BRIEFLY NOTED

A Prohibition on Advertising?

By Thomas A. Hemphill
The George Washington University

Last December, the National Broadcasting Company announced that it had signed a contract with the world's largest distributor of distilled spirits, Diageo PLC, to air liquor commercials for products from Diageo's Guinness UDV division. The contract included an agreement to abide by a 19-point set of guidelines intended to limit children and teenagers' exposure to the commercials. Among those guidelines is a requirement that the ads air after 9 p.m. and that they appear during programming that NBC believes would not draw a significant portion of younger viewers. (For example, the commercials went on hiatus during the network's February telecasts of the Winter Olympics.)

"We've taken a measured and steady approach to increasing our presence on television," Guinness UDV vice president Ted Hissey told the *New York Times*. "We want to do this in the right way, a responsible way, with pretty strict guidelines."

On December 15, during NBC's late night "Saturday Night Live" program, the broadcaster aired its first ad under the agreement: a spot promoting designated driving that was "brought to" viewers by Smirnoff vodka. The NBC contract mandates that the distributor run four months of commercials advocating responsible drinking before the network will air ads promoting Diageo products like Smirnoff, Johnnie Walker Scotch, and Captain Morgan's rum.

LIFTING THE BAN

The contract established a new precedent for American television broadcasting. Though liquor ads on the airways have grown increasingly common since the Distilled Spirits Council of the United States (DISCUS) lifted its self-imposed ban on television and radio advertising in 1996, the NBC agreement is the first arrangement by a major broadcast network to run liquor commercials.

DISCUS abandoned its radio ban (in place since 1936) and television ban (1948) in order to "level the competitive playing field" with the wine and beer sectors, which have had a regular presence on the airways since the early days of broadcasting. By 1995, liquor's share of the alcoholic beverage industry had declined from 44 percent in 1970 to 29 percent, and DISCUS members considered the advertising decision to be crucial for the industry's future. Since 1996, liquor advertising has aired on more than 400 broadcast television stations, 2,000 radio stations, and on television cable networks and systems representing 67 percent of the nation's households.

The NBC contract required more than just a change in DISCUS policy. Prior to 1982, the National Association of Broadcasters (NAB) had established radio and television codes of conduct that effectively kept liquor ads off the air. The NAB codes were subsequently eliminated because of U.S. Department of Justice antitrust concerns but, until the NBC decision, network TV remained free of liquor commercials because all the major television networks established corporate policies of not accepting them. Indeed, at the time of the December announcement, NBC officials conceded that they had not solicited any liquor advertising, but instead had been approached by Diageo.

NEGATIVE REACTION

The NBC-Diageo announcement met with immediate negative reaction from the public health community and legislators. J. Edward Hill, chairman-elect of the American Medical Association, said that NBC's decision was "shockingly irresponsible and should be reversed immediately. It is obvious the network is putting its desire for profit far above the health of our nation — especially young people, who develop many of their ideas and expectations about alcohol from watching TV." Joseph A. Califano Jr., president of Columbia University's National Center on Addiction and Substance Abuse and a former secretary of Health, Education, and Welfare during the Carter administration, wrote in a December 18 *Washington Post* op-ed piece, "The only solution now is for federal regulation, just as we have federal regulation prohibiting tobacco ads on television."

Califano's words were soon echoed in Congress. In a December 20 letter to NBC from Representatives Frank R. Wolf (R-Va.) and Lucille Roybal-Allard (D-Calif.), the lawmakers expressed "extreme disappointment" in NBC for dropping its voluntary ban on liquor advertising. They opined that the contract offered "a sad commentary that your bottom line today is more important to your company than the lives of young people tempted to drink or recovering alcoholics trying to beat their disease."

