Letters

We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.

Who Benefits?

TO THE EDITOR:

Marvin Kosters' article on employee benefit programs ("Mandated Benefits—On the Agenda," *Regulation,* Vol. 12, No. 3, 1988) points out how hard it is to redistribute wealth through mandated employer-provided benefits. Nowhere is this principle more important or more ignored than in our pension system.

The favorable tax treatment that applies to pensions is available only to employers who meet a host of extremely complex regulations that are supposed to prevent upper-income workers from receiving a disproportionate share of pension benefits. As Kosters points out, low-income workers may not want these mandated benefits, and mandated compensation packages can trigger numerous and often undesirable market adjustments.

Yet Congress persists. Each year employers are faced with even more rules designed to ensure "nondiscrimination." These rules govern every facet of pension plans, including coverage, vesting, and benefit formulas. There is, for instance, a constantly evolving and thoroughly overwhelming set of rules on the integration of social security and private pension plans. These rules restrict the very understandable practice of setting benefit schedules that take social security payments into account.

Because of the forces that Kosters describes in his article, the multitude of restrictions on tax-favored pensions has had little impact on the actual distribution of wealth, except to increase the income of the lawyers and actuaries who must be hired to interpret these laws. The restrictions have caused some companies to reject employer-provided pension plans entirely. That cannot be a desirable outcome for a nation with a low savings rate and a rapidly aging population.

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Regulation's Prospects

TO THE EDITOR:

Roger Noll's article on the prospects for regulation in the 1990s ("Regulation after Reagan," *Regulation,* Vol. 12, No. 3, 1988) is a thoughtful piece, and on the whole I agree with it thoroughly.

The future of regulation after Reagan depends a lot on President George Bush. An emerging consensus in Washington is that we are likely to see a great deal more government regulation orchestrated by a Bush administration. This is prompted at least in part by his strong commitment to improving the environment. From my perspective in dealing with Vice President Bush as executive director of his Task Force on Regulatory Relief in 1981 and as a member of the task force in 1986-1988, I believe that this prognosis is incorrect—*provided* the president gives policy direction to the regulators after overcoming what up to now has been a case of benign neglect.

By and large, President Bush is a traditional regulatory *reformer.* He proposes to eliminate regulations that are counterproductive, such as price and entry controls in transportation and natural gas. But where regulation is necessary, such as in worker health areas and the environment, he would achieve the goals of regulation at lower cost.

The president also has two significant advantages in the regulatory area. First, having headed the task force, he knows a lot about the issues—ranging from food and drugs, to pollution, to alternative fuel sources, such as methanol and ethanol. Second, from his extensive government experience, he understands how the regulatory system works—the pressures brought on the regulators by Congress and by their constituents.

As for what the president is likely to do (again, assuming that he exerts policy direction), I think that it is useful to consider three categories. First, he will try to hold on to the gains that have been made already in eliminating excessive or counterproductive regulation, such as in transportation and in petroleum. He will also hang on to the OMB review process put in place in 1981. (Vice President Quayle is in charge of a group that reviews appeals from requesting agencies.) Second, he will continue to push for some reforms that have not yet been completed, such as those of financial institutions and telecommunications, as well as revisions of worker health and safety regulatory protocols and other improvements in the review process. Third, he will generally support, but not spend much capital on, new reforms that are needed, such as allowing competition in the delivery of first-class mail.

In short, it is unlikely that we shall see massive gains in deregulation during the next four years—partly because the wellspring of opposition to regulation that existed in 1980 has largely been dissipated, partly because the proponents of regulation are stronger now and are better organized than they were then, and partly because the "easy" reforms have been accomplished (in other words, those remaining are hard, politically and/or technically). But whether we see a resurgence of regulation in this administration depends on one man—George Bush.

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Principled FCC Decisionmaking

TO THE EDITOR:

In reading Robert Crandall's article on telecommunications policy during the Reagan administration ("Telecommunications Policy in the Reagan Era," *Regulation,* Vol. 12, No. 3, 1988), I was struck by its overall accuracy and fairness. My quarrels with it are

more in the nature of quibbles. For example, the significance of the reduction of local phone subsidies was understated. The consequent reduction in interstate toll rates of close to 40 percent since divestiture may be the most significant telecommunications story of the last decade. Reductions of this size in an industry with annual sales of $50 billion represent yearly consumer welfare gains in the hundreds of millions, if not billions, of dollars.

