Perspectives
on current developments

Is Conrail Finally on the Right Track?

The dramatic economic recovery of Conrail has been hailed in some quarters as an example of the success of government enterprise. "It speaks volumes about American capitalism that the government may be the most trustworthy entrepreneur to run a railroad," writes Bob Kuttner in *New Republic*. Unfortunately for this theory, Conrail started to revive only four years ago when Congress largely freed it from political restraints—freed it, that is, to behave more like a business and less like a government agency. Now, with Conrail about to be sold to the private sector, the question is whether Congress will remember its experience—or will again invoke the "public interest" to guarantee its favorite lobbies a piece of the action.

Back when Congress established Conrail in the Regional Rail Reorganization Act of 1973 ("3R Act"), many people argued that it was inherently impossible to provide northeastern rail service at a profit. Conrail's components (the Penn Central, the Erie Lackawanna, Reading, Central of New Jersey, Lehigh Valley, Lehigh & Hudson River, and Ann Arbor railroads) were bankrupt and continuing to lose money fast. The only solution seemed to be a government bailout—which, in the fashion of that time, was centralized, expensive, and open-ended. To be sure, some charged that Penn Central represented not "the downfall of free enterprise railroading," in Kuttner's phrase, but the failure of overregulation—specifically, the ICC's prohibition and restrictions on branch line closings, rate hikes, and labor force reductions. But Congress was in no mood to listen to these arguments when it passed the 3R Act.

In an ordinary bankruptcy reorganization, the survivability of the emerging debtor is a prime consideration. Not so in the 3R Act, which was less a business proposition than a political grab bag. The law allowed Conrail to abandon many unprofitable lines, but forced it to keep many others; it made statutory the lifetime employment guarantees that the parties to the Pennsylvania/New York Central merger had agreed to have the Interstate Commerce Commission impose on them; it gave most of Conrail's other workers so much protection that it became cheaper for Conrail to keep unnecessary employees on the payroll than to lay them off; and it forced Conrail to continue money-losing commuter operations. Four years later, in the Railroad Revitalization and Regulatory Reform Act of 1976, Congress gave the railroad industry some limited rate freedom; but the effect on industry profits was not major until three years later.

To nobody's surprise, Conrail proceeded to lose money. By 1980 it had swallowed another $3 billion in direct federal funding, on top of the $3 billion that had been spent to compensate the creditors of the bankrupt companies for the railroad's assets. Worst of all, there was no end in sight. In December 1980 the United States Railway Association, a government corporation set up to fund and monitor Conrail, reported to Congress that, under the prevailing restrictions and despite the modernization that earlier subsidies had paid for, Conrail would not become profitable even if it were given another $2 billion over the next five years. For the railroad to become self-sustaining and to return to private ownership, it added, it would have to be permitted to act "as any other business would when faced with large, money-losing operations."

Miraculously, Congress was momentarily convinced—whether because of the new Reagan administration's legislative momentum or simply because it saw big budgetary savings up the road. In 1981, as part of its omnibus budget reconciliation bill, it passed the Northeast Rail Service Act, and this time the remedy consisted not of bailouts but of deregulation. Specifically, the 1981 act ended the guarantees of

lifetime employment for employees of the old Pennsylvania and New York Central, reduced the cost of paying off other discharged employees, gave Conrail the right to abandon unprofitable lines without ICC interference, and freed it from having to run commuter passenger trains. Under a new chairman (L. Stanley Crane, formerly with the Southern Railway) Conrail lost no time in aggressively exercising its new freedoms. By 1984, in one of the great but unacknowledged successes of deregulation, the lemon had turned into a peach: the railroad had moved from a $244 million loss four years earlier to a $500 million profit. (Credit also goes to the Staggers Act of 1980, which gave regulatory relief to the railroad industry in general.)

In addition to adopting the changes needed to make Conrail profitable, the new 1981 act empowered the secretary of transportation to sell the railroad—subject, however, to congressional approval. And the Reagan administration is now eager to do so, especially if it can recover some money to apply to the deficit. Secretary of Transportation Elizabeth Dole accordingly began soliciting purchase offers in the fall of 1983.

