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.

Nitrites and the FDA

TO THE EDITOR:

Chris Whipple's otherwise interesting article ("Redistributing Risk," *Regulation*, May/June 1985) was marred by inaccurate references to the nitrite issue. He says that when the Food and Drug Administration "proposed to ban sodium nitrite, the debate initially stressed the weak evidence for sodium nitrite's carcinogenicity as well as the aesthetics of gray meat, rather than the strong evidence that the chemical prevents botulism. Net risk was ignored." That is at a 180° variance from the facts.

First, FDA was acutely concerned over the health risks that would be created by removing nitrite from processed meats. Its contemplated regulatory action, which I helped formulate as the agency's chief counsel, was to leave sodium nitrite on the market until a satisfactory substitute for preventing botulism was developed; nitrite was to be phased out when and as a satisfactory alternative was found. Not only did the FDA *not* ignore the risk of botulism, but it also gave that risk priority over the risk of cancer.

Second, the FDA did not regard the evidence of carcinogenicity as weak. At the time it was formulating its regulatory strategy, it regarded the evidence as solid. That turned out to be the agency's mistake, for later review of the tissue slides led to the conclusion that the MIT study had not shown carcinogenesis.

Third, the FDA did not "propose" anything, much less a ban on sodium nitrite. A proposal is a formal document published in the *Federal Register*; the FDA published no such document with respect to sodium nitrite. When news of the MIT study leaked from the agency in August 1978, it released a fifty-page internal strategy document, which advocated the position described above.

Precisely because the FDA wanted to *avoid* an immediate ban on nitrite, Health and Human Services (then HEW) Secretary Califano referred to the Department of Justice the question whether, as a matter of law, the agency had authority not to ban it if it concluded that the MIT study showed that it was carcinogenic. The answer that came back—to the agency's dismay—was that it lacked such authority. On the version of history presented in *Regulation*, no such referral would have occurred.

Richard M. Cooper,
Williams & Connolly

CHRIS WHIPPLE responds:

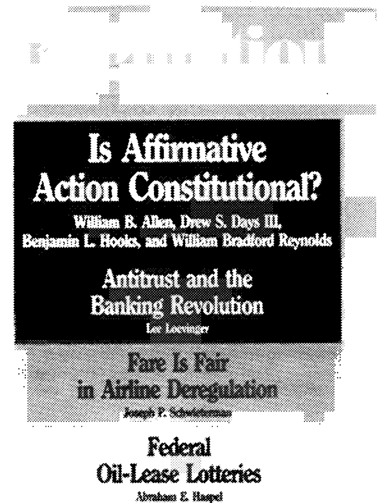
Richard Cooper describes two FDAs: a cerebral FDA with a carefully reasoned strategy for a phase-out, and an operational FDA, constrained by the Justice Department's opinion, that found itself forced to ignore net risk in favor of the prospect of an immediate ban. I am happy to agree that criticism for the latter action should be directed at the statute rather than the agency.

Onshore Oil Leases

TO THE EDITOR:

Abraham Haspel's article ("Drilling for Dollars: The Federal Oil-Lease Lottery Program," *Regulation*, July/August 1985) is one of the few analyses of federal property leasing or sales that does not begin with the assumption that the overall purpose of the program ought to *be* to maximize federal revenue. Instead, Haspel seems to recognize that the appropriate goal of policy is the productive efficiency of the economy as a whole, a goal that may or may not be consistent with acquisition of greater wealth for the federal government.

He is absolutely correct that the best policy for society overall may be outright transfers of such federally owned property as onshore land at low or even zero prices. Markets can allocate the land or other resources to their most productive uses; the issue of "competition" in asset disposal really is little more than an argument over the distribution of wealth between the private sector and the federal government, that is, the beneficiaries of federal spending programs. A relevant part of this argument is the use to which the government may put the pecuniary resources obtained through sales or leases. If the money is likely to be sunk in government spending programs with low social returns, there is actually a good rationale for outright "giveaways" rather than sales or leasing arrangements.



Haspel runs into a bit of trouble when he apparently equates the "fraud" engendered by the simple operations of middlemen, such as those who organize multiple filings, and the true fraud that some filing services commit against their customers. The former is not a real fraud; it is a method by which transaction costs can be reduced given the institutional framework established by the government. It enhances aggregate wealth. The latter *is* fraud, as it deprives innocent parties of wealth under false pretenses.

