



# Food Marketing Policy Center *NEWSLETTER*

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Department of Agricultural and Resource Economics  
College of Agriculture and Natural Resources  
University of Connecticut

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### Mission

The Food Marketing Policy Center conducts research on food and agricultural marketing and related policy questions. It facilitates research within the land grant university system by organizing meetings and conferences, by maintaining large scale data bases and by distributing publications. The general intent is to provide information that can contribute to improved performance of the food production and marketing system. Key users include farmer and consumer organizations, agribusiness firms, public agencies, state legislatures, and the U.S. Congress.

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**Director's Note:** After the Fall NE-165 meeting with the very stimulating seminar at ERS/USDA by Steven Newborn, Director for Litigation at the FTC, I wanted to interview him for the Newsletter. He has moved on to the private sector, however, his successor James Egan obliged and provides a very instructive explanation of FTC merger policy and procedures.

*Ronald W. Cotterill*

### **Food Policy Newsmaker Interview: James Egan, Director for Litigation, Bureau of Competition, Federal Trade Commission**

*by Ronald W. Cotterill*

**Q:** As Chief of Litigation what do you do?

**A:** My actual title is Director for Litigation and there are two directors for litigation within the Bureau of Competition. I supervise the merger litigation shops. There are three merger general litigation shops and there is one health care shop which does all of the hospital mergers etc. as well as some non-merger work.

**Q:** I see. Does that mean your shops don't do Robinson/Patman type litigation?

**A:** That area is under someone else, however we occasionally do such cases. Sometimes we pick up a case, because we discover it is in the context of a merger. Also because one of my shops focusses upon food industries somebody in the industry who knows them brings it in, and they are allowed to develop those cases even though they are technically a merger shop. As of right now I don't have any Robinson/Patman cases under my jurisdiction. In fact in the Bureau

there's only, I think, only a couple of investigations.

Q: Could you briefly explain to us how the FTC reviews mergers and selects particular cases for investigation?

A: First of all, it's probably important to note that both the FTC and the Department of Justice have jurisdiction over mergers. So we have a liaison agreement with the Department of Justice to assure that only one agency will be investigating a particular merger or practice for that matter because there are other areas in which our jurisdiction overlaps. But particularly in the merger area before/when we become aware of a merger we initiate what we call a clearance request with the Department of Justice and they do the same thing with us before they look at a merger and if there is a dispute about that, then we discuss with them what/why we have expertise or they discuss why they have expertise and we decide who will proceed. There will never a case where both agencies are investigating the same transaction.

Most of our merger work comes to our attention through the Hart/Scott/Rodino process. The Hart/Scott/Rodino statute requires parties of a certain size and a transaction of a certain size to file with both the FTC and the Justice Department a notification of their intention to merge. They must provide certain basic information and then to abide by a waiting period in order to allow the agencies to assess whether or not there are competitive concerns that we want to investigate. So most of the mergers come in through the H.S.R. filing process. We occasionally hear about mergers either from a newspaper or from complaining customers. This is particularly true in the food area because there are a lot of local markets in the supermarket and soft drink industries, for example, where local mergers or acquisitions may not meet the Hart/Scott/Rodino filing requirements. We summarize every filing that we get and we circulate the filings to the various litigation shops - to shops that have expertise in the industry. So for example, the food merger shop

would be noted on a food merger summary sheet. They would review the filing, do some background, and make a recommendation to our merger screening committee. The screening committee is made up of members of the Bureau of Competition and the Bureau of Economics and it is chaired by the Director of the Bureau of Competition. Effectively, the Director of the Bureau of Competition, decides whether an investigation should be initiated and whether we should recommend to the Commission that a second request for information under Hart/Scott/Rodino be issued. If the decision is made to pursue the investigation, then we will send up a recommendation to the Commission to issue a second request. Any Commissioner of the Federal Trade Commission can issue a second request but that duty has been delegated to the Chairman of the FTC. A second request has to be done within the first waiting period which is usually 30 days, 15 days for cash tender offer. If a second request is issued, that starts a new waiting period which is, from the time the parties comply with the second request. They must abide by a second waiting period which is 20 days or 10 days in the case of the cash tender offer. In the meantime we normally get compulsory process from the Commission as well. This gives us the right to seek subpoenas. One of the Commissioners must sign every time we issue a subpoena.

