indicator of the ruble's actual worth. And, as good luck would have it, the dollar has never been stronger there. Some of the shady types who hang around in front of Soviet hotels could be retained as consultants and provided with the necessary computers, fax machines, etc.

Paying for penal services at the real value of the ruble will result in tremendous savings for us. Even so, the deal will bring a considerable influx of hard currency to Soviet coffers. The government can use these funds to pay farmers as well as purchase goods from us. We can immediately grant the government a huge line of credit, at a single stroke delivering ourselves from the shameful distinction of being the world's greatest debtor nation.

Skeptics might insist that this proposal, though bold, does not strike at the root of crime in America—drugs. Here too the Soviets can come to our aid. They seem to be serious about cutting back on military spending, but no matter how much they slice, they're still going to be stuck with a very large navy and air force. Why couldn't they patrol the seas and skies through which the drugs reach us? It would be a shame for all those MiGs to sit there and rust.

There's no end to "new thinking" once you get started. And what power it has! It can turn problems into solutions, transform an "evil empire" into America's salvation.

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A lesson in price-fixing.

COLLEGES IN COLLUSION

By Ian Ayres

A group of sellers—say, cement manufacturers—gets together to set the price for a ton of cement. Or the presidents of the ten largest cement manufacturers meet once or twice a year to set the size of discounts they will offer for their product. If their conduct is discovered, the cement companies are in trouble. They face civil suits for triple damages and even could go to jail for price-fixing. And the prosecution would hardly merit a mention in the back of the business section. The cement manufacturers' conduct represents a classic violation of federal antitrust law.

It is a bit troubling, then, that the Justice Department's recently revealed investigation of agreements among top colleges to fix financial aid awards—and possibly to set tuition charges—has been received with so much surprise and some criticism. Colleges have no magical immunity from federal antitrust laws. The Justice Department's investigation, which seeks to subject university presidents to the same rules that govern presidents of cement manufacturers, should be applauded.

The Justice Department is investigating whether a group of Ivy League and elite liberal arts colleges colluded to set both tuition and financial aid awards. The institutions have denied agreements to set tuition. However, some of them freely admit to meeting in committees to set uniform scholarship awards for college applicants who have been accepted by more than one school in the group. Because of the agreements, an applicant would receive the same financial aid offer from different schools.

Tuition and financial aid agreements would eliminate price competition among schools and accordingly run afoul of the Sherman Act's per se prohibition of horizontal price-fixing. An agreement to set the amount of financial aid is economically no different from a horizontal agreement among manufacturers to fix uniform discounts for their products. A scholarship is, in effect, a discount from the basic tuition price. The price of a college education—at tuitions that commonly run more than $15,000 a year at Ivy League schools—is a major consumer purchase that easily dwarfs the purchase of a new automobile. Collusion to limit the amount of discounts on college tuition injures the student/consumers just as much as collusion to limit sticker price discounts for new cars would injure driver/consumers.

The collusion to fix scholarship awards, if proved, constitutes a classic form of price discrimination: selling the same good (in this case, a college education) at different prices (varying financial aid packages). The goal of price discrimination is to separate consumers into groups that value a product differently and then to charge different prices to the different groups.

Normally, price-discriminating sellers are forced to use crude proxies for segregating consumers into different-valuing groups. Airlines, for example, charge higher prices for last-minute reservations on the theory that such purchasers are more likely to be on business and therefore are more willing to pay. Financial aid collusion, however, is a much more sophisticated form of price discrimination. Applicants are required to disclose detailed financial information concerning their own and their family's wealth. Colleges conspiring to extract the maximum amount of tuition from each student are thus given precise information to determine each consumer's willingness to pay.

The colleges are certain to argue that agreements to base financial aid solely on need serve to distribute limited scholarship funds more equitably. By agreeing not to grant scholarships to those who have academic or athletic prowess but can afford full tuition, the colleges can increase the opportunities of prospective students who could not otherwise afford a college education.