What truly is interesting in the present context is the incentives facing Congress and the administration under the forthcoming Gramm-Rudman-Hollings deficit compro-

mise. One way to achieve short-term deficit "reductions" is to sell off federal lands and other assets. Although such a move would not bring about any inherent improvement in the federal fiscal condition—it would simply shift assets in the federal portfolio from land to cash —it would reduce the *reported* deficit for the given fiscal year. Therefore, my prediction is for a shift toward more sales and leasing, under institutional arrangements designed to maximize federal revenue, in order to postpone the day of fiscal reckoning.

Benjamin Zycher,
Canoga Park, California

Nuclear Decommissioning

TO THE EDITOR:

Your "Perspectives" piece entitled "Nuclear Decommissioning: Revenge of the Tortoise" (*Regulation*, July/August 1985) accurately described the problems of power plant decommissioning, both real and bogus, and the hidden agendas of those who raised the issue as one of national concern. Having recently completed a study on the economics, health, and safety aspects of decommissioning, I thought I might share some observations.

The largest nuclear power plant decommissioned to date was the small (22-megawatt) Elk River Reactor, which was projected to require $5.1 million to dismantle. The task was completed in 1974 at a cost of $6.15 million. The cost overrun, while significant, was not exorbitant as such things go, yet the operation was the first of its kind anywhere.

The costs of decommissioning the large-scale nuclear power plants coming on line today are recognized by both the U.S. and foreign governments, as well as utility managements and nuclear technology experts, to be but a small fraction (about 10 percent) of the original cost of construction, as you accurately point out. More important, however, existing reactors have already saved consumers between $30 and $50 billion in lower rates and continue to provide savings of between $2 and $4 billion a year. The cost to decommission all these plants would amount to less than 2 percent of the already accumulated savings.

There also appears to be little need for a new rulemaking on health and safety grounds. Existing Nuclear Regulatory Commission and Environmental Protection Agency regulations and guidelines adequately protect workers and the public from undue radiation exposure and limit residual radioactivity at the former plant site.

I, too, am glad to see the rulemaking activities on decommissioning fade away into superfluous requirements. Better that than another ride on the roller coaster of fear and nonsense.

Theodore M. Besmann,
Oak Ridge National Laboratory

Computer Prices and Antitrust

TO THE EDITOR:

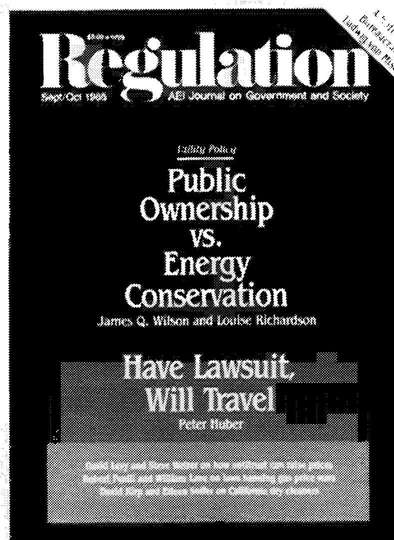
David Levy and Steve Welzer ("System Error: How the IBM Antitrust Suit Raised Computer Prices," *Regulation*, September/October 1985) are much too hasty in concluding that (1) the government's antitrust suit against IBM "had the unintended consequence of raising prices," and thus (2) in general "antitrust enforcement can be worse than ineffectual," harming consumers rather than helping them. Their claim can be faulted both empirically and theoretically. First, the authors' own data act to disprove rather than support their contentions. Second, by considering only the possible deterrent effect of antitrust on IBM, they fail to examine whether or not firms with market power in other industries may have reduced prices to avoid a similar fate, thereby producing benefits to consumers that mitigate or even outweigh the effects from the allegedly higher IBM prices.

The empirical evidence the authors present is twofold. First, they state that IBM "raised its prices with the filing of the antitrust suit." Second, they state that, as a result of this pricing behavior, "IBM's market share began to drop sharply when the Justice Department started investigating IBM in 1967."

As authority for the first statement, the authors cite three estimates, by three groups of authors, of the price premium charged by IBM relative to other manufacturers. These estimates—one for 1967, two for 1971, and one for 1981–83—show a downward trend. However, for the estimates to provide important support for the authors' conclusions, two additional conditions would seem appropriate. First, the two estimates of the 1971 price premium should be roughly equivalent; otherwise these studies must be measuring different things. Second, the estimates for 1967 and 1971 should be higher than those for earlier years; otherwise there is no price increase in response to the suit.

Neither requirement is met. The Ratchford/Ford study shows an IBM price premium in 1971 of 30 to 35 percent, while the Michaels study shows a premium of 10 to 20 percent in the same year. One could drive quite a variety of hypotheses through a gap that large! Furthermore, the Ratchford/Ford study shows a premium of 36 to 47 percent in 1964, compared with a premium of 30 to 40 percent in 1967. At *best*, as those authors note, this shows a price differential "which did not change much over the 1964–71 period"; if there is a change from 1964 to 1967 it would seem clearly to be a decrease rather than an increase.

