dough stage. After ensiling, silage cut at more mature stages contained more true protein than silage cut at immature stages.

The protein of silage made from oats cut in the boot and heading stages deteriorated in the silo. The protein degraded and formed ammonia and other undesirable nitrogen compounds which contributed to an objectionable odor of the silage. With the silage made from oats cut at the dough stage, however, a more desirable fermentation resulted in formation of lactic acid which helped preserve the silage. Also, not as much protein changed to ammonia, and this silage had a good aroma.

Which Did Cows Like?

Our clipping experiments and chemical analyses suggested that the dough stage was optimum for making oats into silage. But we weren't sure that cows would "agree." To find out, we conducted a feeding test with dairy cows to study their acceptance of silage made from oats cut at various stages.

Silage made from oats cut at each of the five stages was placed in adjacent feed bunks and offered to the cows free choice. Within a few minutes, they had rejected the silage made from oats cut at the immature stages and had gathered around the bunks of silage made from oats cut in the early and late dough stages and ate all of it. After 12 hours a good share of the silage made from immature oats remained in the bunks. Apparently, the presence of ammonia and other objectionable compounds, such as butyric acid, in the early-cut silages made them unpalatable to the dairy cows.

A preliminary test indicated that cows gave more milk when fed silage made from oats cut at the mid-dough stage than did cows fed silage made from oats harvested at heading.

In Summary . . .

Our tests indicate that the *dough stage* is the best time to harvest oats for silage for these reasons:

1. Yield is greater.

2. Moisture percentage is at the optimum of 60-70 percent.

3. Aroma and preservation of the silage is better.

4. Dairy cows prefer silage made from oats harvested in the dough stage and apparently give more milk from it.

Farm Co-ops: How "Special" a Status?

How far may farm co-ops go to gain more market power? Are they, as some believe, totally exempt from antitrust prosecution? Apparently not, and court decisions are beginning to outline the boundaries for co-op action.

by L. B. Fletcher

TO HELP relieve long-standing farm price and income problems, the possibilities of farm producers acting jointly to manage their output and marketings are attracting increased interest. Some of the thinking is this: If all producers—or large groups of them acting together—could control the amount and quality of a product going to market, perhaps they could bargain for more favorable prices or incomes.

Marketing cooperatives often are suggested as devices for wielding market power for farmers. One reason is that many marketing co-ops already exist and represent groups of farmers acting in unison to improve their economic position. Another reason given is that they have a "special" status under antitrust laws. What about those reasons?

The first reason is sound. The second needs a caution sign. Legislative measures have led some people to assume that farm cooperatives are completely exempt from prosecution for antitrust violations. This, however, isn't so. Court decisions haven't yet marked all of the boundaries for cooperatives under antitrust legislation. But the emerging pattern of decisions is showing that legislation has given co-ops only a *limited* exemption from antitrust actions.

Thus, let's look at the background leading to co-ops' "special" status, some pertinent court

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decisions and what exemptions apply today.

Co-ops Are Growing . . .

Agricultural marketing cooperatives have developed in the United States largely since 1900. Then, they were of minor importance in the market. Today, there are more than 6,100 marketing associations; total membership exceeds 3.8 million. The gross business of marketing co-ops has grown from about 304 million dollars in 1913 until it now exceeds 10 billion dollars a year.

Between one-fifth and one-fourth of all farm products sold in 1954 were handled by cooperatives at one or more stages in the marketing channels. Co-ops handle substantial percentages of the total output of some commodities. For example, co-op elevators move at least a third of all cash grain; co-op plants manufacture close to 45 percent of all butter produced; co-ops process nearly three-fourths of the cranberries and one-third of the citrus products.

Historically, co-ops have had more effect in balancing market prices under unrestricted production than in raising prices by restricting output or by price-fixing agreements. In the past, entry of cooperatives into markets often has increased competition.

