Food retailers, who repeatedly maintained fixing scheme inflict on consumers in Cleveland. Conclusions from price differences measured substantial reparations against the civil liabilities that apply to the price conspiracy. For example, the USDA study showed the largest single firm growth, rising from a second-place 20.4 percent share to a first-place 26.3 percent share. From generalizing from the evidence in the USDA study, the 1975-76 increase in Cleveland's market concentration would have resulted in a 2.5 percent increase in its retail-food prices above the U.S. average. In sum, a covert price-fixing arrangement is not a definitive explanation for local food-price increases above national averages.

Another approach for measuring the price conspiracy's damage to Cleveland's consumers used data relating to firm gross margins, an important control mechanism for the pricing policies of food retailers. The gross margin evidence yields a substantially lower total consumer damage estimate, between $20.0 million and $21.3 million. Economic experts for the defense offered a net-profit approach to estimate consumer damage, arguing that actual damages would most accurately be reflected in additional profits accrue to the conspiring retailers. According to these estimates, the conspiracy was not nearly as lucrative as one would imagine; the damage was estimated at $2.4 million for the first count of the indictment, while no damage was found for the second count. The primary objection to this analysis is the source of the profit data—the defendant price-fixing firms themselves.

The problems associated with the estimation of consumer damages are complex, as evidenced by the wide range of estimates presented during litigation. Finally, the ledgers of civil actions, the federal court accepted a $20 million coupon repayment plan from the local food stores, payable to the approximately one million households that the retailers serve. This is the largest consumer settlement in U.S. history.

Although there are harsh penalties against attempts to fix prices, experience suggests that such efforts are relatively common. Under the antitrust laws, it is the attempt that should not result in any impact on actual prices and pricing behavior. In theory, inherent forces in a free market should limit the effective life of most price conspiracies. History is replete with souring price-fixing schemes, as illustrated by testimony in a U.S. Senate investigation into price agreements in the electrical manufacturing industry.

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1. The court suspended $2.5 million of the corporate fines and $130,000 of each of the individual fines.

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Economic Commentary

Anatomy of a Price-Fix

by Michael F. Bryan

On February 19, 1982, the three largest retail food chains in the Cleveland area were fined $4.2 million by a federal court for their participation in a national criminal price-fixing, after entering pleas of no contest to the charges against them. Four supermarket executives were given three-year suspended sentences and fined $200,000 each for their participation in the price conspiracy. In related civil actions, the federal court accepted a $20 million coupon repayment plan from the local food stores, payable to the approximately one million households that the retailers serve.

This is the largest consumer settlement in U.S. history.

Although there are harsh penalties against attempts to fix prices, experience suggests that such efforts are relatively common-place. Under the antitrust laws, it is the attempt that should not result in any impact on actual prices and pricing behavior. In theory, inherent forces in a free market should limit the effective life of most price conspiracies. History is replete with souring price-fixing schemes, as illustrated by testimony in a U.S. Senate investigation into price agreements in the electrical manufacturing industry.

Senator Hruska: By and large, Mr. Ginn, you have had considerable experience in the business of meetings with competitors. How effective were those meetings to get the job done that they purported to have as an objective?

Mr. Ginn: Senator, this is the way I will put it. If people had not had the desire to make it work, it would have failed. And if people had the desire to make it work, it wasn't necessary to have the meeting and violate the law.

Senator Hruska: So that your preliminary dis- coveries and meetings were not necessarily controlling?

Mr. Ginn: Were worthless. I think that the boys would resist everything but temptation. No sir, I'll tell you frankly, Senator. I think if one thing I would pass on to posterity, it is that it wasn't worth it. I didn't accomplish anything, and all you end up with is by trying to get in trouble.

That the retail-food industry often operates in a viciously competitive environment is an incentive for providing an indemnity for the marketplace. Indeed, food retailers might personalize price conspiracies as a means of survival rather than a strategy for reaping unwarranted profits. However, the large number of goods sold by food retailers, in addition to the competitive dynamics of the markets they serve, makes this industry an attractive vehicle for a successful price-fix. The retail-food price conspiracy in Cleveland is a case in point.

Economic Environment of the Retail-Food Industry

Food stores are limited in the ways they can successfully compete by the standard nature of the products that they sell.

2. Mr. Ginn was vice president and general manager of the turbine division for General Electric. Price-Fixing: The Cleveland Case, Before the Antitrust Subcommittee of the Senate Judiciary Committee. Hearings before the U.S. Senate Committee on the Judiciary, Parts 27 and 28, 91st Cong. 1st Sess. (April, May, and June, 1961, pp. 7069–7070.)
make it difficult for a store to develop a loyalty, making prices the most powerful larger sales volumes. Cost or efficiency to attract investors, retailers must turn to improve earnings.