Q: I think that's a fairly thorough answer as to how the process works.

A: If I'm being too thorough, please say so, I'll cut it short.

Q: Absolutely not. What are the size limits in the Hart/Scott/Rodino, I don't know those and people in my area probably wouldn't.

A: One person has to have sales or assets of at least \$100 million and the other person has to have sales or assets of at least \$10 million. That's the size of the person test. The size of the transaction test, the

acquiring person will hold a total of stock or assets of the acquired person valued at more than \$15 million.

That's the size of the transaction.

Q: Who determines whether a fix-it-first approach is sufficient or whether a case should be litigated?

A: Well, usually the fix-it-first is raised at the time that an investigation is proposed to the merger screening committee. If a fix-it-first seems appropriate, we will normally instruct the staff to pursue that. On the other hand, sometimes it does not appear to us a fix-it-first is appropriate but perhaps the merging parties will suggest that it is appropriate and we're always willing to listen to a proposal that may cure our concern.

Q: Does the FTC currently have any investigations in process that involve food businesses?

A: Yes. I couldn't name the specific investigations but we do have investigations. We have merger investigations, we have at least one trade practice investigation, that I am aware of, we have an exchange of information type of investigation, we have a joint venture that we are looking at. I wouldn't say that we have a large number but we have a fair number of investigations involving food. It's not unusual for us to look at supermarket mergers, for example, and bottling mergers, those are two areas where we usually have some activity.

Q: To what extent do the 1992 merger guidelines structure your investigation and litigation efforts?

A: I think that the guidelines have been fairly well accepted by the antitrust bar in general and the courts seem receptive to them as well. The guidelines reflect the enforcement policy of the agencies and the enforcement policy in turn, I believe, reflects what the agencies believe the law to be. In addition to that, they are a very, very handy analytical tool for trying to get a hold on the anticompetitive potential of a given merger.

Q: The guidelines draw a distinction between unilateral and coordinated market power. Could you explain that distinction for us?

A: Yes. I think that the important thing to remember as background, is that Section 7 of the Clayton Act is a very, very broadly stated prohibition. The prohibition is on acquisitions or mergers that are likely to lessen competition and the ultimate question that we are trying to get at is whether or not consumers will have to pay higher prices, are likely to pay higher prices, or are likely to have lower quality goods or less services as a result of the transaction. There are two primary ways that the case law, economics, and historical experience tell us that that can occur in the instance of a horizontal merger. One is when a firm has such a large share of the market and the conditions are such that it can likely unilaterally decide to raise prices, unilaterally decide to limit service or lower quality. The other way is when an oligopoly is created and there are so few competitors in the market that they all recognize that it's in their best interest to limit output and raise prices and perhaps limit service and limit quality. So those are the two primary ways that we determine whether consumers are harmed by this transaction.

Q: Has the analysis of unilateral market power been generalized compared to prior guidelines where the primary concern was a dominant firm?

A: I'm not sure what you mean by that question.

Q: Let me explain: the idea that in a differentiated product industry if two products are merging that are in fact close substitutes to each other and highly differentiated from other products in that industry that in fact although they may not be a dominant presence in the industry, in their segment of the industry they would be able to elevate prices to consumers.

A: That's a concept which we have applied well before the 1992 guidelines. The concept is that

within a market, and I think that's an important note here that we are talking about within a defined market, we might have more concern when we have head to head competitors which are being removed from the market place than if it is one at one end of the spectrum and another at the other end.

Q: Have you had any recent mergers in the food industry that come to mind that where you've actually engaged in litigation and established a new precedent felt reasonably happy or unhappy about the outcome.

A: None come to mind as examples of something out of the ordinary. There was a merger involving McCormick, the spice company, and the product was dried onions. The remedy agreed to was divesting certain assets in particular seeds to allow a new competitor to enter the market place. That's not out of the ordinary. It's really pretty much a run of the mill merger case as far as I can tell. So I guess there's nothing that I would point to as being extraordinary in recent times.

Q: Thank you very much for speaking to us.

A: You're most welcome.