Even before a bidder was selected, Dole felt compelled to impose on the sale various conditions designed to protect the "public interest." In particular, she wrote, "we have an obligation to see that the new owner of Conrail stays in the railroad business"; the right buyer must have "a commitment to rail service in the Northeast." The worry here, of course, was that a buyer might "strip" or "dismantle" Conrail, presumably by selling those assets that are worth more elsewhere than employed in the Northeastern railroad business. Toward this goal of making sure that capital investment in the railroad stayed high (even if not compensated by economic return) Dole promised to include in any contract with the ultimate purchaser covenants that would set minimum levels of capital investment after the sale, limit permissible dividend payouts, and prohibit various service reductions and abandonments —in short, covenants that would reimpose many of the old 3R Act burdens that the 1981 act had eliminated.

More than a dozen bids came in by the June 1984 deadline, and the Department of Transportation narrowed down the field of bidders to the three that it considered most serious: Alleghany Corporation, a holding company with previous ties to the old Penn Central; a group of investors headed by J. Willard Marriott, Jr.; and Norfolk Southern, a large railroad that operates mostly in the midwest and southeast. All three bidders offered $1.2 billion. But Norfolk Southern was the only railroad among them, and there could hardly be a more sincere "commitment to rail service" than already operating a railroad. (There were some other factors working for Norfolk Southern, too; it was the only bidder that would finance its purchase without using any of Conrail's own cash.) In February, Dole announced that the department would back a Norfolk Southern purchase. The struggle immediately picked up stakes and moved to Congress.

Critics of the Norfolk Southern purchase fall into a number of categories. First are those shippers and trustbusters who worry that a Norfolk Southern acquisition would eliminate competition. The two railroads operate along a number of parallel lines, and some shippers that now benefit from competition might face a monopoly carrier.

The 1981 act seemingly provided only limited scope for antitrust review: the Department of Justice was supposed to have just ten days to render an advisory opinion after the secretary of transportation had proposed a purchaser. In fact, however, DOT brought the Antitrust Division in for consultations months before it announced its choice. But consultation was not the same as approval. Justice charged that the acquisition would violate both the Clayton Act and the Interstate Commerce Act unless both railroads were forced to sell some of their lines to competing carriers. The department went on to warn that it would oppose the sale unless the attorney general were given the power to pass on the adequacy of any proposed divestiture of assets.

The second group of critics consists of neighboring railroads that would like to grab bits of Conrail for their own. The Grand Trunk Western and the Pittsburgh & Lake Erie, for example, have come up with a plan dubbed "Prorail" that would allow them to acquire some of Conrail's lines against its will. DOT has also agreed to give some lines to Guilford Transportation Industries, which owns the Delaware & Hudson and the Boston and Maine.

CSX, a large railroad that competes with Norfolk Southern, has also angled for some of Conrail's lines.

Forcing Conrail to donate lines parallel to its own might increase competition, of course, although some of the proposed divestments would simply transfer monopoly power from one railroad to another. On the other hand, divestments might disrupt the economies of scale and coordination that make rail mergers sensible in the first place.

Other complainants, however, object to the Norfolk merger not despite its possible cost savings but, in effect, because of them. Members of Congress from Pennsylvania and New Jersey are worried that Norfolk Southern will consolidate management and repair operations at its southern operating centers. They have demanded that Norfolk keep the Conrail headquarters in Philadelphia no matter what—invoking what might after the recent Phillips Petroleum case be called the Bartlesville principle, that corporate headquarters are, like freshwater supplies and pre-Columbian antiquities, a natural resource not to be alienated without government permission. Unions, likewise, fear possible cost-saving consolidations.

Finally, one group of critics would prefer a direct sale of the railroad's stock to the public. Conrail Chairman Crane, who favors this course, commissioned an analysis by investment bankers Morgan Stanley which predicted that the government could realize as much as $200 million more by selling the railroad through a public offering than it would get from any of the three bidders.

