Perspectives
on current developments

A Reconstituted Threat to the Milk Cartel

There are two ways to reform anticompetitive regulation. One is to confront the regulation head-on and try to repeal it. The other, and by some measures the more promising, way is to encourage the spread of innovations that undercut the system by forcing the regulated firms to begin competing willy-nilly. Innovations of this sort have virtually transformed the competitive nature of the banking and telephone industries in a few short years. Now another system of regulation that had seemed impervious to reform, the federal milk marketing orders, is coming under challenge from an innovation that could save consumers hundreds of millions of dollars.

Reconstituted milk is milk that has been broken down into its solid components of dry powder and butterfat, and later recombined with water into fluid milk. The resulting mix tastes much more like fresh milk than anything you mix up from the dry milk powder sold in supermarkets. In fact, neither consumer taste-testers nor lab chemists can distinguish ordinary fresh milk from a blend of 70 percent reconstituted milk and 30 percent fresh milk. Reconstituted milk currently is sold in Alaska, Hawaii, and the Virgin Islands; the Department of Agriculture (USDA) thinks it could cut consumer fluid milk prices in the contiguous forty-eight states by about 5 percent, which would amount to hundreds of millions of dollars a year.

Reconstituted milk is not a new invention; in fact, it was perfected during the 1950s. But for years now it has been effectively regulated out of existence by special provisions in the milk marketing order system. In the 1960s the local marketing orders around the country were amended to require, in effect, that milk powder used to make reconstituted milk be priced high enough to bring the price of the resulting mix up to that of fresh milk. (Milk powder sold directly to consumers was not included and can be sold for considerably less.) These "down allocation" and "compensatory payment" provisions have virtually eliminated any incentive for dairies to sell reconstituted milk. Before a marketing order with such provisions was established in the Houston area, according to Joe Murphy of Associated Milk Producers Inc., reconstituted milk captured 30 to 40 percent of the fluid milk market; after the order was in place, reconstituted milk disappeared.

In 1979 the Community Nutrition Institute (a consumer group), three milk drinkers, and a dairy operator petitioned the USDA to eliminate these provisions. When the department dragged its feet on the issue, the petitioners went to court. They won an important skirmish in January 1983, when the U.S. Court of Appeals for the District of Columbia Circuit ruled that the milk drinkers had standing to sue.

In a sense, their suit is a challenge to the entire milk marketing order system. That system's essential features, which date back to the 1930s, are as follows:

- Each marketing order sets minimum prices for fluid milk in a given local area. These prices are supposed to be high enough to guarantee self-sufficiency in fluid milk for each area. However, the Agricultural Marketing Agreement Act, which authorizes the order system, and the commerce clause of the Constitution both limit the degree to which the government can insulate milk markets from outside competition. The minimum prices thus take into account the possibility of competition from nearby areas and are scaled upward as one moves away from the lowest-cost producing areas in Wisconsin and Minnesota. The highest-cost producers and thus the biggest beneficiaries of the scheme are dairy farmers in such states as Florida and Texas, and the biggest

losers are consumers in those states. Since the 1930s, advances in transportation and refrigeration have made it possible to transport milk over greater distances, but even the highest-cost southern areas still produce much of their own fluid milk year-round.

- The minimum price of fluid milk sold to consumers is kept higher than the price of manufacturing-grade milk sold for processing into butter, ice cream, and other processed items. However, all dairy farmers within a marketing area get the same price for their milk, regardless of whether the particular dairy that buys their milk sells it in fresh or processed form. This is accomplished through payments into and out of a "pool" of all dairies of an area.

Economic critics characterize the marketing order system as one of classic cartelized price discrimination. The purchasers with the more inelastic demand, consumers of fresh milk, pay the higher price. (The demand for manufactured milk products in a particular area is elastic because they are relatively easy to store and ship.) Since there are no entry controls, cartel managers cannot prevent overproduction of fresh milk. They can, however, use the marketing order system to shunt the excess milk production onto the processed market instead of dumping it in rivers—which would violate EPA effluent guidelines anyway.