Modern marketing associations, however, may sufficiently influence the markets in which they operate to affect the prices their members receive. Some associations have obtained larger total returns for annual crop production by withholding or diverting certain products from the market. Such products include fluid milk, lemons, oranges, almonds, avacados, walnuts and cranberries.

This brings us to the question of how co-ops received whatever antitrust exemption they have.

How "Exempt"?

The Sherman Act of 1890 first expressed the policy that antitrust legislation was meant to promote free competition in open markets. Later, doubt arose as to the status of cooperatives under the act. Farm groups feared that the law might be interpreted so that producers organized into marketing co-ops could be held in violation as combinations in restraint of trade.

The Clayton Act attempted to resolve this fear in 1914 by exempting nonprofit, nonstock farmer cooperatives from prosecution under the Sherman Act. In 1922 the Capper-Volstead Act extended the exemption to co-ops with capital stock. Agricultural producers were authorized to act together to process, prepare for market, handle and market their products. Necessary contracts and agreements to carry out those activities were legalized for associations which either restrict each member to one vote or limit dividends to 8 percent.

In addition to these basic legislative provisions, the Cooperative Marketing Act of 1926 provided that agricultural producers and their associations may legally acquire and exchange "past, present and prospective" production, marketing and price data. Finally, the Robinson-Patman Act legalized patronage dividends to members in proportion to their sales through an association.

Judicial interpretations haven't marked all boundaries of cooperatives under antitrust legislation. But some cases have set up precedents indicating the circumstances under which co-ops *are* and *are not* exempt.

When "Exempt": The courts recognized that many widely spread producers of a product may need some type of centrally controlled national cooperative or federation of local organizations for effective marketing. So, administrative ruling has placed centrally controlled co-ops, federated co-ops and the use of joint marketing agencies within the authorization of the Capper-Volstead Act, though they weren't expressly included in the statute.

This ruling was upheld in 1956 when a district court acquitted two co-ops charged with unlawful combination and conspiracy to fix prices in violation of the Sherman Act. The court interpreted the Clayton Act as applicable to producers whether they joined into a single co-op or into several associations acting jointly.

When Not "Exempt": One way that an organization which controls the disposition of a commodity can increase its total revenue is to sell to some buyers at higher prices than others. But, generally the Robinson-Patman Act prohibits discriminatory prices. Cooperatives are subject to these prohibitions with the exception of the approval for payment of patronage dividends and discrimination among uses under market order programs.

Two cases stress the importance of the price-discriminating ruling. In one case the Federal Trade Commission ordered a citrus co-op to refrain from discriminating among its customers on prices of canned citrus juice. On another occasion, a district court prohibited several dairy co-ops from joining together to distribute milk at lower prices in one area than in others to retaliate against a dealer who refused to increase his buying price.

Several cases also suggest that cooperatives exceed legal limits when they act jointly with noncooperatives for purposes which may not be illegal if sought separately. For example, a court ruled it illegal for a co-op to conspire with milk distributors and a labor union to fix prices and control the milk supply in Chicago.

What About Market Power? Can a co-op acquire and exercise monopoly power to increase prices received by its farmer-members?

Recent events have forced the Supreme Court for the first time to interpret the nature of exemptions granted to restrain trade or to achieve a monopoly and to specify the extent to which they immunize co-ops from antitrust actions for advancing their own interests.

The first judicial interpretation in this area was in 1916 when a district court ruled that a potato growers association couldn't "blacklist" dealers who were delinquent in payments or who refused to buy from members of the association. The same court recognized the legality of cooperative

organization among competitive producers.

In two other cases, involving cranberry co-ops, the courts ruled that co-ops aren't immune to antitrust prosecution for purely predatory practices such as seeking a dominant share of the market, or for using otherwise legitimate methods in bad faith. These courts also recognized the right of co-ops to acquire a large, even 100-percent, position in a market if done solely through steps involving co-op selling.

