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**Antitrust and the Issue of Competitive Advantage:
Economic Analysis and *United States v. IBM***

Lacy Glenn Thomas

FRANKLIN FISHER, JOHN MCGOWAN, & JOEN GREENWOOD, *Folded, Spindled, and Mutilated: Economic Analysis and U.S. v. IBM*. Cambridge, Mass.: MIT Press, 1983. Pp. 443. \$25.00.

I. Introduction

On January 8, 1982, the U.S. Assistant Attorney General agreed to dismissal of the government antitrust case against IBM (International Business Machines Corporation),¹ stipulating that the complaint was "without merit." This startling reversal raises several obvious questions: Did the severe self-assessment in the 1982 stipulation represent accurate analysis, and the dismissal, correct policy? If so, why would a patently baseless case have been filed in January 1969 against one of the nation's most successful and strategically significant companies? And how could an error of this magnitude have been maintained for the 13 years of Department of Justice (DOJ) legal proceedings? Franklin Fisher, the late John McGowan, and Joen Greenwood (FMG hereafter), in *Folded, Spindled, and Mutilated*, their recently published economic analyses supporting IBM's defense, provide an opportunity to examine these questions and to review the current economic foundations of antitrust law.

FMG offer a simple explanation for the "disaster" of the IBM case—poor economic analysis. The economic arguments for the government case were incompetently developed by DOJ legal staff and government expert witnesses. FMG portray these analytical errors as wholly original and idiosyncratic to the case. The entire legal enterprise was further facilitated by loose DOJ administrative standards providing for no centralized review of ongoing cases. In their own words, FMG summarize the problem as follows:

The IBM case . . . began with a plainly erroneous view of the facts . . . It moved forward with economic theory that made progressively less sense as it devel-

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1. 69 Civ. 200 (D.N.E.) (S.D.N.Y. Jan. 8, 1982).



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