U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MAY 24 1993

Andrew W. Maron, Esq.
Short Cressman and Burgess
3000 First Interstate Center
999 Third Avenue
Seattle, Washington 98104-4008

Re: Fishermen's Marketing Association, Inc.
-- Request For Business Review

Dear Mr. Maron:

This letter responds to your request for a statement of the current enforcement intentions of the Department of Justice concerning the proposal by the Fishermen's Marketing Association, Inc. ("FMA") to extend membership in FMA to Canadian owners and captains of certain Canadian trawling vessels that catch seafood in Canadian waters and deliver that seafood to processors located in the United States. The Department of Justice has concluded that it is unable to state a present intention not to bring an action under the antitrust laws should FMA membership be extended to the Canadian owners and captains of those trawling vessels. This response is based upon information submitted by you on behalf of the FMA and our own investigation of the proposed conduct.

The FMA is a non-profit corporation organized to qualify for the limited antitrust exemption provided by the Fishermen's Collective Marketing Act ("FCMA"), 15 U.S.C. §§ 521-522. Membership in the FMA, according to its bylaws, is limited to persons involved in trawl fishing or holding ownership in a vessel or vessels involved in trawling the waters of the Pacific Ocean, its inlets and tributaries adjacent to the states of Washington, Oregon, and California. The FMA currently has 600 members operating over 200 vessels. The principal function of the FMA is to negotiate with processors of trawl-caught seafood for the

minimum price per pound that these processors will pay FMA members for such seafood. The FMA represents its members only in negotiating selling prices for trawl-caught seafood and the terms and conditions under which such sales will be made. The FMA itself does not process or market the seafood caught by its members, each of whom is responsible for marketing the seafood it catches.

The FMA proposes to extend membership to the Canadian owners and captains of four to six Canadian trawling vessels. The seafood caught by these Canadian trawling vessels is caught in Canadian waters and some of that seafood is delivered to processors located in the northern Puget Sound, Washington area.

The FCMA provides a limited antitrust exemption for those fish marketing associations whose members engage in the fishing industry "as fishermen catching, collecting, or cultivating aquatic products . . . ." The term "aquatic products" is defined by the FCMA as "all commercial products of aquatic life in both fresh and salt water, as carried on in the several states . . . or other places under the jurisdiction of the United States." The seafood caught by the Canadian trawlers to whom the FMA wishes to extend membership is caught in waters outside the United States' jurisdiction and is then delivered to United States' ports. Such seafood does not meet the definition of "aquatic products" set forth in the statute. There is nothing in the legislative history related to the enactment of 15 U.S.C. §§ 521-522 or the Capper-Volstead Act, 7 U.S.C. § 291, upon which the FCMA is based, or the case law interpreting those statutes, that discusses Congress' intention as to whether Canadian fishermen fishing in Canadian waters and delivering seafood to processors located in the United States are eligible to be members of a fish marketing association established under 15 U.S.C. § 521.

The Supreme Court has stated that immunity from the antitrust laws is not to be lightly inferred. United States v. First City National Bank, 386 U.S. 361 (1967). The Supreme Court has held that, in determining the scope of a statute, "one is to look first at its language . . . . Absent a clear, expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." North Dakota v. United States, 460 U.S. 300 (1983). Thus, where no ambiguity appears, it is presumed conclusively that the clear and explicit terms of the statute express the legislative intention. United States v. American Trucking Association, 310 U.S. 534 (1940).

The language of the FCMA is clear in stating that only fishermen who catch seafood in waters within the United States' jurisdiction are entitled to the limited antitrust exemption

provided by the FCMA. If a fish marketing association extends membership to persons who do not meet the statutory eligibility requirements, it loses its exemption from the antitrust laws. See, e.g., Case Swayne Company v. Sunkist Growers, Inc., 389 U.S. 384 (1967), rehearing denied, 390 U.S. 926 (1968). Thus, under the above authority, if the FMA extends membership to the Canadian owners and captains of Canadian trawling vessels, the FMA would lose its limited exemption under the FCMA.

Based upon review of your submission, relevant statutes and legislative history, applicable case law, and the above analysis, the Department of Justice has concluded that it is unable to state a present intention not to bring an action under the antitrust laws should FMA membership be extended to the Canadian owners and captains of the subject Canadian trawling vessels.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedures, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting data will be made publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

John W. Clark
Acting Assistant Attorney General
Antitrust Division