We should not, however, uncritically accept the explanations of colluding competitors. Collusion may al-

low colleges to redistribute their financial aid "pie" to the truly needy, but it also reduces the total size of that pie. Indeed, it is hard to imagine that unrestricted competition for applicants on the basis of financial aid would reduce the total amount of financial aid being offered. Colleges wooing desirable students almost inevitably would increase the amounts spent on financial aid—in effect, lowering their price—to keep up with the competition. Agreements to eliminate financial aid competition can therefore reduce even the scholarship support of the truly needy.

The antitrust laws would not prohibit "reasonable" agreements among universities on issues other than amount of tuition, if the agreements generate significant cost savings. For example, colleges probably could continue to cooperate in developing standardized financial aid forms—a practice that benefits students by saving them the trouble of filling out multiple, cumbersome forms and that does not appear by itself to pose an antitrust problem.

Critics of the Justice investigation have displayed a surprising distaste for price competition. A recent editorial in the *Boston Globe* concludes that the "aid agreements, reducing if not eliminating money as a consideration, encourage [college] choice on a more germane ground." Shouldn't price be a germane ground for choosing among different products? If auto manufacturers colluded on price, consumers would be left to choose among cars on other—but hardly more germane—grounds. An administrator of Lake Forest College was quoted as saying, "Once you start allowing marketplace bartering, you've allowed your principles to go down the drain." But competition is itself an important value, enshrined in the antitrust laws. Although government interventions are sometimes justified to correct market failure, why should private institutions be allowed to supplant the market for one of the most expensive goods that a consumer will ever purchase?

Indeed, the Justice Department should perhaps go further. Concentrating on the Ivy League, it ignores an even more blatant form of financial aid collusion among universities. This is the National Collegiate Athletic Association. Member institutions of the NCAA openly agree to limit compensation to college athletes. No colleges are allowed to pay their athletes salaries, and smaller schools (such as the Ivy League and Division II) are even prohibited from awarding athletic scholarships. For many universities, NCAA sports are a major revenue source, which they maximize in a highly businesslike way. This makes the analogy to a regular business, which ought to comply with regular antitrust laws, even more compelling.

NCAA prohibitions against paying athletes have all the characteristics of cartel-like collusion to suppress wages. Individual firms (universities) attempt to cheat on the agreements by secretly paying their workers (athletes), and the cartel (the NCAA) seeks to discipline these cheaters by reducing their profits (e.g., by banning them from postseason play).

Yet the Supreme Court has hinted that it doesn't see things quite this way. A few years ago, when the Court struck down NCAA restrictions on competition for football television revenues, Justice Stevens stressed that "horizontal restraints on competition are essential if the product is to be available at all." The opinion asserted that the amateur status of the players made college football different: "In order to preserve the character and quality of the 'product,' athletes must not be paid . . ."

The Supreme Court's rationale is a bit puzzling. It is hard to think of another "product" in which consumer demand would be enhanced if workers were unpaid. But even setting aside nostalgic notions of amateurism, there is an argument that intercollegiate athletics has unique attributes. The Supreme Court noted that what the NCAA markets is competition itself: contests between competing institutions. There is evidence that fans value balanced leagues with teams of roughly equal ability. The NCAA rules prohibiting salaries thus might arguably serve to enhance the quality of competition by equalizing the quality of play. This, of course, doesn't explain why the cap on competition in paying college athletes has to be set at zero.

In any case, restraints on athletic scholarship are clearly distinguishable from the financial aid collusion at issue in the Justice Department's investigation. College football fans may care about how well the other teams in the conference play, but the quality of a Shakespeare class at Michigan doesn't depend on how well T. S. Eliot is taught at Ohio State. Thus, the possible legality of restraints on athletic scholarships does not justify collusion to fix financial aid awards for the broader class of college applicants. Markets don't always get it right, but the Sherman Act expresses a strong presumption that when it comes to protecting consumers' interests, we trust the market more than agreements among sellers.

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The dregs of the Bush cabinet.

HALF WATT

By Bruce Reed

The secretary of the interior, Manuel Lujan, went on Alaskan television this summer to talk about the Exxon oil spill. For a man in charge of assessing the damage to hundreds of miles of coastline, he didn't sound terribly concerned. Lujan