While "implor[ing] NBC to reverse its decision, reassert its social responsibility, and put back into place its self-regulated ban on liquor advertising," the lawmakers warned that "we are

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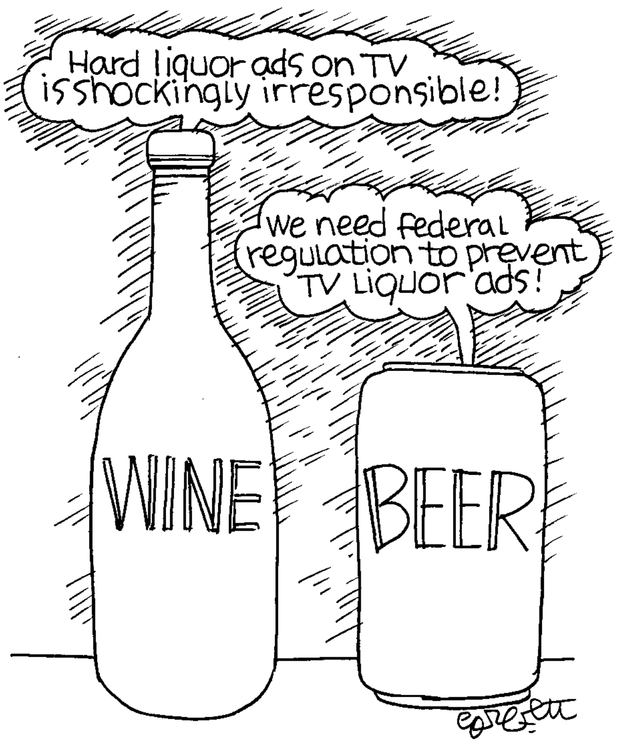
prepared to hold extensive hearings on alcohol advertising and to introduce legislation to replace the system of self-regulation of hard-liquor advertising with mandatory federal regulation."

INDUSTRY SELF-REGULATION

The liquor, wine, and beer sectors of the alcoholic beverage industry have longstanding voluntary codes of conduct that self-regulate advertising and marketing practices. The codes emphasize that advertising should be targeted to legal age consumers of their products. For liquor producers and distributors, DISCUS developed the *Code of Good Practice for Distilled Spirits Advertising and Marketing* (which is periodically revised and updated) to responsibly guide its membership. (See "Harmonizing Alcohol Ads," *Regulation*, Spring 1998.)

In response to criticism of those self-regulation regimes, the House and Senate Appropriations Committees requested that the Federal Trade Commission undertake a study to evaluate their effectiveness. The FTC released the results of that study in 1999. The report verified that the industry generally complies with guidelines covering advertising content and placement, product placement, online advertising, college marketing, and code enforcement.

The report positively cited DISCUS for prohibiting its members from marketing on college campuses, even though the practice is not specifically mandated in its code. The FTC also noted that the liquor industry, unlike the wine and beer industries, operates a code review board within its organization. The report recommended that each sub-sector of the industry take an evolutionary step beyond that board and establish external advertising and marketing review boards with responsibility and authority to address complaints from the public or other industry members. Finally, the FTC recommended that all alcoholic beverage industry members should build on their self-regulation best practices to avoid promoting alcoholic beverages to underage consumers.



ILLUSTRATIONS BY JACK CORBETT (4)

UNDERAGE DRINKING

According to the 2000 "Monitoring the Future" study by University of Michigan researchers, the percentage of high school seniors consuming alcohol has fallen over the past quarter-century. In 1975, surveyors found that 84.5 percent of seniors drank an alcoholic beverage at least once a year, 68.2 percent drank at least once a month, and 5.7 percent drank daily. By 2000, those percentages had declined to 73.2 percent for annual usage, 50 percent for monthly usage, and 2.9 percent for daily usage.