This option, whether carried out all at once or (more likely) in stages, would probably be the least intrusive option of all. It would remove the need for complex IRS tax rulings and would lessen the pressure for dismemberment and for abandonment restrictions. Of course, antitrust problems might arise if some competing railroad tried to accumulate Conrail stock, but those could be dealt with in the usual way, for better or worse. (The Morgan Stanley plan would limit single purchasers to less than 10 percent of Conrail stock, removing the possibility of a takeover.) Dole, however, has dismissed the public offering idea as too risky, declaring that "the federal government has a clear public interest obligation to know who will own a controlling interest in this railroad."

The sharp contrast between the failures of the 3R Act and the success of the 1981 act makes one thing clear: if the goal is to maximize the return on the taxpayers' investment while leaving Conrail in self-sustaining shape, the sale should bear a minimum of artificial burdens. The question is whether that goal is Congress's. If so, the lawmakers will have to say no to a powerful range of interests.

Goober Madness at the USDA

Back in 1930, U.S. farmers planted 1.1 million acres apiece of both peanuts and soybeans—two crops that have a lot in common in both biological and utilitarian terms. Then Congress decided to protect the small peanut farmer. (It left soybeans to the ravages of the marketplace.) Today, American farmers grow 1½ million acres of peanuts—and over 65 million acres of soybeans. The congressionally favored crop has been left in the dirt.

Congress has been helping to roast the peanut consumer since 1933, when it first instructed the Department of Agriculture to buy peanuts so as to prop up market prices. A decade or two later, the expense of this program had gotten out of hand, as more and more farmers had entered the business in search of guaranteed profits. So Congress passed another law essentially closing off the industry to newcomers in hopes of stemming the financial drain. The law prohibited anyone from growing peanuts without a federal license. The licenses went to incumbent farmers, and entitled them to continue growing peanuts on however many acres they had already planted in peanuts. This sort of entry prohibition applies to only a few other crops, most notably tobacco, but also (under federal marketing orders) hops, cranberries, spearmint oil, and Florida celery.

This system seemed perfectly suited to ensure unending prosperity in the peanut patch. The price supports kept peanut growing highly profitable, while the license system kept out potential competitors. Congress was happy to cultivate peanut farmers' votes at comparatively low budgetary expense, most of the subsidy being hidden at the grocery check-out counter.

Gradually, problems arose. Even if farmers did not compete with new entrants, they could

compete with each other. They began producing one record crop after another on the permitted acreage, plowing in more fertilizer, new seed varieties, and new planting techniques. Peanut production per acre rose by 150 percent between 1957 and 1977. Since the support price was kept high, however, consumer demand did not grow apace, and the federal government had to buy up surplus peanuts. By 1976 Washington was spending $250 million for this purpose, and Agriculture Secretary Earl Butz complained that peanuts were "driving me crazy."

Finally, in 1977, Congress admitted that controlling acreage alone was not enough to do the trick. It took direct control over how many pounds each farmer grew, replacing acreage allotments with poundage allotments based on farmers' previous production. This set a ceiling on overall production: as farmers raised their productivity per acre, they would simply take some of their land out of peanut production.

There was still a great deal of budgetary pressure not to spend so much on buying surpluses. Thus Congress proceeded to cut the permitted poundage allotments 5 percent each year between 1978 and 1981, and another 20 percent in 1982. By this year, peanut poundage quotas will have dropped from 1.7 million tons in 1978 to 1.1 million tons. The poundage reductions have not been proportional: some farmers have managed to escape with smaller cuts than others. The formula was elaborate:

> The annual percentage reductions are to be shared equally among states. Farm reductions are to come first from farms owning quotas that do not have adequate tillable land to produce it; next, from farms where the quota has not been planted in 2 of the last 3 years; then, from farms where the quota has been leased away to another farm; and finally, from farms producing their own quota.