Also neglected were the Federal Communications Commission's efforts to rationalize its management of the radio spectrum. The commission lacks the necessary information about the cost of foregone opportunities to select either the use or licensee most likely to put the frequency to its highest and best use. While the Fowler and Patrick commissions were unable to persuade Congress to use auctions rather than lotteries and administrative hearings to assign licenses, they did succeed in significantly increasing the flexibility that some spectrum holders have in using their spectrum. But a great deal remains to be done. To put the importance of reforming spectrum management in perspective, consider that investment analysts would value one cellular radio license covering all of the large U.S. markets at more than $30 billion.

I write for another reason. Beneath the substance of the policy changes recounted by Robert Crandall lies another equally important story on how the remarkable regulatory change of this era was achieved. Roger Noll's article on the prospects for regulation in the 1990s ("Regulation after Reagan," *Regulation*, Vol. 12, No. 3, 1988) provides an on-the-whole insightful discussion of the causes of deregulation in the Reagan administration. But his suggestion that the Reagan FCC's "confrontational" handling of congressional relations was responsible for less rather than more regulatory reform is, to put it kindly, wrong. Having toiled for eight years at the side of Chairmen Mark Fowler and Dennis Patrick as chief of plans and policy, I would like to offer a few comments on their modus operandi that might be useful to students of the regulatory process.

First, Fowler and Patrick believed in marketplace solutions and pursued them out of the conviction that they would benefit consumers. Fowler and Patrick were prepared to do so at considerable personal cost. While they recognized the bounds of the Communications Act and were cognizant of the need for some regulation and of the necessity to strike political compromises, they did not view the Washington Beltway as their review board. Measuring intestinal fortitude in more than parts per billion, they were prepared to take the heat for principled decisionmaking. If they had not been, the Reagan FCC would have effected far less reform.

Second, Fowler and Patrick knew the importance of ideas. Their numerous speeches, testimony, media interviews, and articles engaged ideas. The reduction of local telephone subsidies and the concomitant reduction of long distance rates became a debate on the profound efficiencies and fundamental fairness of cost-based pricing and subsidies targeted more narrowly to the poor. The struggle over the so-called fairness doctrine, which was eventually eliminated, became a debate on the importance of free speech and the reasons the electronic media should be accorded the same First Amendment rights as the print media. The phaseout of government-mandated discounts for the new interexchange carriers and the approval of attempts by AT&T to restructure its rates to respond to competition stimulated a debate on why competition should be viewed as a process, not a set of preordained market shares to be achieved by regulatory ukase. Relaxing ownership limitations on broadcasters and a neutral policy towards hostile takeover of broadcast stations led to a debate on the benefits of free transferability. Replacing profit-oriented, rate-of-return regulation for dominant carriers with incentive regulation provoked a debate on the need for regulation to better emulate the workings of the competitive process. Restoring the broadcasters' ability to contract for program exclusivity against broadcast signals imported by local cable systems generated a debate on the importance of intellectual property and freedom of contract.

It is my belief that by persevering in the face of congressional opposition and emphasizing their comparative advantage in the public-interest appeal of their policies, these chairmen were far more successful in achieving their policy goals. I strongly disagree with Noll that this "openly confrontational" approach with Congress was counterproductive. All of the reforms mentioned in the previous paragraph were the product of FCC actions. Indeed, legislation was not necessary, and, other than blocking legislation, was not feasible. Reaching consensus and concord with the Hill would have almost certainly meant far less or no reform in most of the above initiatives. Where legislation was sought, for example auction authority for licensing, all attempts at compromise—and they were legion—came to naught. And does anyone who is familiar with the Hill's views on auctions think for a moment that the Bush administration will fare better on this issue?

Third, Fowler and Patrick also wanted to propound and leave a vision and a rationale that would be judged and vindicated by the results of these policies. While they have received little credit inside the Washington Beltway—indeed just the opposite—the impact of their accomplishments on international and state telecommunications policy is already significant. While other factors are important as well, the adoption of market-oriented telecommunications and broadcasting reforms by Japan, England, France, Germany, and other countries, if sometimes in their beginning stages, represents substantial approbation of the U.S. reforms. Many states, as well, have moved dramatically to reform their telecommunications regulations.

Robert Crandall correctly characterized the momentous policy changes in telecommunications in the last eight years. But the story of the policy changes made by the Reagan FCC is incomplete without mention of the role that the vision, commitment, and strategy of Chairmen Fowler and Patrick played in achieving them.