### **Food Marketing Policy Center Staff**

Kathleen Segerson, a resource economist that many of you know and member of the economics department at UConn recently affiliated with the Food Marketing Policy Center. Kathy and James Barrett, a Ph.D. candidate in economics are working on the regulation and liability issues that fit squarely with the planned 1995 NE-165 conference on Food Safety and health issues. Petter Walstrom, a University of Rhode Island graduate student working with Kathy Wessells was in residence at the Food Marketing Policy Center this winter, to use the IRI infoscandata base to estimate brand level demand models for canned seafood. Since we cannot distribute the IRI data, we are prepared to provide

support for visitors such as Petter with well defined research projects.

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### **Activity Report**

**Julie Caswell**

*(University of Massachusetts)*

Julie is editing the book *Valuing Food Safety and Nutrition*, which is a product of the NE-165 conference of the same name held in June 1993. The book contains 22 chapters focusing on research methods for measuring the value of food safety and nutrition to consumers, industry, and society.

Julie and Ph.D. student Eliza Mojduszka are analyzing annual data collected since 1991 on nutrition labeling, nutritional content, and health claims on over 800 packaged food products. They will track changes in the composition of product categories as mandatory nutrition labeling goes into effect in May 1994. They presented a paper at the January 1994 American Economics Association meetings in Boston and will present a poster at the June 1994 NE-165 conference in Montreal.

Julie Caswell and Richard Rogers will teach an Industrial Organization course at the Polish-American summer school, University of Economics in Posnan, Poland in July. The course will be taken by 30 junior faculty members from economics departments in Poland.

Julie was promoted to full professor as of September 1, 1994.

As President-Elect of the Northeastern Agricultural and Resource Economics Association, Julie organized the program for the June 1994 meetings. She was also elected Vice-Chair of the national Food and Agricultural Marketing Consortium at its January meeting.

**Ronald W. Cotterill**  
(*University of Connecticut*)

Ron was invited to participate in a research conference entitled "Retail Power, the Citizen and the Consumer, Sponsored by the House of Lords, London, England. October 19, 1993.

Ron delivered an invited seminar at the Department of Geography, the University of Southampton, England entitled "The Organization of the U.S. Food Retailing Industry: Mergers, Leveraged Buyouts, and Performance" on October 20, 1993.

Delivered an invited seminar at the Department of Agricultural Economics and Management, University of Reading, England "Estimating Oligopoly Price Reaction and Demand Elasticities at the Brand Level in the U.S. Carbonated Soft Drink Industry" on October 21, 1993.

Ron delivered an invited seminar at the Department of Agricultural Economics, Rutgers University entitled "Economic Analysis of Mergers in Food Industries" on April 14, 1994.

Delivered an invited seminar at the Department of

Agricultural Economics, University of Wisconsin, Madison entitled "Old and New Approaches to Estimation of Market Power: A Synthesis" April 29, 1994.

Ron is serving as expert economic analyst and witness for the National Association of State Attorney Generals in State of New York v. Philip Morris/Kraft General Foods. He is analyzing the competitive consequences of the proposed acquisition of Nabisco Shredded Wheat by the Post Cereals Division of Philip Morris/Kraft General Foods. The opposing economist is Professor Daniel Rubinfeld, University of California-Berkeley, and the court's economist is as Professor Alfred Kahn, Cornell University.

Ron presented a workshop entitled "Trends in the Food Industry: A Strategic Outlook and Assessment for Cooperatives" at the Consumer Cooperative Management Association annual conference, Atlanta, May 1994.

**Lawrence Haller**  
(*University of Connecticut*)

Larry submitted a grant proposal to the N.R.I. Competitive Grants Program entitled "Evaluating Brand Level Competition in the Catsup and Breakfast Cereal Industries."

Larry is coauthor of two papers accepted for presentation at the AAEEA summer meetings, to be held in August in San Diego, Ca.: "The Determinants of Brand Price in the Catsup Industry: Market Share and Local Market Effects," coauthored with Ronald W. Cotterill, and "Price Determination in the Bottled Water Industry: A Case Study of Poland Spring," coauthored with Hong Wen.

Larry will present a poster at the NE-165 Montréal conference entitled "The Effects of the Beatrice - ConAgra Merger on Consumer Welfare."