There were, of course, exceptions:

> Beginning with the 1979 crop, the farm quota was raised if the producer undermarketed his/her quota the previous year and if he/she had planted sufficient acreage, based on his/her farm yield in the previous year, to have expected to market his/her quota. The total of the undermarketing carryovers was restricted to 10 percent of the national quota, but an individual's carryover was not limited unless the maximum was reached. A producer did not risk losing or having the allotment reduced if he/she planted enough acreage, based on his/her farm yield, to produce at least 75% of his/her quota.

Local offices of the USDA's Agricultural Stabilization and Conservation Service had the final say on which farmers would lose their quotas. There was squawking from the peanut gallery, or at least parts of it, but to no avail.

The reduction in quotas may have been good news for taxpayers, but not of course for consumers, who go right on paying high prices. In fact, the cut in quotas has worsened the artificial scarcity of peanuts, driving domestic prices well above the already-high support prices. Prices rose from $440 a ton in 1977 to $675 a ton in 1983.

Until 1968, farmers could not sell their allotments even if they went out of business. After that, Congress allowed farmers to lease their quotas—so long as they had the personal permission from the secretary of agriculture. Even then the quotas could be leased only within the county of 1949 ordination. Later, farmers were allowed to sell their quotas outright, again on an intra-county basis. About half of all poundage quotas are now rented out, with a going rate of six cents a pound in Georgia.

The barriers to geographic mobility have led to glaring disparities in productivity between regions. Georgia peanut farmers produce an average of 3,279 pounds an acre, while Texans average only 1,415 pounds. More than 1 million acres are capable of producing 2,500–3,500 pounds an acre but are prohibited from producing for domestic consumption; at the same time, 25 percent of current quota acreage produces 1,700 pounds an acre or less.

As a recent USDA study noted, "If quota could be sold or leased across county or state lines, production would shift to the most profitable production regions. This could affect some local economies." Which is probably why it has never been allowed: although the allotment system was originally intended to protect small peanut farmers, it has been turned into a way to protect the local areas where peanuts have traditionally been grown. (It may also have encouraged bad farming practices. Texas peanut farmers do not rotate their crops as farmers usually do, and the unvaried peanut growing has depleted the soil of nutrients.)

Until 1977 peanut farmers had little reason to export any of their production. USDA promised to buy all the peanuts quota holders could produce, and at a price that was almost always higher than the world market price; so farmers sold to the federal stockpile instead. USDA managed to get rid of some of its surplus through the Food for Peace program. The 1977 farm bill created a second tier of support prices, this time for exports, in order to encourage quota holders to grow peanuts for export in addition to quota peanuts. The support price for exports was much lower than that for domestic consumption—$250 a ton instead of $420—but still above the world price. Since 1981, anyone has been allowed to grow peanuts for export. These policies have stimulated peanut exports, which rose from 245,000 tons a year in the 1974–77 period to more than 400,000 tons a year recently, at a time when exports of wheat and corn, restrained by high price supports and the strong dollar, have fallen sharply.

USDA has had to concoct a lot of new regulations, however, to preserve its two-tier pricing system from erosion by normal market forces. Growers are required to sign contracts for shipment of their export peanuts before the crop is even planted, which spares the department the possible discomfort of having to take a crop off the hands of a farmer who finds no buyer. Export peanuts cannot be sent to Canada or Mexico in processed form, because USDA fears they could be reimported and take business away from the American product. (Imports have been conveniently limited by law to approximately 1 percent of domestic peanut consumption.)

When the Reagan administration came into office, it wanted at first to get rid of the peanut program. It soon changed its mind. In August 1981 President Reagan, who needed votes from three Georgia congressmen for the Gramm-Latta tax-cut bill, signed no less than a written pledge to preserve the program. Later that same year, he threw his support behind a bill raising the support price for domestic peanuts from $455 to $550 a ton, citing a huge jump in alleged production costs—based on figures for 1980, a year when a major drought had driven production costs sky-high. Since then, with production back to normal, peanut farmers have done quite well indeed compared with farmers generally.