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Antitrust Paradox

TO THE EDITOR:

Michael DeBow's article on price fixing ("What's Wrong with Price Fixing," *Regulation*, Vol. 12, No. 2, 1988) takes issue with those "new critics of antitrust" who would eliminate that last antitrust regulatory redoubt, the prohibition against "price fixing." Since my article ("Why Not Abolish Antitrust?" *Regulation*, Vol. 7, No. 1, 1983) advocated that policy and was aimed at good-government reformers such as DeBow, I welcome the opportunity to respond to his comments.

DeBow focuses on the new critics'

economic and philosophical arguments against antitrust—that these laws inhibit efficiency-enhancing activities and are inconsistent with economic liberty. Since recent events have enhanced the respectability of economic freedom, let us first address the philosophical argument. A free society is one in which individuals can pursue their own objectives as long as their activities do not substantively harm their neighbors. Economic freedom is incompatible with the egalitarian "from each according to his ability" mandate. Yet, the output-maximizing fetish of antitrust regulators relies on exactly this principle. We no longer draft individuals to "serve their country." The time is overdue to end the concept of an economic draft embodied in the antitrust laws.

Are people only conditionally free to the extent that their activities advance overall "social welfare"? Does the freedom to withdraw from the work force not also imply the freedom to determine their level of involvement in it? Certainly individuals routinely restrict output, and this sometimes enhances efficiency. Graphic artists, for example, number their works after making a market decision as to whether they will produce a "unique" item, a small run of ten or one hundred, or a larger run of several thousand prints. Print 5/100 is a different item from print 5/1,500 and the price differences reflect the former's "scarcity." DeBow, we may surmise, is unlikely to prosecute solitary artists. But if those who paint portraits of Elvis Presley on black velvet were collectively to restrict output in this market, the logic of his position would require that they be condemned. Should they not be allowed to argue the case that quality relates in part to quantity for groups as well as for individuals?

DeBow's second major theme deals with the new critics' economic points. He argues that "price fixing" is more costly than the critics suggest. Moreover, the antitrust laws, he believes, are flexible enough to permit those occasional horizontal arrangements that enhance efficiency. Yet his discussions of bid-rigging against government agencies and a quick reference to OPEC scarcely justify expanded political control over the economy. No one disputes the existence of bid-rigging in the political arena and the fact that taxpayers bear the costs of all government programs. (DeBow, however, provides little evidence that private parties have suffered from such bid-rigging.) But those favoring free enterprise should not be surprised that a political agency proves incapable of carefully shopping for vendors. After all, the measure of success for pork barrel programs is the amount spent, not the results achieved. The solution to this problem, however, is not more antitrust enforcement but less political investment, privatization not politicization of the economy.

In my view, OPEC—DeBow's other example—also suggests that politics creates more problems than it solves. DeBow sees the impact of OPEC on the economy as evidence that cartels can be highly damaging: "Few would suggest that OPEC has been either short-lived or ineffective." But the shifts in oil prices accompanying the organization of OPEC can also be seen as the natural consequence of the changes brought about by the nationalization of the Arabian oil fields. By the late 1960s, the U.S. and European oil companies recognized that their ownership rights were in jeopardy, and they rationally adopted a "pump it now or lose it later" policy. Output increased and prices fell. Once the fields were nationalized, the new owners (having every reason to believe that their tenure as owners would be a lengthy one) quickly adjusted investment and operating policies. Output fell and prices rose. In brief, the pricing history of the OPEC era can be explained without resort to conspiracy theories.

The OPEC example is illustrative of a general difficulty of antitrust enforcement: How can we know that a specific pricing policy reflects "naked" collusion rather than some "ancillary" aspect of a horizontal coordination agreement to enhance efficiency? As Harold Demsetz argued recently, "we lack an antitrust-relevant theory of competition." DeBow provides only the not-so-helpful suggestion that we determine whether there has been any "significant integration of the firm's productive activities." Exactly how one goes about doing this is left unexplained. We critics question the ability of anyone, especially anyone responsive to the political authorities, to make these distinctions. Not that DeBow and his cohorts will not try. As Ronald H. Coase noted much earlier, "if an economist finds something—a business practice of one sort or other—that he does not understand, he looks for a monopoly explanation."