Although those results are encouraging, the attendant problems are still considerable, with underage drinking levels increasing since the mid-1990s. According to a 2000 survey commissioned by the U.S. Department of Health and Human Services, about 9.7 million persons age 12 to 20 report drinking alcohol in the month prior to the survey. Of those, 6.6 million were binge drinkers and 2.1 million were heavy drinkers. Furthermore, alcohol-related car crashes are the leading cause of death among young people ages 15 to 24, more than 43 percent of teenagers who began drinking before age 14 later became alcoholics, and underage drinking costs Americans nearly $55 billion annually. Alcohol is also a contributing factor in illegal drug use, premarital sex, and sexual abuse among teenagers and college students.

The advertising connection

Given the consequences of alcohol abuse by underage drinkers, one can understand the reaction to NBC's announcement. But does alcoholic beverage advertising contribute to those consequences?

A 1985 FTC review of econometric studies concluded that there was no reliable evidence that alcohol advertising contributes to aggregate or individual consumption of alcoholic beverages, let alone abuse. Yet, the 1999 FTC report noted that "the econometric research focuses only on the effect of advertising on population-wide alcohol consumption and thus it may not effectively test for the small part represented by underage consumption. In short, the generally inconclusive nature of the empirical research does not rule out the existence of a clinically important effect of advertising on youth drinking decisions."

Indeed, an earlier study by Joel Grube and Lawrence Wallack of the Prevention Research Center of the University of California, Berkeley, indicated that there are statistically significant correlations between alcohol advertising and youths' likelihood to drink. The study, which was published in the February 1994 *American Journal of Public Health*, found that awareness of television beer advertising was related to more favorable beliefs about drinking, greater knowledge of beer brands and slogans, and increased intentions to drink as an adult.

UNSETTLED ISSUES

The Grube-Wallack study offers evidence of a link between advertising and young people's attitudes towards drinking. But the guidelines established voluntarily by NBC and Diageo should limit the ads' contribution to youth "awareness" of alcohol. Perhaps that self-regulation will satisfy the concerns raised by Wolf and Roybal-Allard when they threatened legislation.

Of course, there is a third issue at play besides underage drinking and industry self-determination: Does the liquor industry have the right to exercise free speech in the form of advertising for its products? Two recent U.S. Supreme Court rulings — *Liquormart vs. Rhode Island* and *Greater New Orleans Broadcasting Association vs. the United States* — have supported that right over government claims to social welfare concerns. Will Congress attempt to restrain that right? Or will the liquor industry assuage those concerns and promote public confidence in self-regulation, perhaps by being the first alcoholic beverage sector to create an external advertising review board as recommended by the FTC?

On March 20th, NBC announced that it would end its agreement with Diageo. In explaining the decision, NBC cited congressional and special interest pressure. DISCUS responded that NBC's change was the result of pressure from another group: beer makers.

Profile, But Pay

By Aaron Lukas
The Cato Institute

Walied Shater, an armed Arab-American Secret Service agent who was bumped from an American Airlines flight last Christmas over security concerns, is suing the company for engaging in "racial profiling." Shater claims that he was denied access to a flight to Dallas because of his ethnicity. The plane's pilot says that the agent was verbally abusive and his paperwork was not correctly filled out, and thus his ejection from the flight was justified.

For argument's sake, let us assume that the agent's version of the facts is correct. In the wake of September 11, is it really so absurd that airlines would screen some passengers more carefully than others based, at least in part, on ethnicity?

Some people think so. Christy Lopez, one of Shater's lawyers, called the alleged profiling part of an "irrational security system" that is "not safe." Lopez apparently believes that it is better to search a million old ladies or 13-year-old girls than to admit that traits like age and ethnicity might be useful variables in screening for terrorists.

In any case, racial profiling is hardly as widespread as Lopez suggests. Two days after Christmas, I was waiting in line to board a flight to Washington. Unshaven, grumpy, and wearing a black backpack, I strolled unquestioned onto the plane. But behind me, uniformed security personnel escorted an elderly woman to a nearby table where they dumped the contents of her purse and had her remove her sneakers. Behind her, a young man of apparently Arab heritage was allowed to board the plane unhindered.