**Subhash Jain***(University of Connecticut)*

In April Subhash visited Europe to interview executives at two bottled water companies Perrier, Evian and two beer companies Heineken and Beck's in connection with his work on global competition in beer and bottled water industries.

Currently, Subhash is working on a project entitled "Effects of Weak International Intellectual Property Rights Protection on American Business and Industry."

**Michael Lubatkin***(University of Connecticut)*

Michael (with Ron Cotterill and Yu Da) had a paper accepted to the annual Academy of Management Meetings to be held August, 1994 in Dallas, titled "Market Power Gains in Mergers: A Line of Product Analysis of Structure and Conduct Effects." The paper presents a detailed investigation of four large mergers in the branded food manufacturing industry.

**Richard Rogers***(University of Massachusetts)*

Rich wrote a proposal, at the invitation of Jay Hellman, president of Cains Foods, Inc., for a case study of the pickle industry in the United States. The proposal was accepted and the industry will give \$10,000 to support a graduate student's master's thesis on the topic.

John Connor and Rich are collaborating on research on the importance of vertical competition between food manufacturers and retailers in determining market concentration in food manufacturing markets. John will present the paper this June at a conference in Italy.

Our ideas for proposed symposiums at the San Diego AAEA meetings that originated at our Fall NE-165

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meeting were most successful. Jeff Royer and Richard Rogers had their proposed symposium accepted on "Cooperative Strategies in Imperfect Markets: Theoretical Approaches". Cathy Durham, Michael Mazzocco, and Richard Rogers also had a symposium accepted on "Changes in Information Technology and Reduced Public Information: Impacts on Food System Performance." Rich also had a paper accepted as a selected paper, co-authored with Michael Willis on "Market Share Dispersion Among Leading Firms as a Determinant of Advertising Intensity."

Rich will present a paper, co-authored with Yu Ma, at the NE165 Montreal conference on "Concentration Change in an Era of Lax Antitrust Enforcement: Evidence from Food Processing Industries, 1977 to 1987."

**Kathy Segerson***(University of Connecticut)*

On sabbatical leave in the Fall of 1994. Was a visiting scholar in the School of Forestry and Environmental Studies at Yale University, working jointly with Yale researchers on a project estimating the impacts of global warming on the agricultural sector.

Was elected Vice-President of the Association of Environmental and Resource Economists.

Presented a paper entitled "Issues in the Choice of Environmental Policy Instruments" at a conference on Environmental Policy with Economic and Political Integration: The European Community and the United States, at the University of Illinois, October 1993.

Presented a paper entitled "Environmental Policy and Risk" at the annual meeting of the Regional Research Project S-232 ("Risk Analysis") in Gulf Shores, Alabama, March 25, 1994.

**Tom Steahr**

Tom continues to work on large health data sets to identify the incidence of food borne illness. Recently he acquired the National Mortality Data for the United States, 1990 (6 reels of data), from the National Center for Health Statistics, and the WONDER program to access national data sets at the National Center for Health Statistics from the Storrs location.

**Linkages: The University of Massachusetts Connection.**

The Food Marketing Policy Center is located at the University of Connecticut. However, since its inception in 1988, Professors Richard Rogers and Julie Caswell, Department of Resource Economics, University of Massachusetts, have been an integral part of the Center via an annual subcontract that supports their research activities. One of the original reasons for organizing the Policy Center was to provide a vehicle for integrating food and agricultural marketing research in New England.

**Linkages: The NE-165 Connection**

The Food Marketing Policy Center is the core research group for a national agricultural marketing consortium that conducts economic research on the organization of the food system, the impacts of safety and nutritional attributes of food products on consumer preference, and the performance of the food marketing system.

The consortium is organized as a land grant university regional research project **NE-165 Private Strategies, Public Policies, and Food System Performance**, and includes 24 U.S. and Canadian Universities, the U.S. Department of Agriculture, the Food and Drug Administration, the General Accounting Office, and the Environmental Protection Agency.

The Center facilitates research among participating agencies by disseminating technical papers, organizing NE-165 bi-annual meetings, national conferences, and workshops on specific topics on the research agenda, and publishing results of those meetings in research monographs, and books.

