in Legal-Economic Analysis*. Lexington, Mass., Lexington Books, 1987, 271 pp.

The Sunkist Case is a gem of a book. Its strengths are rooted in: (1) the rare opportunity for readers to learn something about the market conduct of a large agricultural marketing cooperative, (2) the readability of the text by three highly qualified scholars in the industrial organization and agricultural cooperative fields, and (3) the expert examination of antitrust policies applied to agricultural cooperatives.

The overall purpose of the book is to provide antitrust practitioners a framework for conducting legal-economic analyses of cooperatives. The specific objectives of *The Sunkist Case* are to evaluate the charges of the Federal Trade Commission (FTC) against Sunkist and to reach conclusions consistent with nonprofit, open-ended marketing cooperatives.

The FTC complaint relied upon Section 5 of the FTC Act and Section 7 of the Clayton Act, although the Section 7 charge was subsequently dropped. Section 5 of the FTC Act prohibits unfair methods of competition, while Section 7 of the Clayton Act prohibits mergers that may substantially lessen competition or tend to create a monopoly. In reality, however, the case was based almost entirely on the legal precedents from Section 2 of the Sherman Act. Section 2 of the Sherman Act seeks to strike down monopoly power in relevant product markets where that market power is willfully acquired or maintained. The Capper-Volstead Act of 1922 was not regarded as a sufficient defense against the monopolization charges. Also, the existence of federal marketing orders for California-Arizona citrus was considered as irrelevant to the FTC allegations of bad conduct by Sunkist.

FTC alleged that Sunkist derived its market power from: (1) deliberate policies to control 65 to 75 percent of the market shares for each citrus variety; (2) persistent price leadership in all relevant markets; (3) price premiums; and (4) withholding of supplies to increase or stabilize prices in fresh citrus and processed lemon juice markets. FTC further alleged that Sunkist's market power was enhanced by exclusive dealing arrangements with grower-members' packinghouses, acquisition of a processing plant in Arizona, and restrictive arrangements with commercial packinghouses.

The remarkable aspect of this work by Mueller, Helmberger, and Paterson is that all those serious FTC charges against the Sunkist cooperative are neatly laid to rest with their legal-economic analysis. The authors demonstrate with more than adequate vigor that the FTC charges are erroneous and based upon a faulty legal-economic model of cooperatives. The major flaw by FTC counsel was the heavy reliance upon Sunkist's market share without concomitant evaluation of entry barriers and conditions. FTC made the mistake of concluding that market power is automatic with the large market share held by Sunkist in the relevant market. But large market share is a necessary but not sufficient condition for market power. Section 2 monopolization also requires, in addition to market share, the finding of

market power that is willfully acquired or maintained, such as by predatory acts of coercion, boycotts, or pricing below average costs. In the absence of predation, the court may look into tying arrangements; interference with access to alternate outlets or sources of supply; undermining a competitor's ability to sell; or discriminating against producers, rivals, or buyers. Thus, the market conduct of the defendant needs to be closely scrutinized with respect to the degree of entry barriers imposed upon potential rivals and/or restraints upon growth of existing rivals.

The authors of *The Sunkist Case* convincingly demonstrate that the Sunkist cooperative does not possess nor impose monopoly power. Hence, there is no reason to examine the corollary issue of predation or exclusionary conduct. The authors effectively point out that the absence of entry barriers for open-ended cooperatives essentially nullifies the significance of market share data in relevant product markets. That is, nonprofit cooperatives, such as Sunkist, which do not restrict the output of their members and also do not limit the number of members, fail to impose monopoly power even where market shares are very high. The key to the argument is that open-ended cooperatives do not restrict entry, and consequently, prices tend to differ very little from those resulting from perfectly competitive markets.

It is well known that the Sunkist cooperative has one of the nation's best known food brands and relatively large market shares of fresh citrus and processed lemon products. The Sunkist book develops a well reasoned argument that these lofty and enviable market positions were based upon business acumen and superior or high quality products rather than from unlawful predatory or exclusionary conduct. Although Sunkist did not possess any significant scale economies at the packinghouse plant level, the authors did find some evidence of multiplant economies of scale in brand advertising, research and development, and foreign market development.

An important aspect of the competitive nature of marketing fresh California-Arizona citrus has to do with access to fresh citrus supplies. The authors analyzed the contractual relationships between growers and packinghouses only to find that growers affiliated with Sunkist are free to leave the cooperative at the end of each marketing season. Thus, there is freedom of movement on an annual basis. Similarly, packinghouses affiliated with Sunkist operate with annual contracts. As Mueller, Helmberger, and Paterson note on page 188 of their book, "packinghouses affiliated with Sunkist and other California/Arizona citrus marketers have considerable mobility." This heightened mobility between Sunkist and competitors reduces both entry and exit barriers. More significantly, the level of mobility existing in the industry prevents Sunkist from controlling supplies and selling prices. Even with their Sunkist brand franchise, they have not been able to convert their highly recognized brand name into a product differentiation type of entry barrier. Even with higher quality standards and the brand image of Sunkist, potential rivals face only a 2.2 percent product differentiation disadvantage of the selling price.

The authors discovered that the Sunkist cooperative exhibited "good" price leadership in that they led the industry toward a competitive price

equilibrium, as opposed to a monopoly price as alleged by the FTC. Also, contrary to FTC's allegations, the authors found that Sunkist sold relatively more in the primary market when compared with its competitors. In other words, Sunkist did not undership its weekly market allocation or prorate assigned by the federal marketing order. And rather than "manipulate price by a practice called switching the trade," the authors concluded that Sunkist simply changed prices on sizes, grades, and varieties to better equate short-run demand and supply.

The *Sunkist Case* was concluded with a settlement agreement between Sunkist and the FTC. Sunkist agreed to divest itself of a citrus processing plant in Yuma, Arizona, as well as to limit the number of its affiliated licensed commercial packinghouses over a five-year period. These concessions by Sunkist were quite minor in relation to the gigantic legal fees that would have been required for a fully litigated verdict. More importantly, the two concessions by Sunkist involved issues that were somewhat peripheral to the major thrust of the FTC charge of monopoly power through dominant market share. In effect, the consent agreement represents a qualified victory for Sunkist on the merits of the case.

This book is highly recommended reading for a variety of professionals. For key managers of agricultural cooperatives, *The Sunkist Case* provides a contemporary review of antitrust policy applied to cooperatives as well as a glimpse into the price and nonprice practices of a large marketing cooperative. For industrial organization (I-O) economists, this book provides a framework for scholarly analysis of a Section 2 Sherman Act monopolization case applied to agricultural marketing cooperatives. The book also gives scholars in the field an extraordinary amount of data and information on market conduct, as opposed to the usual barrage of market structure and market performance data and information found in traditional I-O studies. Legal practitioners can also benefit from the authors' excellent treatment of the law of monopolization for agricultural cooperatives. The book is also testimony to the mutual roles of two disciplines—law and economics—in evaluating adversarial antitrust litigation.

The Sunkist Case by Willard F. Mueller, Peter G. Helmberger, and Thomas W. Paterson represents a rare blend of multidisciplinary scholarship, clarity of prose, and special insight into the price and nonprice behavior of a large agricultural marketing cooperative.

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