Hence, the *methods* used to achieve and maintain market power may expose a co-op to antitrust attack even though it's not a violation for the organization to lawfully acquire even a "complete" monopoly or 100-percent control of the market.

New Decisions . . .

Recent Supreme Court rulings on co-op status were issued in 1960. The results provide the best basis yet for judging how far cooperatives may legally go.

The rulings involved a co-op that supplied about 85 percent of the fluid milk consumed in the Washington, D. C., metropolitan area. Attempting to strengthen its market position, the co-op bought the assets of the market's largest distributor, which hadn't regularly obtained raw milk from the association.

The transaction gave the co-op 95-percent control of raw milk supplies and 91-percent control of the milk supply for resale to the government. The acquisition also diverted to the co-op the market outlet of 120 producers who had supplied the distributor.

Complaints against the action in federal district court charged violation of the antimerger provisions of the Clayton Act. The complaints also listed alleged predatory practices in violation of the Sherman Act. The court considered the association exempt from monopolization charges under the Capper-Volstead Act, but tried the co-op on the acquisition charge—and ordered the co-op to dispose of the acquired dairy.

Both the government and the co-op appealed to the Supreme Court — the government sought reinstatement of the monopolization charge; the co-op sought reversal of its merger conviction in the district court.

The Supreme Court agreed with the district court that the purchase contract wasn't made merely to advance the co-op's own processing and marketing business. Rather, the court said that the co-op had entered the contract as a weapon to suppress competition. The court ruled that even lawful contracts and business activities may help to form a pattern of conduct that's unlawful under the Sherman Act.

In addition to supporting the district court's decision on the acquisition charge, the Supreme Court viewed the monopolization charges as anticompetitive activity so far outside the "legitimate objectives" of a cooperative that —if clearly proved—violated the Sherman Act.

Turning to the question of how far exemptions from antitrust laws extend for co-ops, the court completely discarded the idea that Congress intended to grant complete antitrust immunity. It defined the intent of Congress to be simply that individual farm operators should be given, through agricultural cooperatives, the same unified competitive advantage and responsibility available to businessmen acting through corporations.

It further declared that the exemption statutes don't allow co-ops to monopolize or to restrain trade and suppress competition. Also, the court said that the privilege that the Capper-Volstead Act grants producers to conduct their affairs collectively doesn't include a privilege to use a monopoly position as a lever to force membership from independent producers and/or suppress competition among independent processors.

A consent decree was entered as a supplement to the Supreme Court decision. The decree prohibits the co-op from distributing fluid milk in the Washington, D. C., area for 5 years, except to sell milk on government contracts. The decree also ordered the association to dispose of two other dairies which the association had acquired.

The co-op was admonished against interfering with dealers' supply sources, against forcing dealers to buy milk from the association and was enjoined from reprisals against dealers who buy milk elsewhere or who do business with the co-op or its customers.

The co-op was prohibited from using contracts that can't be terminated annually at members' options. It was required to release membership contracts, upon request, of producers who had supplied the independent dairy before it was acquired by the association.

Summing Up . . .

It seems that recent court decisions imply that the *use* of market power by co-ops is likely to be restricted to a point which largely invalidates their exemption for monopoly control over supplies and marketings.

Complete control of the production and disposal of a product is theoretically open to cooperatives under present statutes as long as it is acquired by "lawful means of attracting voluntary membership." On the other hand, if co-ops with complete or lesser control are held accountable for all market conduct deemed "unreasonable," then their exemption for monopoly structure seems largely nullified. Indeed, no legislative exemption is necessary for market behavior which is "reasonable." While antitrust actions don't seem to be directed against power arising solely from large-scale organization, actions by co-ops against buyers and competing producers that "substantially lessen competition" are probably illegal.

It appears that producers don't have "special" status in their attempts to achieve market power through cooperatives. Marketing cooperatives, therefore, may be forced to confine their activities to "usual marketing functions" and to participate in supply-control and price-fixing activities only under specific legislative authorization such as federal or state market order programs.