According to federal officials, that was just fine. President Bush said he would be "madder than heck" if profiling was really a factor in the Shater incident. Similarly, Transportation Secretary Norman Mineta told a television interviewer that if a 70-year-old woman from Indiana and a group of praying Islamic men were in line to board a flight, he hoped both would receive equal scrutiny.

Of course, applying "equal scrutiny" may make it less likely that travelers of a particular ethnicity will be inconvenienced, but it also ensures that more people will face delays overall. Worse, the refusal to profile reduces security; we know, for example, that youngish males of Middle Eastern descent are more likely to be terrorists than, say, 70-year-old Chinese women. For every granny from Terre Haute who gets shaken down, scarce security resources are wasted. And if searches are truly random, a 20-something Saudi national is just as likely to avoid having his bags checked as Aunt Edna.

COMPENSATION FOR INCONVENIENCE

The harsh reality is that racial profiling may be necessary if security is to be reasonably effective and efficient. Yet it is regrettable that such profiling burdens innocent members of the targeted group. So what should we do?

One answer is to compensate people subjected to abnormally intense security. That could be done in a variety of ways, anything from cash payments to free airline miles. Such payments could be given to anyone forced to undergo a full bag-

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gage or body search. Or, if general compensation turns out to encourage "suspicious" behavior, then only those passengers who are explicitly singled out because of race — the profiling characteristic people find most objectionable — could be paid. Concentrating attention on members of a subset of the population that we know is most likely to include terrorists would still be unfair, but compensation would minimize the injustice and make everyone better off. Arab travelers might be searched more often, but they would also be paid for the inconvenience.

Admittedly, there are plenty of details to be worked out before a system of compensation could be implemented. One obvious problem is that airlines would have an incentive to minimize searches in order to minimize compensation. However, since federal officials are taking over airline security, that should not be an issue. But even if passenger screening continues to be handled by the airlines, it is likely that the financial ramifications to an airline from a hijacking or bombing will be enough to maintain vigilance. Besides, the alternative to compensated profiling is not fewer searches, but many more random checks.

Other questions also come to mind. What level of security would trigger a payment? How much should passengers be given? Might there be a special system of background checks to speed travel by frequent flyers, such as the traveler identification card proposed by the Bush administration? All of those issues are important, but none of them suggests that a profile/compensation system would be unworkable.

Obviously, no passenger screening system will be perfect and random searches undoubtedly will remain a part of the system. But to insist solely on random checks is both unsafe and a waste of people's time. We would be screening people who are exceedingly unlikely to harbor ill intentions while turning a blind eye when a real suspect seeks to board a plane — all in the name of racial sensitivity.

For the sake of national security, Arab-American travelers should be willing to undergo greater scrutiny than the general population. And the rest of us should be willing to pay them for their trouble. R

The Benefits of MS–Settlement

By Robert W. Hahn
AEI-Brookings Joint Center for Regulatory Studies

Like every other turn in this long case, the tentative settlement to *United States v. Microsoft* has generated controversy. Critics of the settlement, including many of Microsoft's competitors, argue that the proposed accord does not go far enough in punishing the company for perceived wrongdoings.

Reviewing the case as an economist leads me to a very different conclusion: For a number of reasons, the settlement is preferable to additional litigation. First, it is a compromise between the disputants that reflects the reality that continuing the trial would put the government case at risk and expose Microsoft to an uncertain and potentially more costly outcome. Second, it would reduce the considerable business uncertainty that now plagues the high technology sector. Third, the proposed settlement fully addresses the Microsoft actions that the U.S. Court of Appeals confirmed to be anticompetitive when it reviewed the original decision by District Court Judge Thomas Penfield Jackson. Indeed, the settlement includes some Microsoft concessions addressing plaintiffs' concerns that were not supported by the appeals court.