As authority for their statement concerning market share, Levy and Welzer cite the evidence presented by Fisher et al. in their book on the



case. While this book has well-known weaknesses as an objective source of information (see, for example, our review in the *Atlantic Economic Journal* of December 1983), we can take it on its own terms to refute the point made here. Using a variety of measures of market share, the Fisher data clearly show a downward trend in IBM's share going back as far as 1957 (or further). If there is a "sharp drop" in the 1968–69 period, it is merely a return to the overall trend line following a one-shot increase in share in the 1966–68 period.

Thus, when Levy and Welzer state that IBM's share fell only from 52 to 50 percent between 1961 and 1968 but from 50 to 37 percent from 1968 to 1972, they are simply grouping

the data imaginatively. One can regroup it and show a drop from 52 to 44 percent between 1961 and 1966 and from 44 to 37 percent from 1966 to 1972. Unless Levy and Welzer can explain the share increase in 1966–68, there is no reason to choose one grouping over the other.

Even if the IBM case had the effect the authors allege, it is premature to conclude that society is worse off without considering the possible pricing effects that the case might have in other industries. While the authors correctly note that "one of the possible benefits [from filing the case] is deterrence," they appear to think that deterrence would be limited to the defendant in such cases. But any enforcement action, especially one as prominent as the filing of the IBM case, could have a demonstration effect that conditions the behavior of other firms as well. In particular, if firms with market power in other industries viewed the IBM case as signaling increased enforcement against monopolies, they might determine that it is wise to reduce prices somewhat and thereby reduce the likelihood of detection and prosecution. Even if the benefits from this demonstration effect were relatively small in any single market, the cumulative effect from several markets over time could be sizable. Indeed, the demonstration effect in other markets could far outweigh any costs arising from IBM's reaction taken in isolation. The authors fail to consider even the possibility of an offsetting demonstration effect, let alone measure its possible importance.

Antitrust policy has been enjoying great popularity as a punching bag. Could we at least keep the punches above the belt?

Russell Pittman and
Bruce R. Snapp, Washington, D.C.

David T. Levy and Steven Welzer respond:

Russell Pittman and Bruce Snapp cast doubt on our evidence that the antitrust suit caused IBM to raise its prices, and also charge us with having ignored the potential deterrence value of the suit. The second claim stands or falls with the first, which itself is based on only part of our evidence and is not well supported.

To start with, Pittman and Snapp consider only what happened to pricing when the antitrust suit was first filed. They completely ignore what happened when it became clear that the suit was going to end. Yet the latter is the most striking turning point in the case as it relates to IBM's pricing behavior. Casual perusal of computer industry trade journals indicates a widely accepted view that IBM has been pricing aggressively in recent years, dropping the "price umbrella" maintained during the antitrust period.

The writers claim that one of the studies we cited found that IBM had erected its price umbrella as early as 1964, before the Justice Department began its probe. This point is hardly central to our conclusions, since fear of antitrust prosecution could easily have been driving IBM's pricing policy well before that fear turned into reality. But in fact the writers' conclusion is itself on shaky ground; the estimates they cite for 1967 and 1971 are corrections of earlier results, but the 1964 estimates are uncorrected.

Pittman and Snapp are also disturbed that two of the cited studies diverge in their estimated price premiums for 1971. This sort of variation is quite common in empirical studies where researchers use different equations to estimate prices. What is important is that both studies agree that the IBM premium was significant. Combined with the evidence that the firm has been discounting prices in the post-antitrust period, as well as the clear evidence that IBM's market share fell during the antitrust years and then began rising after the suit was ended, these results provide the basis for our claim that the antitrust suit raised prices.

The writers go on to accuse us of ignoring the deterrent effects of suits like this one (presumably even of suits that wind up being dismissed). But if we are right that the suit's direct effects were perverse, then its indirect deterrent effects are likely to be perverse in the same way, and should be feared, not welcomed. If IBM reacted to accusations of excessive market share by raising prices so as to cut market share, then other firms may do the same thing in hopes of being left alone.

The point of our article is not that all antitrust is bad, merely that misguided antitrust policy can do more harm than good, especially in suits that stretch over long periods. It seems rather odd that Pittman and Snapp would choose as an example of the virtues of deterrence an antitrust suit that was dismissed without merit and was directed at a firm many consider one of the most efficient in the United States. ■

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