The system is economically inefficient, say these critics, in a number of ways. First, because of the price discrimination, it artificially discourages fluid milk consumption and encourages product consumption. Second, it subsidizes milk production overall, which adds to the already huge federal outlays on dairy price supports and stockpiles. Third, it discourages the transport of milk from lower-cost to higher-cost producing areas, with associated cost savings. Fourth, the costs the industry pays to administer the whole system are not negligible: $22.7 million was budgeted in 1976. Finally, according to a Department of Justice study, the system helps large dairy cooperatives, often including nearly all the farmers in a market area, acquire market power and raise prices above the legal minimum.

Supporters of the system, including the USDA, say it promotes "orderly marketing," a concept whose meaning is rather unclear. Most often it is argued that the price of fluid milk would gyrate in an open market because its demand and supply fluctuate seasonally in different ways—although it is hard to see why sales onto the manufactured-product market would not absorb these fluctuations. Marketing orders are said to provide a "margin of safety" by luring farmers to produce more milk than they otherwise would.

Even if fluid milk prices should happen to vary seasonally, as do the prices of fresh fruits, vegetables and seafood, it is not clear how that would harm consumers. They can hardly complain of unpredictability. Nature itself has decreed for ages that milk is especially plentiful in the spring. Besides, even under marketing orders the prices dairy farmers receive still swing seasonally. (Some economists, by the way, say the system may exaggerate the swings.)

The reconstituted milk issue provides an interesting test of the "cartel" versus "price stability" theses. If the purpose of the milk order system is cartelized price discrimination, reconstituted milk represents a dire threat, since no price-discrimination scheme can survive unless it can keep the low-price and high-price markets separate. If, on the other hand, the purpose of the system is the stated one of ensuring ample fluid milk supplies at stable prices, reconstituted milk seems like the ideal solution, since it allows dairies to break down milk where and when it is plentiful and reconstitute it where and when it is scarce. Either way, reconstituted milk undercuts the rationale for the two pillars of the current system: local self-sufficiency and the differential pricing of milk for fluid and product markets. That the system has nonetheless rejected the innovation is consistent with the cartel thesis, but not with the "orderly marketing" thesis.

It is possible that reconstituted milk could be the technological development that unravels the entire milk regulatory system. It is not that reconstituted milk has any across-the-board cost advantage: although it saves money not to have to ship water around in refrigerated trucks, it also costs money to dry and recombine the ingredients. But the current price differentials are so great that in 1980, when the Department of Agriculture considered the reform petition, it publicly worried that dairies might indulge in "uneconomic" reconstitution, drying milk and then recombining it on the spot in order to evade the minimum price rules. To meet that threat, dairy farmers probably would

press USDA to lower the minimum price for fluid milk. USDA estimated that the revenues of dairy farmers would drop by 5 percent (by coincidence, the same percentage as consumer milk costs would drop) and that costs to the government in the separate support-payment program, currently running at $2.7 billion a year, would also fall. Manufactured-product prices would also rise, of course. But the Council on Wage and Price Stability calculated that, based on USDA's analysis, the efficiency benefits of reform would exceed the costs by $255 million a year in 1978 dollars, which would amount to $377 million in 1982 dollars—most of the gains coming not from the lower cost of the reconstituted milk itself, but from its competitive effect on the fluid milk market.

Health Benefits for the Jobless: The Middle Class Cashes In

The "conservative welfare state," much talked of by political commentators in recent years, is apparently about to get its first trial run. As of this writing, the Republican Senate is expected to pass, and the Reagan administration is falling into place behind, a bill to establish the first big new social program since President Reagan took office more than two years ago: health insurance for the unemployed. A different version of the legislation has already passed the House Energy and Commerce Committee.