Peanut processors appear eager to fight for reform of the program in this year's farm bill. An econometric study commissioned by their association recently asserted that the program raises consumer prices by about thirteen cents a pound, or more than $250 million a year. (Even the USDA, in a 1984 study, found that the program boosted domestic peanut prices by 13 percent.) The study further estimated that each one cent per pound increase in retail peanut prices cuts peanut consumption by 20 million pounds, which means the program cuts peanut consumption by 200 million pounds below what it would be under a free market. Low-income families are especially hurt because peanuts are (or would be) such an inexpensive source of nutrition.

The irony of the peanut program is that if controls were removed, peanut growing might support more, not fewer, farm families. Farmers are profitably growing peanuts for export at prices $150 a ton less than the government promises quota holders for growing for domestic consumption. The real effect of the current program, now as fifty years ago, is not to maximize the number of family farms—if that is itself any sort of coherent goal—but to transfer money from consumers to the owners of political capital. Possibly this year's farm bill will change that, but at last report the owners of peanut quotas did not seem to be very alarmed.

Airline Reservation Systems: Curse of the Mummy's Tomb

Just before the crypt of the Civil Aeronautics Board finally slammed shut, a gnarled hand reached up and grabbed the airline reservations network. On November 14 of last year, only six weeks before its demise, the board put into effect its final regulations governing airline-owned computer reservations systems (CRSs). And although the CAB gave up the ghost on regulating the airlines themselves, it has bequeathed to its institutional successor, the Department of Transportation, a tight grip on the airlines' main means of booking customers.

CRS systems are interactive computer data bases that travel agents use to check airline schedules and more important, make reserva-

tions. By punching buttons on a terminal, an agent can call up information on flight schedules and fares, can book seats for clients, and can even reserve hotel rooms and rental cars.

The CRS networks grew out of internal systems that individual airlines had adopted to control their own logistical operations. Some of the larger carriers, spying a chance to gain publicity as well as revenue, began revamping these systems and marketing them to travel agents. Agents, however, wanted the CRS providers to list other airlines' flights as well as their own, since it was expensive to maintain separate terminals for each airline. Thus most systems came to include most carriers. (There were a number of cooperative efforts to set up a common industry system, but all failed, in part because the government hinted that they might violate antitrust laws.)

Listing other airlines' flights on a CRS system benefits both the host airline, which gains comprehensiveness for its system, and the other airlines, which gain publicity and easier ticket writing. The classic economic relationship of this sort is that between beekeepers and orchard owners: sometimes beekeepers charge a fee for pollination services, sometimes they themselves must pay to obtain forage for their bees, depending on supply and demand. In this case, CRS providers generally charged a fee for listing competing carriers, but gave larger competitors a discount because their flight information was more in demand and thus more critical in marketing CRS systems to travel agents. In effect, CRS systems are like newspapers that get revenues from both "readers" (travel agents) and "advertisers" (carriers)—though, of course, CRS systems are owned by their major "advertisers."

Two CRS systems, United's APOLLO and American's SABRE, have come to occupy the major share of the industry. The two seem to compete vigorously with each other, although when one carrier dominates air traffic in a city, like United in Denver or American in Dallas, its reservation system tends to be dominant too.

The "search routine" of the CRS software program determines the order in which flights appear on the screen. APOLLO, for example, lists nonstop and direct flights first, on-line connecting flights second, and off-line connecting flights last. Within each category, a search routine must make many more "decisions" as to which flights to list first. Not all flights between two points wind up being listed on a single screen; the display screen on APOLLO can handle a maximum of eight flights. Overflow data appear on additional screens that the user can easily call up.

Not surprisingly, CRS providers structured the decision process in ways that tended to list their own flights before their competitors'—a phenomenon that rival airlines tagged as "bias." Sometimes the "bias" was relatively explicit, as when the names of carriers were used as search criteria. ("Look ahead one hour for Carrier A's flights, but only half an hour for Carrier B's.") But as in the civil rights area, there are innumerable forms of "statistical bias" as well. Connecting flights, for instance, might be listed in an order that depends on the city they connect through, and the system might look at the host airline's own "hub" before its competitors'. Seat capacity might be a good search criterion for a host airline with a wide-body fleet. Rival airlines and some travel agents demanded that the CAB prohibit bias and regulate the CRS industry in other ways as well.

