Department of Justice

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JUSTICE DEPARTMENT WILL NOT CHALLENGE
TOBACCO COOPERATIVES' INVENTORY SALES

WASHINGTON, D.C.-- The Department of Justice's Antitrust Division will not challenge three separate proposals by tobacco cooperatives to sell a substantial portion of their inventories to domestic cigarette manufacturers because each cooperative will set prices unilaterally.

In 1985, a similar proposal by one of the cooperatives involved in today's decision, was reviewed by the Antitrust Division and also was not challenged.

The Department's position was stated in a business review letter from Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division, to Flue-Cured Tobacco Cooperative Stabilization Corporation of Raleigh, North Carolina, the Burley Tobacco Growers Association of Lexington, Kentucky, and the Burley Stabilization Corporation of Knoxville, Tennessee.

Bingaman said that each of the cooperatives functions as a contract agent for the Commodity Credit Corporation of the Department of Agriculture in administering the government's loan program for tobacco. Each cooperative's members' crops are automatically consigned to the cooperative at the government support price if they do not bring at least the support price on the open market. The cooperatives' purchases of tobacco from their members is financed with loans from the Commodity Credit Corporation. The cooperatives incur interest and storage costs until they resell the tobacco. To protect the Commodity Credit Corporation against losses on the resale of the tobacco by the cooperatives, the growers and purchasers are assessed an amount on each pound of tobacco sold. The assessments are held by the Commodity Credit Corporation as a reserve fund. The amount of the assessment per unit increases as the cooperatives' inventories grow.

The increased carrying expenses and assessments are not the only costs to the tobacco growers that can result from the inability of their cooperative to resell its tobacco inventory quickly. Under the governing statutes, if a cooperative still has on hand more than 15 percent of the previous year's quota prior to the time for determining the next year's quota, that excess is factored into a formula in a manner that reduces the quota, i.e., the amount of tobacco that may be grown, for the next year. This may impose additional assessment and other costs on tobacco growers.

To avoid these various costs, Bingaman stated that each of the cooperatives, whose marketing activities are exempt from the antitrust laws under the Capper-Volstead Act, had proposed to attempt to sell all or a substantial portion of its tobacco inventory to domestic cigarette manufacturers. Each cooperative proposes to negotiate a price for the tobacco with individual customers, which price shall be contingent on the cooperatives' ability to move its entire inventory. Each cooperative intends to offer the tobacco to all customers at the same price. One effect of such a sale would be materially to lower the current high carrying costs for the inventory which are borne by the tobacco growers, Bingaman said.

Bingaman said that after reviewing the proposal with the cooperative and consulting with the United States Department of Agriculture, the Department has concluded that it has no present intention of challenging the proposal.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division would challenge that action under the antitrust laws.

A file containing the business review request and the Department's response will be made available in the Legal Procedure Unit of the Antitrust Division, Room 3235, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review request will be added to the file.

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