Julie Caswell, University of Massachusetts, is the chairperson of the Regional Research Project NE-165, Public Policies, Private Strategies and Food System Performance, and Ron Cotterill, University of Connecticut, serves as its Executive Director.

**Linkages: Data Available**

The following acquisitions have been added to update our subscriptions to reference data books

*1994 Market Scope, Progressive Grocer*

*1994 Marketing Guidebook, Progressive Grocer*

*1994 Grocery Distribution Analysis and Guide, Metro Market Studies*

The Leading National Advertisers quarterly advertising expenditure data from 1988-1991 has arrived.

The Food Marketing Policy Center manages several research data sets that are available for your use. We have the Information Resource, Inc. Infoscan data base for all major branded food products and their private label counterparts, quarterly for 1988 to 1992, for 59 urban areas and total U.S. Since we are not permitted to distribute the IRI data, users must come to the University of Connecticut. Modest support for well defined research projects using IRI data is available from the Center. Other data sets include the ADP Merger Database, the 1987 Census of Retail Trade Special Tabulation, and SAMI data for 1980-1990. Also available are several reference data books and trade journals including the *Grocery*

*Distribution Analysis and Guide, The Food Institute Report, and Supermarket News.* We welcome suggestions for further data acquisitions. A complete list and details as well as assistance is available from the Policy Center. Contact Andrew Franklin at (203) 486-2823.

### **Food Marketing Policy Center Publications Catalogue**

Recently we assembled a list of all the publications that are available through the Center. Call (203) 486-1927 or write for a copy.

### **Recent Graduate Dissertations and Theses**

Haller, Lawrence E. Ph.D. (under Ronald W. Cotterill, University of Connecticut) "Branded Product Pricing Strategies in the Catsup and Cottage Cheese Industries: The Effects of Brand Share and Cooperative Presence." January 1994.

### **Recent Publications and Papers**

Bhuyan, Sanjib and Ronald W. Cotterill. Countervailing Power and Seller Performance in U.S. Food and Tobacco Manufacturing Industries. Accepted as a selected paper for August 1994 Meetings of the American Agricultural Economics Association in San Diego, CA.

Caswell, Julie A. In Press. The Policy Environment for Food Safety and Nutrition: Regulating Quality and Quality Signaling. In *Re-Engineering Marketing Policies for Food and Agriculture*, Food and Agricultural Marketing Consortium. College Station, TX: Texas A&M University.

Caswell, Julie A. 1994. Responses of Manufacturers to New Food Labeling Regulations. Paper presented at annual meetings of the Allied Social Sciences Association, Association of Environmental and Resource Economists Session, Boston, MA, January.

Caswell, Julie A. and Helen Jensen. In Press. Food Safety and Health. Leaflet Series on Public Policy Education for the 1995 Farm Bill. Series editor Ron Knutson, Texas A&M University.

Caswell, Julie A. and Jaana K. Kleinschmit v.L. 1993. Economic Criteria for Settling Federalism Disputes with an Application to Food Safety Regulation. NE-165 Working Paper No. 36. Storrs, CT: Northeast Regional Project 165, December.

Caswell, Julie A. and Tanya Roberts. 1994. Vertical Quality Control Systems: A Potential Marketing Advantage for Cooperatives. In *Competitive Strategy for Agricultural Marketing Cooperatives*, ed. Ronald W. Cotterill. Boulder, CO: Westview Press.

Caswell, Julie A., Tanya Roberts, and C. T. Jordan Lin. 1994. Opportunities to Market Food Safety. In *Food and Agricultural Markets: The Quiet Revolution*, ed. Lyle P. Schertz and Lynn M. Daft, pp. 229-248. Washington, DC: National Planning Association.

Cotterill, Ronald W. and Lawrence E. Haller. 1994. Market Strategies in Branded Dairy Product Markets. In *Competitive Strategy Analysis for Agricultural Marketing Cooperatives*, ed. Ronald W. Cotterill. Boulder, CO.: Westview Press.

Cotterill, Ronald W. and Randall E. Westgren. 1993. Strategic Marketing in Food Industries, *Agribusiness: An International Journal*, (accepted for publication in 1994).