That the world is far more complex than the simplistic static equilibrium framework used to teach economics has been the principal contribution of the public-choice, Austrian, and institutional schools of economics. That learning has not yet been applied in any depth to antitrust policy, but the partial efforts suggest that we should be leery of restricting institutional innovations to those that the bureaucrats can understand.

Consider pricing. Pricing is one of the market's most significant "productive activities." Yet DeBow seems to act as if only *physical* integration of activities (combining production or distribution, for example) can yield substantial efficiency gains. The gains obtainable from integrating such informational activities as market research, advertising, standardization, or pricing are viewed as relatively unimportant. DeBow, like most efficiency-oriented regulators, now recognizes that joint R&D ventures are an important exception to this rule. But antitrust regulators still do not understand the value of the informational aspects of our modern economy.

Moreover, the optimal scale for production or distribution may well differ from that of advertising, marketing, or pricing. All are important activities that might well best be organized at a larger or smaller scale. A firm is nothing more than one way of grouping activities, some handled internally, others handled via contract or joint ventures with other firms.

None of this is controversial. Yet the antitrust laws rule out any effort to coordinate pricing policies (or indeed a range of informational activities) among firms. This bias against nonphysical cost factors is common but irrational. Markets exist to address the full range of activities necessary to provide consumer goods and services, not merely to solve a series of physical problems. Coase argues this point strongly: markets exist to reduce transactions costs, including "the costs of discovering . . . the relevant prices. . . ." "Price fixing" is nothing more than an effort to coordinate such pricing activities among firms. DeBow understands that antitrust regulations have blocked many efficiencies in the past that might have been gained by creative vertical and horizontal interfirm arrangements. He fails to realize that this same problem exists when dealing with the integration of informational activities.

The current rules have real costs. Efforts within the trucking industry to coordinate pricing policies—to continue the publication of common list

prices (from which, of course, discounting and other independent actions are permitted)—are threatened by expanded antitrust laws. To DeBow the efficiencies achieved by reduced search costs, reduced uncertainty, and so forth are unimportant—but how does he know?

Moreover, pricing policies are inevitably confounded with other productive activities. Whether the price increase was "ancillary" or "naked" will not easily be determined. Consider another petroleum example. Suppose that two firms jointly own an oil field. Each faces the same dilemma: oil left in the ground may be lost. As a result, output is high and prices are low; moreover, extraction costs are higher and yields are low since rapid pumping lowers field pressure at a rate too rapid to permit recovering all the otherwise economically recoverable oil. Suppose that the two firms form a joint venture to resolve this externality problem. Under this new arrangement, the problem disappears and the firms shift to a more rational production schedule. Although output is restricted and prices increase, overall efficiency is enhanced. DeBow, given modern understanding of this phenomenon, would probably allow this type of price/production coordination; yet when such innovations first evolved in Texas, they were attacked as clear efforts to "monopolize." Adam Smith documented fierce populist opposition to 16th century efforts to stockpile and transport corn as middlemen's sterile activities that raised prices and restricted supply. Does DeBow really trust bureaucrats to resist future populist opposition to institutional innovations? Political control of innovation is dangerous; yet in the institutional area, it is the inevitable result of current antitrust policy.

This raises one point addressed by the antitrust critics and neglected by DeBow: the public-choice argument that the antitrust regulatory agencies will be used to advance anticompetitive policies. That likelihood is very high, as witnessed by recent efforts of Sen. Howard Metzenbaum and others in Congress to overturn the hard-won rights of producers to establish pricing policies for their distributors. DeBow would probably oppose the Metzenbaum proposal, as would most efficiency-oriented antitrust scholars, but their views may not prevail. Is it wise to leave unchallenged such risky tools and rely on keeping them within "reasonable" bounds? DeBow concedes that the "popularity of an antitrust doctrine does not guarantee its economic rationality," but he fails to note that popular but economically irrational antitrust policies will be politically attractive. The inability of any outside observer to know how a specific economic action affects efficiency and the rhetorical nature of much of the antitrust debate ensure that public-choice problems will be rampant in the antitrust field. And they are.

It is conceivable that antitrust regulations might advance human welfare, but the evidence and arguments advanced by DeBow are not convincing. Those favoring free markets should insist that antitrust regulations receive the same scrutiny as all other regulations. Minimally, all per se prohibitions against horizontal arrangements should be eliminated. Business practices should be presumed innocent until—and unless—proven guilty. They should at least have the right to a rule of reason hearing.

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