The Senate bill, S. 951, is co-sponsored by Senators Robert Dole (Republican, Kansas) and David Durenberger (Republican, Minnesota). The House version, H.R. 3021, was introduced by Representative Henry Waxman (Democrat, California). Both offer matching federal grants to states to provide health insurance for laid-off workers who have lost their eligibility for employer-provided insurance. Eligibility for the new benefit would depend essentially on eligibility for state unemployment insurance or federal supplemental benefits. Recipients would come under coverage several weeks after they started receiving jobless benefits, although both bills make some provision for those whose jobless benefits have been exhausted. Coverage would continue for six months after jobless benefits stopped or one month after reemployment. Waxman's bill also would provide twelve months' coverage for those whose jobless benefits were exhausted at the time the bill goes into effect.

Under both plans beneficiaries could be required to pay a small part of the premium as well as deductibles and copayments out of their unemployment benefits; Dole would require more of this "cost-sharing" than Waxman. States would be allocated federal matching funds under a formula tied to their unemployment rates under both bills, with Waxman allocating more money to states than Dole.

Both bills would also shift some costs to employers. The Senate bill would require employers to provide an "open enrollment" period during which workers whose spouses had been laid off could convert to family coverage. The House bill would require employers after October 1985 to continue coverage for ninety days after separation, contributing the same level of premiums as for active employees.

According to Irving Kristol, conservatives should favor universal, Bismarckian programs that give benefits to rich and poor alike, even though such programs are much more costly than the "means-tested" programs targeted at the poor. The reason is that universal programs defuse discontent among the poor and working class and bind all classes more closely to the political system. The unemployed health insurance initiatives that have emerged so far, however, hardly fit the prescribed Bismarckian pattern. They manage, for the most part, to confer benefits on the middle class; but they deny them to a great many lower-income people. Many lower-income people who do not receive unemployment compensation would still not be entitled to health insurance, including widows and pensioners not poor enough for Medicaid or old enough for Medicare, workers whose employers do not provide health insurance (these workers are generally low-paid), and spouses and family members of those whose workplace insurance covers themselves only. At the same time, a great many of the unemployed who would qualify for benefits are in no way poor. When supplemental benefits and trade adjustment assistance are added to sources of outside income, many unemployed workers maintain an above-average standard of living—along with the prospect of returning to well-paid jobs as the recovery proceeds. Economist Herbert Stein recently wrote that

"[p]robably only about 10 percent of the 10 percent who are unemployed are in poverty."

The Dole and the Waxman bills would target special unemployment compensation grants to states based on their unemployment rates—producing some anomalous results. An unemployed worker in one state (or part of a state) could be entitled to federal funds while an equally unemployed colleague in the next state would not. Moreover, the transfer of wealth from lower-unemployment states to higher-unemployment states would be accelerated, which is ironic because the lower-unemployment states tend to be poorer.

Proponents defend a program geared mainly to middle-income and experienced workers by noting that this group has a strong "labor force attachment" and that most of its members have paid taxes for years. This single proposal, it is argued, was not intended to plug the gaps in poverty programs. Still, it will be very hard to explain on equity grounds why subsidized health insurance, once it has been given to higher-income workers, should not be extended to lower-income workers—introducing national health insurance through the "back door." Unemployment compensation itself, by the way, is not open to this charge of inequity because it is paid for by participating employers and workers rather than by general tax revenues.

The Reagan administration has indicated that it will support the bill if it is "self-funding," meaning that it will not add to the deficit. It proposes to finance the program with the money raised by enacting an even lower "cap" than had earlier been proposed on the tax-deductibility of employer-paid health insurance. (The earlier proposed cap was $2,100 for family coverage and $840 for individual coverage.) Funneling the money back into federally paid health care will presumably negate some of the restraint the tax cap might have placed on medical costs, which are still rising at double-digit rates despite the slowdown in the general inflation rate.

And, of course, the total costs of the program—and stimulus to medical inflation—will naturally be much higher than the reported federal costs of $1 billion (Dole) and $2.8 billion (Waxman) would suggest. As we have learned from earlier proposals for national health insurance, it is deceptively easy for the federal government to load costly requirements on the private sector (see Jack Meyer, "Hiding the Costs of National Health Insurance," *Regulation*, March/April 1980).