In this article, I will discuss those three points in more detail. My discussion will not include any analysis of the original case; one need not take a stand on the merits or weaknesses of the economic foundations of *United States v. Microsoft* in order to see the wisdom in accepting the two parties' agreement. All that is required is an acknowledgement of where the case rulings stand today. The proposed settlement addresses those rulings and offers a remedy that prohibits the acts that have been found anticompetitive.

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COMPROMISE THAT REDUCES UNCERTAINTY

Economic analysis suggests that, in disputes, compromise should be the rule rather than the exception. According to one of the basic tenets of economics, "when transaction costs are low, parties will voluntarily transact if a mutually beneficial transaction is possible." In fact, the vast majority of all legal disputes are settled.

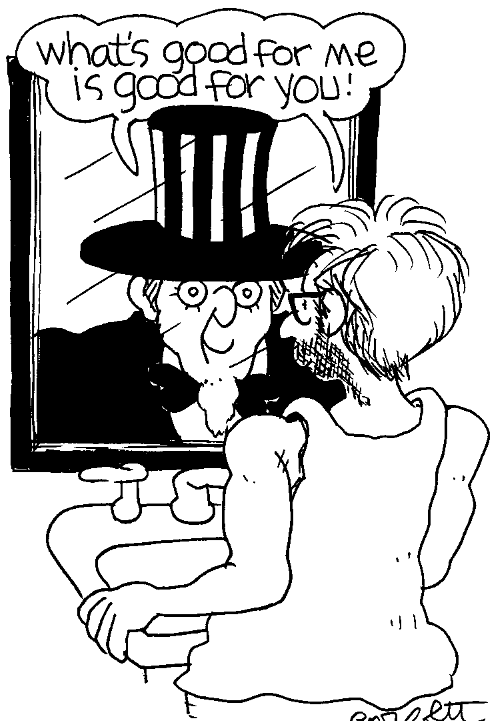
Settlements of pending litigation generally represent a compromise that takes known information into account and offers advantages to both parties. If a settlement is not balanced, the option of continuing the litigation will appeal to one side and stall negotiations. Thus, the fact that Microsoft and the government reached an agreement after numerous unsuccessful attempts indicates that the proposed settlement is not a "victory" for Microsoft or the government, but a middle ground reflecting the facts of the case, the court rulings to date, and a recognition that continued litigation is a gamble for both sides.

Apart from satisfying the two parties directly involved, settlements are also commonly viewed as good for society. As University of California economist Carl Shapiro has explained, "Settlements of litigation generally are recognized to provide a number of private and social benefits. Private benefits include the avoidance of litigation costs and the resolution of uncertainty. Social benefits include savings on court costs and/or reduction of congestion in the court system."

UNCERTAINTY IN THE HIGH TECH SECTOR

The reduction in uncertainty would be a boon not just for Microsoft, but also for much of the high technology sector. Companies that produce complementary products, such as applications that run on the Windows operating system, are directly affected by the case. The government has recognized that fact; as Assistant Attorney General Charles James explained, "Lots of small software development firms want to work closely with Microsoft to get their products commercialized, and they do so in a way that produces good software."

A study of how past antitrust enforcement involving Microsoft affected the stock of 159 other computer technology companies suggests that the effect is far broader. George Bittlingmayer and Thomas Hazlett found that the share prices of companies in the computer sector moved with Microsoft's share price in response to antitrust enforcement actions aimed at Microsoft. The authors examined 54 incidents of federal antitrust enforcement action from 1991 through 1997 that altered Microsoft's business prospects, classifying those actions as either pro-enforcement or anti-enforcement, and then tying the public announcement of the actions to computer sector stock values. The researchers concluded, "investors appear to believe that antitrust enforcement increases the link between the fortunes of Microsoft and other computer firms." "Withdrawals from policy enforcement," they continued, "have been accompanied by positive shareholder returns throughout the computer sector."