For the return on equity to be high enough swelling populations indicated market growth for years to come. The U.S. retail-food industry, however, has undergone some difficult transitions. Since 1960, the percentage of personal income spent on food prepared at home has been declining. In 1960, 17.5 percent of disposable income was allocated to retail-food purchases; by 1970, the retail-food share of income had fallen to 15 percent, and in June 1982 it was slightly under 13.5 percent. Clearly, the increasing number of food service establishments and the growing prominence of women in the labor force are primary contributing factors as more and more people eat meals away from home.

As consumer buying habits have shifted, the retail-food industry has been restructured. Convenience-food stores have proliferated, offering lower prices and variety for power to control prices. Yet, urban markets are often dominated by a few retail-food sellers. In the 1970s, two food retailers-Supermarkets (Pick-N-Pay)-accounted for national food chain of First National Supermarkets, Cleveland SMSA

only by a change in life-styles but by a persistently declining local population. In 1970 the retail-food industry in the Cleveland area was dominated by a population of 1,000,000 and that population has since declined approximately 16,000 persons per year. Although the 1970s witnessed a shrinking of Cleveland's food market in 1971 and 8.0 percent was the third-place firm, Stop-N-Shop, added share superiority over the two-year period, increasing its market share in 1973 to 25.0 percent to 20 percent (see chart 1). The first was in popularity of convenience-food stores. Lawson's, a major convenience-food seller, operated 100 stores in Cleveland in 1971, growing to 300 stores in 1975. At the same time, Convenient Food Market was emerging as a competitor: a virtual unknown prior to 1970, this seller opened 68 stores by 1976. Whether because of this additional competition or because of internal reasons, two national food chains-A&P and Kroger's-came together to withdraw from the Cleveland market in the 1970s. Together, these two food sellers represented 13.5 percent of Cleveland's food market in 1971 and 8.0 percent in 1976, but by 1979 they were virtually nonexistent. The "void" created by the pull-out of supermarket competition explains a large part of the increase in market shares enjoyed by the surviving major food sellers in Cleveland between 1974 and 1976, as the remaining participants aggressively repositioned themselves. As Pick-N-Pay and Fisher's were exchanging loads for market-share superiority over the two-year period, the third-place firm, Stop-N-Shop, added nearly 6 percent to its market share. In 1977, this trio of food sellers accounted for over 65 percent of Cleveland's total retail-food sales. Market concentration can be an important determinant of industry prices and, consequently, industry profits. A recent analysis by the U.S. Department of Agriculture (USDA) of the price-concentration link in the food-retailing industry reports that increased concentration in some cases yields higher retail-food prices. This link is particularly strong in urban markets dominated by three firms or less, as in the Cleveland market. In pricing theory, as firms recognize their joint dominance of a market, they tend to develop coordinated the price-fixing strategies. Simply, they said, set prices with the unsigned understanding that low settlements on certain food items or not raising prices quickly enough to agreed-to levels. One conspirator superstores also lower prices and the price-fix dissolves. The government argued that the price-fix was more than a mere restraint of trade to prevent price uniformity and conspired to raise prices again in the fall of 1977. By year-end 1977, price lists allegedly were being exchanged often, occasionally being used to prepare identical advertising campaigns. Weekly price "bulletins" apparently were distributed for a period in excess of nine months, with the basic purpose of keeping specific prices equal or nearly equal. Once again, a common conspiracy topic during the second price-fixing period was the charge that one of the retailers was cheating against agreed-to prices. Meetings were arranged to sort out the price-fixing also serves to undermine the cartel's smallest conspirators to cheat. Firms with relatively small market shares tend to improve their individual positions by drifting below agreed-to price levels. This strategy, however, depends on the ability of the price-fixing cartel to maintain market share without being detected by its members. While it is known why the price-fixing opportunity to drift below agreed-to prices. Simply, the competition that fosters thoughts of price-fixing also serves to under- mine the success of such agreements. Inasmuch as the food retailers pleaded no contest, the criminal evidence against the price-fixers is unspoken. The government argued that the cheating incentives in Cleveland's retail-food price conspiracy surfaced early in 1973, when the Justice Department, inasmuch as the food retailers pleaded no contest, the criminal evidence against the price-fixers is unspoken. The government argued that the cheating incentives in Cleveland's retail-food price conspiracy surfaced early in 1973, when the Justice Department, inasmuch as the food retailers pleaded no contest, the criminal evidence against the price-fixers is unspoken. 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The Damages

Inasmuch as the food retailers pleaded no contest, the criminal evidence against the price-fixers is unspoken. Beyond the criminal violations of the law, however, remain questions concerning any