In the evolving conception of the conservative welfare state, one of the casualties is the one-time conservative concern with incentive effects. Since health insurance would still not be guaranteed to workers with steady jobs under the plans, many workers would have to give up valuable health benefits as the price for getting off the unemployment rolls.

And Now, a Spectrum Bubble

The Federal Communications Commission took a small but intriguing step toward regulatory reform August 16, 1982, in a rulemaking opening up a previously unused part of the radio spectrum. The commission decided to allow the holders of the new licenses to follow any technical standard they want within their assigned frequencies so long as they do not interfere with reception on other channels.

The rule affects land mobile radio, a service that taxicab companies, police, and companies with delivery routes use to communicate with their vehicles. The FCC assigns each land mobile licensee a 25 kilohertz (kHz) band, which has sufficed to accommodate one channel with enough separation to avoid undue interference with adjacent channels. Up to now, the FCC has required these radio users to broadcast using the FM (frequency modulation) mode and to follow other exact technical specifications.

These regulations seemed natural enough when they were first imposed, since FM was the most practical form of transmission. But now new technologies are becoming available that economize on spectrum. "Single sideband transmission," for example, uses only about 3 kHz per channel. This would let license holders carve out five channels, instead of one, from their 25 kHz assignment, and either add more users to the system, or improve the chances that existing users will not get "busy signals," or both. In effect, more spectrum would be created—exploding the idea that the quantity of spectrum is immutably fixed. (See the articles on "Airwaves for Sale?" in this issue.)

In Brief–

Endangered Species of the Month. The federal government has extended Endangered Species Act protection to *Potentilla robbinsiano*, a rare New Hampshire wildflower. It seems the hapless *P. r.* has the bad luck to grow only in the neighborhood of the Appalachian Trail, the federally maintained hiking path that runs from Maine to Georgia. Now, according to the *Wall Street Journal*, the plant is in danger of being trampled to extinction by nature lovers.

In Other Hiking News . . . Britain's Labour party drew up plans for a new "socialist countryside group" in a "bid for the 'green vote' " at the June election, the *Economist* of London reports. The group's probable chairman, Lord Melchett, called for legal changes to implement his rural environmentalism.

First on the list is "a law to allow people to walk anywhere they want in the countryside," in order to keep farmers from being beastly to wandering nature lovers who invade their property. Not only would hikers and suchlike get onto the property, but Lord Melchett wants to spare them unaesthetic sights once they get there: government planning boards would have to consent before farmers could erect new buildings, mow down hedges, or plant exotic trees on their land. Wouldn't that drive up the cost of farming? No problem: the Labour lord would make government grants available to small farmers who retain traditional farming methods instead of making improvements to the land.

Where America's Deregulation Begins? As an island strategically located in the western Pacific amid the rich markets of East Asia, the U.S. territory of Guam might be expected to be prospering like its neighbors. But instead it is stagnating and highly dependent on aid from Washington—and, according to an account by Stuart Butler of the Heritage Foundation, regulation is one big reason.

Many federal regulations are oddly inappropriate to Guam's remote tropical location (some find them oddly inappropriate here, too, but that is another question). The Environmental Protection Agency has told Guam that its oil-burning power plant must install a "scrubber," costing $20 million—that's $200 for every resident of the island—although almost all of the smoke is blown out to sea by trade winds. The Occupational Safety and Health Administration requires steel scaffolding on new construction, which not only corrodes in the tropical climate, but is much less safe in tropical storms than the indigenous bamboo scaffolding because it has less "give." The Jones Act requires that traffic from Guam to the U.S. mainland go in expensive U.S. bottoms. Minimum wage laws and prevailing-wage rules for construction have choked off a construction boom. (Happily, the Reagan administration recently waived the latter rule and substituted local wage councils; it has also established a task force on regulatory reform in the territories.)

The Guam tax code "mirrors" the Internal Revenue Code; all the money it raises there is remitted directly to the island government (along with a large supplemental payment). Many Guam businessmen would like to see the island's tax code revised to make it more competitive with its neighbors: Hong Kong's flat tax, for example, amounts to 15 percent for individuals and 16.5 percent for corporations. But so far Congress has not been willing to go along, nor has it shown much interest in Guamanian requests for regulatory relief. Perhaps it fears that the deregulatory impetus will spread to Hawaii . . . and then California. . . .