COURT OF APPEALS DECISION

Some settlement critics chastise the agreement for failing to secure many of the penalties against Microsoft that the Jackson court had ordered. Those criticisms are misplaced; the settlement had to reflect the appeals court's subsequent decisions on which Microsoft practices were anticompetitive and which were not. As New York University economist Nicholas Economides noted, "The remedy has to be based on [the appeals court ruling]. It should not punish Microsoft for things it was not found guilty of." Expanding on that point, Assistant Attorney General James explained:

> People look at the Jackson decree, and then look at our decree, and perceive that it is weaker or compromised. I fundamentally disagree with that. The Jackson decree was premised on these liability findings that didn't continue in the case after the Court of Appeals ruling. Second, the Jackson opinion did not ever undergo a true litigation process. There are a number of issues that would have been hotly contested. Finally, there were a number of things that would have been ineffective in the context of the software industry as we find it now. Looking at our decree from the standpoint of the case that emerged from the Court of Appeals, we think that, in many respects, it is certainly equal to and perhaps superior to the result that likely would have emerged in litigation.

In particular, the appeals court vacated the Jackson finding that Microsoft's inclusion of the Internet Explorer Web browser in Windows was illegal per se. It also reversed Jackson's ruling that Microsoft took anticompetitive actions to obtain a monopoly in Web browsers. While the appeals court did agree that Microsoft holds a monopoly in PC operating systems and has taken some anticompetitive actions to maintain (but not initially to gain) that monopoly, many of the specific charges were narrowed. In fact, the decision vacated Jackson's remedy because, among other things, the appeals court "drastically altered the scope of Microsoft's liability."

The proposed settlement is, in my opinion, based on the "limited ground of liability" that the appeals court upheld. First, it directly addresses all of the conduct that the appeals court found anticompetitive. For example, the court found that Microsoft acted illegally in preventing PC manufacturers from deleting end-user access to Internet Explorer. The settlement explicitly gives computer makers that right – not just for Internet Explorer but also for many other software categories falling under the settlement's definition of "middleware." Similarly, the appeals decision found that Microsoft's exclusive arrangements with Internet Access Providers (IAPs) hampered distribution of competing Web browsers and were illegal. The proposed settlement broadly prohibits Microsoft from requiring IAPs or other companies to distribute Web browsing or other kinds of software exclusively or in any fixed percentage.

Second, the agreement calls for information disclosures by Microsoft that go far beyond the behavior identified by the appeals court as anticompetitive. For example, by requiring the company to disclose software interfaces and related technical information, the settlement would make it easier for software developers to create new middleware products that operate in the Windows environment. That requirement would prevent Microsoft from keeping secret information that is normally considered proprietary—information that might give internally developed software a competitive edge.

Finally, the proposed decree contains stringent enforcement provisions. It creates an independent three-person technical committee with broad, on-site review powers. It requires Microsoft to offer uniform license terms to the 20 largest computer manufacturers, thereby preventing the company from sidestepping other provisions of the settlement through discounts and promotional deals. It gives the government authority to seek criminal and civil contempt sanctions in the event that Microsoft violates the accord. And it grants the court the discretion to extend the five-year term of the order by two years if Microsoft breaks the rules.

CONCLUSION

In the end, both Microsoft and the government made concessions in order to reach a compromise because they realized that there are costs and risks to continuing litigation. Finding that such a compromise serves the public interest does not require a complete re-hashing of the original charges and arguments made in *United States v. Microsoft*. In fact, one need not take a stand on the merits of the original case at all. A far better approach is to review the record as it stands today, taking into account the appeals court decision and the uncertainty created by the fact that the remaining proceedings will be conducted before a new district court judge. Such a review reveals that the proposed settlement is preferable to additional litigation, and is in the public interest. R

Rationalizing Air Pollution Regulation

By Randall Lutter
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The nation's sputtering air pollution policies may soon receive a major overhaul. On Valentine's Day, President Bush proposed that Congress mandate deep cuts in the levels of sulfur dioxides (SO_2), nitrogen oxides (NO_x), and mercury emitted by U.S. electric power plants. Under the Bush "Clear Skies Initiative," SO_2 emissions would decrease from the current level of 11 million tons per year to three million in 2018, NO_x would fall from five million tons to 1.7 million, and mercury from 48 tons to 15.