The word "bias" is loaded, of course, but in this context it may be empty as well. CRS display screens deliberately show customers some products before others, but then so do department-store clerks; spotlighting the items that are the biggest profit generators is standard practice in the retail business. Likewise, cigarette, candy, and magazine companies commonly provide drug stores with display racks that hold a number of different brands, but give the most prominence to their own. No false pretenses are involved, and consumers are well aware that it pays to probe. (Travel agents are among the more sophisticated consumers or, in this case, representatives of consumers.)

An even closer analogy is that of supermarkets, which commonly stock "national" brands that compete head-on with their "house" brands. In effect, the national manufacturer is bidding for shelf space against the store's own products. And frequently it wins this competition: the store gives "preferred" shelf space to the national brand or sometimes even discontinues the house brand. The national manufacturer will win such a competition if its product offers the store a higher return per unit of shelf space than the house brand. It may, for exam-

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reversal would necessarily be gradual, and it would start from sets of precedents that define individual rights more or less according to the specifications of the ACLU.

In the first few years of any effort to get the courts to accord constitutional status to the rights they regard as important, conservatives could expect to lose far more cases than they would win. But their only alternative is to confine themselves to defending the power of legislatures to protect these rights, which is what got Dr. Seguin and Mrs. Black into so much trouble in the Akron case. This is quite a discouragement; if during the early history of the ACLU its clients had been routinely exposed to liability for many thousands of dollars in attorneys' fees, it would have had fewer clients.

Finally, the public interest establishment is in a better position than the newcomers to absorb any losses they might incur. The litigation budget of the ACLU alone is many times larger than the combined budgets of all the conservative groups that litigate on "social" issues. The established groups get institutional support not only from blue-chip law firms and large foundations but even, ironically, from various levels of government. In the Akron case, for instance, the ACLU lawyer was also the director of the "litigation clinic" at a state university law school. His services were donated (with out-of-pocket expenses being advanced by the abortion clinics) with the stipulation that the law school and the ACLU would share equally in any attorneys' fee award.

THE FINANCIAL ADVANTAGES that the public interest establishment enjoys over its adversaries, like the fact that it starts out with more of its positions having been designated by the federal courts as the "true" individual rights positions, is attributable in no small part to the fact that it has been on the job longer. In individual rights litigation as in any other market, barriers to entry help the established enterprises. If the costs of setting up business can be made steep enough, competition can be eliminated and monopoly power established. The Akron case—in which a law designed to encourage people to assert their rights in court has been transformed into a bludgeon against the assertion of rights that are not currently fashionable—suggests that the incumbent monopolists are in a predatory mood. ■

Curse of the Mummy's Tomb

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ple, allow the store a generous markup on the merchandise; or it may advertise the item heavily, spurring consumer curiosity and high turnover. Note that manufacturers can win even in cases where a supermarket is a local monopolist; the Soviet Union is known for its rigid retailing monopoly, but finds it advisable to sell Pepsi-Cola anyway.

Rival airlines have a number of ways to bid for prominence in a CRS system. They can create demand from the ground up by advertising aggressively to consumers, or give travel agents higher commissions so as to encourage them to take a moment to call up the extra screens. More drastically, they can launch their own CRS systems, or even market their tickets outside the world of travel agents, as People Express has done. These options were not much explored in the CAB proceedings. The board's statement mentioned, but only to dismiss as an anomaly, People Express's success in selling directly to consumers. They asserted that travel agents would find it hard to switch from one CRS system to another, and they examined only the chance that a new entrant would have of displacing United's SABRE or American's APOLLO—even though carving out a smaller market niche might be a more effective strategy for entry.