Baguettes Legalized in Walla Walla. The Washington state legislature has voted to give consumers half a loaf. It recently passed a bill to allow the marketing of bread in sizes half as big as the standard loaves mandated by previous state law (which had been, so to speak, Procrustean). The bill also legalizes the sale of odd-shaped French, Italian, and other so-called ethnic loaves. According to Representative Helen Sommers, the bread industry opposed more extensive decontrol, fearing that new entrants would get a slice of the market.

The FCC hopes that, by decontrolling technical standards in this way, it will give manufacturers of transmission equipment a greater incentive to innovate, since they will no longer have to convince the agency to change its specifications in order to sell a new product they come up with. The new licensees, for their part, have little to fear, since they are not obliged to buy new types of equipment. (Older parts of the land radio mobile spectrum continue to operate under the old rules.)

The FCC's new initiative is parallel in conception to the Environmental Protection Agency's "bubble" for airborne emissions. The "bubble" was begun in 1978 as a continuation of EPA's earlier "offset" policy, and has gradually been liberalized since then to permit, for example, trading of emissions rights among plants in the same area. Just as the plant managers have fixed limits on the pollutants that their plants can emit but latitude on how to apportion the permissible quantity among individual smokestacks, so mobile radio users can do as they please within their band so long as they avoid interference with other bands.

Both initiatives aim to let firms find, and take advantage of, their own opportunities for cost savings. Both resulted from dissatisfaction

with "engineering controls" that mandated specific equipment and so discouraged the development of alternative pollution control and transmission technologies.

The FCC, however, has adopted its new policy with much less controversy and delay than EPA. The idea of the spectrum bubble was originated by an FCC staffer and encountered little opposition (mostly just mild objections from some equipment manufacturers who may have preferred the old system's predictability). EPA's emissions bubble, on the other hand, has run into resistance from the courts, environmental groups, some agency staff, and even some industry representatives.

There are a number of possible reasons why the FCC had it so much easier. First, its reform affects a very small group: the new licensees make up only a few percent of all mobile radio users. The EPA bubble has involved large firms like DuPont and millions of dollars.

Second, the FCC bubble is easier to enforce. Licensees still have to report what emission mode and bandwidth they are using, so that interference outside the assigned band is readily identifiable when the affected user complains. Any leeway in environmental regulation, on the other hand, rouses fears that harmful but unmeasurable emissions will occur while no one is looking. It also causes environmentalists to wonder why, if companies can reduce emissions further in certain locations at low cost, standards could not have been tougher in the first place. Contrariwise, industry has reason to fear that if it admits that these emission-reducing opportunities exist, enforcement personnel might call off the "offset" deal and instead order the reductions unilaterally.

Third, while both the spectrum and the environment are claimed as "public property," the spectrum, aside from its radio and TV segments, simply has not come under much scrutiny from the public or even, until lately, from economists. More important, the interference problem affects the same group of mobile radio users that benefit from the changes—that is, they collectively "internalize" their externality problem. There is no outside group, as there is in the case of the environment, that might suffer costs (real or imagined) as a result of the program that does not reap its benefits.

Fourth, because the FCC was drawing up rules for a newly allocated part of the spectrum, rather than for existing licensees, there was no major constituency trying to protect its investment in equipment, avoid new competition, or simply ward off change and uncertainty. All of these factors sometimes tend to make business dubious about market-oriented reforms.

The spectrum bubble shows that the reform ideas hatched during the last decade can help affect regulatory decisions even in far-flung fields, perhaps most effectively if they percolate up from the staff level. When EPA first drew up Clean Air Act regulations in the early 1970s, familiarity with these ideas had not yet filtered into policy-making circles. Now it has, and new regulations are showing its benefits—which does nothing, however, to ease the task of reforming old ones.