At the same time, the Bush administration supports phasing out the New Source Review (NSR) program, at least as it applies to facilities regulated by the new legislation. The program requires power plants, refineries, and other facilities to gain advance approval from federal environmental regulators that new investment projects and maintenance procedures will meet stringent emissions requirements. Though environmentalists and some members of Congress laud NSR, the program has drawn criticism because the costs and uncertainty of the lengthy approval process encourage energy producers to operate outmoded, minimally maintained plants instead of refurbishing them with more efficient and more environmentally benign equipment.

If lawmakers and the White House can resolve disagreements over how to address greenhouse gas emissions, they have an opportunity to forge a sensible compromise that would enable the passage of new NO_x, SO_2, and mercury caps while dumping NSR. But that process will not yield legislation that can be implemented in an economically sound manner unless Congress and the administration pay attention to a few basic economic issues.

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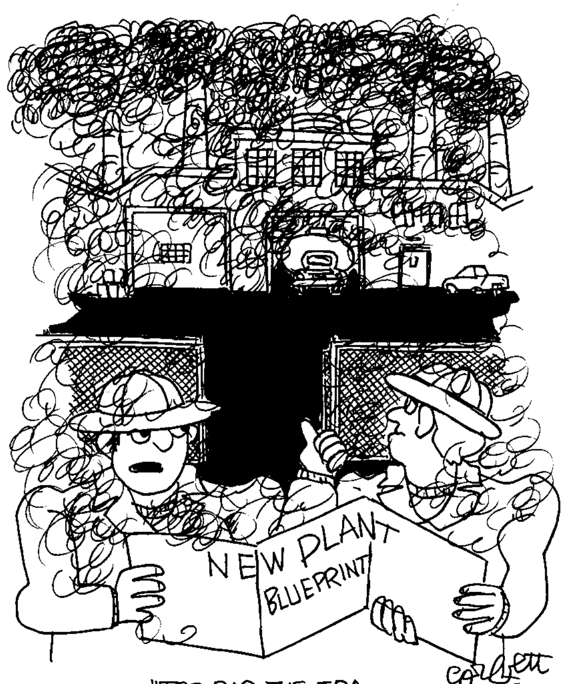
STRINGENCY MATTERS

The Environmental Protection Agency is still preparing estimates of the benefits and costs of its proposed emissions caps—information essential to evaluate their stringency. Preliminary reports suggest, however, that the agency's analytic methods preclude identification of the best emissions caps. First, the estimates are not expected to take into account pending emissions cuts required by existing regulations. States already must cut emissions to meet the stringent air quality standards that EPA issued in 1997, yet EPA's analysis is likely to ignore the effects of the cuts, thereby overstating the benefits of the new emissions caps. Second, EPA's analysis is expected to include benefits from air cleaner than required by the 1997 standards. Because EPA claims its standards are requisite to protect public health with an adequate margin of safety, air quality improvements in areas that would otherwise meet the standard should not be used to justify costly new emissions cuts. EPA should provide an economic analysis that takes proper account of pending air quality improvements and discounts benefits that occur in areas that comply with its air quality standards. After considering that more sound analysis, Congress should set caps to maximize net benefits.

Mercury The benefits of reducing mercury emissions justify only very modest emissions caps. Research suggests that a severe mercury cut, like the one proposed by Sen. James Jeffords (I-Vt.) in legislation now before the Senate, would produce very small gains in public health but would boost electricity bills by more than a billion dollars per year.