Cotterill, Ronald W. Scanner Data: New Opportunities for Demand and Competitive Strategy Analysis (invited key-note paper to be delivered at The Northeast Agricultural and Resource Economics Association Meetings, June 1994). Forthcoming *Agricultural and Resource Economics Review*, 1994.

Cotterill, Ronald W., Mahlon G. Lang, Richard T.

Rogers, Richard J. Sexton, and John M. Staatz. Symposium "Cooperative Strategies in Imperfect Markets: Theoretical Approaches" has been accepted for presentation at 1994 AAEA annual meeting in San Diego, August, 1994.

Da, Yu; Michael Lubatkin; and Ronald W. Cotterill. Market Power Gains in Mergers: A Line of Product Analysis of Structure and Conduct Effects, To be presented at the Academy of Management Meetings, August 1994.

Ding, John Y. and Julie A. Caswell. 1993. Relatedness and Performance: A Reexamination of the Diversification-Performance Link. NE-165 Working Paper No. 37. Storrs, CT: Northeast Regional Project 165, December.

Ding, John Y., Julie A. Caswell, and Richard T. Rogers. 1993. Restructuring's Effect on Related and Unrelated Diversification Among the Top Food Manufacturing Firms in the 1980s. NE-165 Working Paper No. 38. Storrs, CT: Northeast Regional Project 165, December.

Haller, Lawrence E. and Ronald W. Cotterill. The Determinants of Brand Price in the Catsup Industry: Market Share and Local Market Effects. Accepted as selected paper at American Agricultural Economics Association Meetings, San Diego, CA. August 1994.

Jain, Subhash C. 1994. Globalization as a Prophylactic Strategy. In *Management-Qualitat Contra Regession und Krise*, ed. Ralph Berndt. New York: Springer Verlag. pp. 151-164.

Jain, Subhash C. and Lewis R. Tucker. 1994. Market Opportunities in Eastern Europe: MNCs' Response. In *The Economics of Change in East and Central Europe*, eds. Peter Buckley and Pervez Ghauri. London: Academic Press. pp. 389-402.

Kramer, Carol R. and Julie A. Caswell. In Press. Food Quality: Safety, Nutrition, and Labeling. In

*Food and Agricultural Policy Issues and Choices for 1995*, ed. M. C. Hallberg, D. Ray, and R. Spitze. Boulder, CO: Westview Press. (Also published as Research Report No. 20, Food Marketing Policy Center, University of Connecticut.)

Langan, Glenn and Ronald W. Cotterill. Estimating Brand Level Price Elasticities and Market Power in the U.S. Carbonated Soft Drink Industry. Accepted as a selected paper at the American Agricultural Economics Association Meetings, San Diego, CA August 1994.

Rogers, Richard T. and Lisa M. Petraglia. Agricultural Cooperatives and Market Performance in Food Manufacturing, *Journal of Agricultural Cooperation*, forthcoming.

Rogers, Richard T. 1993. Selling ItCo-op Advertising Lags Behind Private Sector Food Companies, *Farmer Cooperatives*, Agricultural Cooperative Service, USDA, November.

Rogers, Richard T. 1993. Advertising Strategies by Agricultural Cooperatives in Branded Food Products, 1967 to 1987," Food Marketing Policy Center Research Report 21, October.

Steahr, Thomas E. "Determining Foodborne Illness in the United States: A Step Toward Valuation" a chapter in a volume on Valuing Food Safety (forthcoming).

Steahr, Thomas E. "Foodborne Illness in the United States: Geographic and Demographic Patterns" accepted in the *International Journal of Environmental Health Research*, (forthcoming).

Steahr, Thomas E. 1993. A Sociological View of Illness: The Case of Foodborne Disease. *Free Inquiry in Creative Sociology*, 21(2):1-12.

Steahr, Thomas E. and Tanya Roberts. 1993. "Microbial Foodborne Disease, Hospitalizations,

Medical Costs, and Potential Demand for Safer Food," Regional Research Project NE-165, Working Paper No. 32.

Wen, Hong and Lawrence E. Haller. Price Determination in Bottled Water Industry: A Case Study of Poland Spring. Accepted as selected paper at American Agricultural Economics Association Meeting, San Diego, CA August 1994.