CAB + ICC + FMC = NTC?

When substantive regulatory reform is stalled, the thoughts of reformers turn to agency structure. To judge by the number of important reorganization proposals in the air right now, substantive reform is dead in its tracks. The Reagan administration wants to combine the Special Trade Representative's office and parts of the Department of Commerce into a new Department of Trade. Senator Daniel Patrick Moynihan (Democrat, New York) has introduced a bill to make the Environmental Protection Agency an independent instead of executive-branch agency. And—of perhaps keenest interest to regulatory reformers—Chairman Robert Packwood (Republican, Oregon) of the Senate Commerce Committee has introduced a bill (S. 48) to fold the three major transportation regulators into a single five-member panel.

The new National Transportation Commission would be an independent agency, like its three predecessors, the Federal Maritime Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board (which is scheduled to disappear in 1985, most of its remaining functions going to the Department of Transportation). Perhaps its most salient virtue would be to help regulators address the growing trend toward "inter-modalism." Already, ICC rulings have made it easier for railroads to operate trucking firms, and some companies have found it profitable to pursue diversification even

further: Tiger International, for example, carries freight by air and truck and leases rail cars. Critics have charged that the existing agencies promulgate inconsistent technical rules, ignoring the effects of their decisions on competing modes, or that two existing agencies both try to regulate a movement involving two modes.

Aside from making it easier to offer combined rail-truck service, Packwood's bill does not contain any substantive deregulatory reforms. It is premised on the view that, whatever reforms may take place in the next few years, transport regulation is not likely to disappear entirely. In the maritime area, for one, decontrol is nowhere in sight: in fact, Congress is debating whether to extend the scope of cargo preference laws. In air transport, federal intervention is likely to continue indefinitely on international routes, and even on domestic routes the 1978 Airline Deregulation Act guarantees "essential" air service to small communities through 1988, a provision that Congress could easily extend. In surface transport, the law continues to prescribe safety and insurance rules for truckers and rate ceilings for "captive" rail shippers (however those may be defined).

Those authorities still add up to a lot of power, even after scheduled deregulations are completed. But the existing agencies are becoming smaller and less prominent, which might conceivably make it harder to recruit commissioners who would be of high quality and resistant to "capture." A unified agency might attract prominent commissioners. On the other hand, each of the regulated industries involved would want to be represented on the commission, if only to contribute its specialized expertise. That would open up the prospect of anticompetitive logrolling among the airline member, the trucking member, and so forth—which might make for more efficient recartelization than the industries could ever have achieved separately. Logrolling of this sort, what one might call the dark side of inter-modalism, has traditionally been carried on between rail and truck interests at the ICC.

The new NTC might avoid capture, only to fall victim to a different danger: it might try to justify its existence by showing that economic regulation can be "done right." This "urge to meddle" (as Alfred Kahn calls it) might be suppressed if the new agency were made a politically accountable part of the executive branch (rather than an independent agency, as Packwood would like), so that its rulemakings were subject to oversight by the much-feared Office of Management and Budget, among others. The logical executive-branch home for the agency would be DOT—whose other parts, for what it is worth, are headed by single administrators rather than multi-member commissions.

But the old debate over whether it is more important to insulate regulators from political pressure or coordinate their actions with overall presidential policy is not likely to be settled any time soon. At any rate, the current organizational chart of the U.S. government does not conform to any set theory on the merits of executive branch versus independent status. Many sensitive quasi-judicial and adjudicative functions that no one would openly propose to "politicize" are now carried out by cabinet departments amid little controversy. For example, the Food and Drug Administration is part of the Department of Health and Human Services, drug approval powers and all. Meanwhile consumer safety education, a service activity one might think typical of the executive branch, is entrusted to the independent Consumer Product Safety Commission. Procedurally, executive branch agencies can adopt just as many quasi-judicial niceties as the independents: they can and do shield their officials from off-the-record contacts with the regulated, for example.