Granted, some epidemiological studies suggest that children whose mothers ate very large quantities of mercury-contaminated fish while pregnant may experience subtle neurological problems. But very few women in the United States eat fish in quantities where significant neurological problems are of concern. Moreover, most contaminated fish consumed in the United States are ocean species, like swordfish and tuna, whose mercury levels are quite unlikely to respond to cuts in U.S. emissions of mercury. Finally, there is no accepted estimate of how mercury levels for fish caught in U.S. waters would respond to reductions in power plants' mercury emissions. Mercury in U.S. waters comes from natural sources like the earth's crust, foreign sources, and previously contaminated sediment, and is largely determined by a poorly understood process that converts inorganic mercury into the organic form that accumulates in fish tissue. Thus, Congress should mandate only a modest mercury cap until there is better evidence that deep cuts, like the 90-percent reduction proposed by Jeffords, would bring about meaningful environmental or public health gains.



"TOO BAD THE EPA LIKES THE OLD GIRL BETTER."

PERMIT TRADING

Good legislation would include a program patterned on the much-acclaimed SO_2 emissions trading program established by the Clean Air Act Amendments of 1990. The permit-trading program that EPA administers under Title IV of the act has become a model because it yielded emissions control costs and emissions that were both lower than expected. However, lawmakers should be careful to adopt a trading program that builds on the lessons of the earlier SO_2 program, and is not merely a cookie-cutter copy.

For instance, an emissions trading program should recognize regional differences in the damages from emissions to help ensure that trading does not worsen environmental protection. Congress should direct EPA to take into account the broad regional differences in emissions' damages when designing emissions permit markets. For example, a permit to emit 12 tons in the sparsely populated West, if traded to a power plant in the densely populated East, might allow emissions of only 10 tons because emissions in the East are more damaging. The Bush proposal to create two separate regional markets for NO_x emissions is an inadequate step in that direction because it bans any trade between the two regions.

Second, an economically sensible trading program would allow tradeoffs between pollutants with similar effects. All legislative proposals to date specify maximum levels of emissions for NO_x and SO_2, as if air pollution legislation were a cake recipe. Yet, changing the relative stringency of NO_x and SO_2 caps need not affect air quality, because the two pollutants have very similar effects, and the Clean Air Act already compels states to limit emissions to meet air quality standards. A better policy would be to authorize EPA to give permits to emit NO_x in exchange for permits to emit SO_2, and vice versa. Firms would willingly conduct such trades whenever the emissions permits they receive are more valuable. Environmentalists and EPA should also welcome such trades as long as the exchange rate is set so that expected environmental damages do not rise. Congress, therefore, should allow the mix of NO_x and SO_2 to vary with market conditions and avoid prescribing specific national limits for the two similar pollutants.

Finally, Congress should authorize firms to trade permits to emit mercury. A national market for mercury emissions permits makes sense because significant local public health risks are not linked to mercury emissions from specific sources. Congress should also authorize EPA to sell mercury emissions permits at a prescribed price — such as \$20,000 per pound — to reduce the risk of unduly high mercury control costs.

ENDING NSR AND OTHER REDUNDANCIES

New Source Review would no longer have any rationale in facilities covered by the new emissions caps. Congress should exempt such facilities from the byzantine rules of the program, as defined by 704 pages in the *Code of Federal Regulations* and 513 separate EPA policy and guidance documents. Moreover, the compexity of the program demands legislative action, not reversible administrative reforms. Lawmakers also should exempt other emission sources, like pulp and paper mills, from NSR requirements if they volunteer to be covered by the emissions cap.

The cap and permit-trading system would also make unnecessary the regulation that EPA currently is drafting to limit mercury emissions from power plants. That regulation is likely to be relatively burdensome because of the approach prescribed by the Clean Air Act. New legislation should direct EPA not to pursue new mercury regulations.

The government can rationalize air pollution regulations by enacting new caps on power plant emissions. Economics are important in setting the stringency of the emissions caps, designing permit trading systems, and eliminating redundant regulations. Congress should pay more attention to basic economics to ensure that the new legislation makes sense. R