The most obvious way for a carrier to bid for better screen position, of course, is to offer a higher fee to the system operator. Thus, the point of the campaign against bias was to demand that the government secure for rival airlines, for free, an increase in listing prominence that they were quite capable of bidding for. One reason for their attitude may be that the fees charged to competing carriers and agents have in many cases been going up, as both the costs of operating the systems and their value to users has risen. Deregulation has intensified the use of CRS systems by making possible rapid fare and schedule changes, entry by new airlines, tighter seat assignment scheduling (because of higher load factors), and more connecting flights (because of the shift toward a "hub-and-spoke" system).

The CAB devoted most of its attention to the question of whether bias is unfair to businesses, and never much looked into the ques-

tion whether it is harmful to consumers, despite an entreaty from the Federal Trade Commission that it do so. Where the United and American systems are effectively competing with each other, they may be passing along any profits from "bias" by charging lower fees to agents or rival carriers or lower fares to passengers. It is also hard to separate the effects of "bias" from the natural interest of travel agents in gaining quick access to the most popular flights, which often tend to be those of the host airline. The convenience of travel agents, after all, has shaped many aspects of the existing systems; that they exert little effective demand to wipe out any remaining bias suggests that it is not very troublesome to them. Even so, ongoing technical improvements may further reduce the importance of bias by making it easier for users to reprogram their terminals, in effect, so as to influence the order in which flights appear on the screen.

Prominence in a commercial display system is a scarce good. If it is priced at zero, companies will engage in strategic behavior to get it. This can occur even in a seemingly objective ordering scheme; that is why the Yellow Pages, where the listings are alphabetical, has so many companies with names like AA-Aabco. Likewise, the listing of flights in order of takeoff has sometimes led airlines to schedule takeoffs to try to beat each other out by five minutes. There seems to be no way around this fact of life: any display will list some data more prominently than other data, and a directory with an entirely random ordering would defeat one of the purposes of a directory, namely ease of use.

The rules the CAB eventually adopted contained the following provisions:

First, the rules ban both explicit and statistical bias in search routines. Explicit bias is banned in so many words: a CRS system may not use the name of a carrier as a display criterion. The rules restrict the use of many other criteria on grounds of statistical bias, and announce that "indirect" (that is, statistical) discrimination against carriers will not be tolerated. In order to discourage the use of new proxy factors to achieve statistical bias, CRS providers must disclose the criteria that drive their search routines.

Second, the rules ban a number of other industry practices. A host airline may not tell travel agents that it will take away their terminal if they go on booking most of their tickets on that airline the old way or if they install a rival's CRS system. It may not tie agents to contracts of more than five years' duration—which critics warned will make it riskier for an entrepreneur to launch a new CRS system. If it offers enhancement options to one carrier, it must offer them to all. Furthermore, if a CRS vendor carries out market research on the use of its system, it must make the resulting data available to all participating carriers on a "nondiscriminatory" basis.

Third, charges to participating airlines must not be "unfair or discriminatory." By this the CAB means that charges may not take into account the fact that another carrier is a competitor. This rule is "presumed" by the CAB to lead to uniform charges per flight segment for all participating carriers.

Before the ink was dry on the CAB regulations, eleven other airlines filed suit against United and American. Although the CAB did not prove (or claim to be proving) antitrust violations, and although a detailed Justice Department investigation likewise failed to turn up antitrust violations, the plaintiffs are likely to cite the CAB's denunciations of bias as evidence that the CRS vendors have behaved in an anticompetitive way. Moreover, the Senate Commerce Committee has scheduled hearings on whether to require carriers to divest themselves of CRS systems. The telephone experience, however, has left many legislators leery of the Texas Chainsaw approach to enhancing competition.

Other computer data bases have some of the same properties as CRS networks, which raises the uneasy prospect that the CAB rules might open the way to further government regulation of the emerging information economy. Already the publisher of the *Official Airline Guide* has agreed, in an antitrust consent decree, to eliminate "bias" in its directory (which also happens to be available on-line to computer users), and many other software innovations may become "essential" enough to attract regulatory interest. In the "computerized supermarket" of the future, someone's can of peas will have to appear higher on the screen than someone else's. Will screen space—the new equivalent of shelf space—also be parceled out by federal regulation?