It would be impossible, even if it were desirable, to give purely adjudicatory functions to independent agencies and purely policy-making functions to executive agencies, since there is usually no clear line between the two kinds of function. In awarding an airline route, for example, the CAB is supposed to consider a long list of relevant criteria: fares, service, established position in the market, traffic "feed," and so on. But deciding how much weight to give each factor in a given instance is largely a policy

(Continues on page 50)

Mark Your Calendar Now

AEI's Seventh Annual Public Policy Week will be held December 5–8, 1983, at the Mayflower Hotel, Washington, D.C.

Watch coming issues of *Regulation* for program details. For further information, contact Mary Ann Allin, (202) 862-5890.

gredient is unavailable—one is probably better off finding some quite different solution. In the case of the full market approach to spectrum economics, two of the necessary ingredients are to ensure (1) that we achieve far greater flexibility of spectrum use (including the ability to shift uses between allocation categories) and (2) that all users (or at least most) abide by the marketplace rules. And from the outset we know that the largest single user—government—in all probability will not play the game.

Toward Piecemeal Reform

The MacAvoy-Besen-Nelson law of deregulation holds that the more a given regulatory system departs from desirable competitive, pro-efficiency, and marketplace norms, the greater the costs of changing it and thus the harder it will be to change. Today's radio spectrum management system was designed initially to further engineering, not efficiency or competitive, goals. Given the major problems that have been encountered in simply trying to implement the "equity principle"—that most rudimentary of the spectrum economics notions—the chances of our shifting to a full-blown spectrum market in the short run are not great.

Fortunately for the dyed-in-the-wool deregulators, however, we are already implementing some variations on that scheme. Be sure not to tell anyone. But, for a long time, people have actually been selling FCC radio frequency licenses, the people's airwaves—although, for propriety's sake, the price in the pertinent sales documents is labeled "capitalized good will and other intangibles." The FCC this spring sanctioned subdividing FM radio channels in some instances in order to allow FM broadcast licensees to utilize the subcarrier portion of their signal to transmit data, to provide paging or beeper services, and the like. Merrill Lynch and public broadcasters have an experimental authorization to explore means by which the "vertical blanking interval" that is part of the television signal can be exploited for common-carrier-like offerings. Piggybacking services of these kinds are one of the objectives of those who are urging upon us a purer, and more obvious, regime of spectrum economics.

We are, in short, kind of edging up to a system of spectrum economics, and someday we may even get there. But it will not be soon. ■

CAB + ICC + FMC = NTC?

(Continued from page 11)

matter. The ICC exercises the same sort of policy judgment when it considers new applications for trucking authority.

To complicate matters, the executive branch may well wish to appear to distance itself from especially touchy or unpopular decisions. One such notable case is that of reciprocity in international traffic, where the White House currently has it both ways: the independent CAB makes the determination that foreign countries have unfairly denied reciprocal landing rights to U.S. carriers (and is thus supposed to take the heat) but the President himself has ten days in which to disapprove its retaliatory measures. Similarly, the FMC recently came close to retaliating against Venezuela's shipping lines for that country's alleged exclusion of U.S. carriers from some bilateral trade, with the executive branch reportedly exerting considerable influence behind the scenes. (The dispute was resolved through diplomatic negotiations instead.) Even on reciprocity matters, however, there is precedent for vesting power directly in the executive branch: the Interior Department passes judgment on foreign reciprocity in granting mining rights on public lands.

Reformers might have more clout on these structural matters if they all agreed on one view. Instead, one school of thought holds that structural reform is, if not irrelevant to the substance of agency decision making, at least a tremendous diversion from the task of substantive reform. Those who believe that structures do matter are more or less evenly split between proponents of independent-agency and executive branch status, quasi-judicial and informal decision making, and single-administrator and multi-commissioner format, so that they practically cancel each other out. The political actors, for their part, typically take a strong interest in the subject even if they do not have an interest in the substantive outcomes.

Perhaps the assertion that would meet with the widest approval is that deregulation should be taken as far as it can go before any structural reform is attempted (which is the Transportation Department's position, too). As one Capitol Hill staffer put it: "Empty the boxes before you stack them."