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EC, US SIGN TRAILBLAZING ANTI-TRUST AGREEMENT

Represented by EC Competition Commissioner Sir Leon Brittan, the Commission recently signed an historic accord with the US government to cooperate on competition policy matters (see EURECOM, September, 1991).

Initialed in Washington on September 23, the pact (which is a "memo of understanding") has immediate effect. It establishes parameters for coordination and cooperation between the Commission and the US competition authorities (i.e. the Justice Department and the Federal Trade Commission) on anti-trust policy, including the examination of mergers and acquisitions and anti-competitive concentrations. It does not alter any existing EC or US anti-trust laws or related rules on business secrecy.

Under the agreement, each party will notify the other when it becomes apparent that its enforcement decisions may affect important interests of the other. In addition, the parties have agreed to share information to aid in applying their respective competition laws and to promote better understanding of the economic conditions behind enforcement decisions. The accord also allows for coordinated enforcement when both sides agree that a combined approach is "appropriate". EC and US officials will meet at least twice a year to exchange information and to discuss potential policy changes.

An innovative aspect of the agreement is the inclusion of a "comity" principle, whereby the parties agree to take each other's legitimate interests into account when considering anti-trust action.

Commented Sir Leon: "This agreement comes at a time when our economies are becoming increasingly interrelated and we both pursue active competition policies to ensure fair play. It is therefore important to provide a means of avoiding conflict. This is what the agreement does."

JOINT EC-US STATEMENT ON SECURITIES

In addition to his anti-trust activities during his recent Washington visit, Sir Leon signed (on behalf of the Commission) a joint statement with the US Securities and Exchange Commission (SEC), aiming to improve cooperation between regulatory authorities both bilaterally and multilaterally.

The text sets out three areas for enhanced cooperation: **greater information exchange** between the SEC and the relevant member states' authorities, including a provision for mutual assistance in circumstances involving the administration and enforcement of their respective securities laws; cooperation in **maintaining the financial integrity** of the participants in the US and EC securities markets; and **regular consultation** on matters of mutual interest vis-a-vis the operation and oversight of EC and US securities markets.

"Our agreement...marks an important step in cooperation between the US and the European Community in the area of financial services regulation. The EC Commission is committed to playing its full part in developing international structures to ensure that financial markets are made more efficient, more transparent, and above all, more honest, to the benefit of all their users worldwide," said Sir Leon.

OPENING OF SERVICES CONTRACTS IN THE "EXCLUDED SECTORS"

Following unexpected delays, the Commission recently proposed a directive to expose public contracts for services in the "excluded sectors"—energy, water, transport and telecommunications—to more competition.

The proposed legislation would amend an earlier directive on public works and supplies contracts in these four sectors (which has been approved), and would complement a proposal to open all public contracts for services to EC competition except in the "excluded" areas (see EURECOM, October 1990).

Under the directive, as of January 1, 1993, public contracts for services—notably maintenance and repair services, informatics and architectural and engineering services—would have to be advertised in the EC's Official Journal if they exceed 400,000 ecu (excluding VAT) in the water, transport or energy sectors, or 600,000 ecu (excluding VAT) in the telecommunications sector. Contracts would be awarded on the basis of the best or lowest tender from anywhere in the Community. Other services such as manpower, legal and vocational/educational services, where "buying local" is generally more practical, would only be subject to transparency requirements. Spain and Portugal would receive derogations until January 1, 1996 and January 1, 1998, respectively.

The proposal contains a reciprocity clause: third-country bidders would receive the same access to these contracts as EC enterprises as long as the third countries do not discriminate against EC companies in the "excluded" sector services market.

FIRST BLOCKED BID UNDER EC MERGER RULES

The EC Commission recently turned down the proposed takeover of de Havilland, the financially troubled Canadian aircraft manufacturer (and subsidiary of Boeing), by ATR, a joint venture between Aerospatiale of France and Alenia of Italy, marking the first time that the Commission has used its new merger control powers to stop a prospective deal.

According to EC Competition Commissioner Sir Leon Brittan, the proposed merger would have created "a powerful and unassailable dominant position in the world market for turboprop [commuter] aircraft," giving de Havilland and ATR 50% of the world market and 67% of the EC market for commuter aircraft (i.e. aircraft of 20-70 seats). Commission analyses indicated that the relatively high number of smaller competitors in this market would not have been able to challenge ATR/de Havilland either individually or collectively considering the industry's current excess capacity, high investment costs and market uncertainty. ATR is the world's largest manufacturer of commuter aircraft; de Havilland holds second place.

"The deal would not so much have led to economies of scale or investment in research and development as acquisition of market share," said Sir Leon.

France and Italy have raised objections to the Commission's decision on industrial policy grounds and will most likely appeal the case to the European Court of Justice.

Until this merger, the Commission had approved all 52 cases it had considered (albeit attaching conditions to five) since the merger legislation's inception in September 1990.

COMMISSION RECOMMENDS ENERGY TAX

To uphold the EC's commitment to stabilize "greenhouse" emissions at 1990 levels by the end of the millennium (and to promote energy efficiency and security), the Commission has proposed a controversial energy tax aimed primarily at fossil fuels,.

The proposed tax would fall 50% on fossil fuels graded according to carbon content, and 50% on all other forms of non-renewable energy. It would be phased in over seven years, starting at $3 per barrel of oil in January 1993 and rising by $1 per barrel each year until 2000 to tally $10 per barrel (or $14 for an equivalent amount of coal). Under the Commission's plan, the tax would be offset by tax cuts in other areas so that overall tax burdens would remain the same. Because the EC has no tax-raising powers, the member states would have to levy the charge; correspondingly, they would determine the use of the revenue.

While the EC only generates 13% of world carbon dioxide emissions compared with 23% from the US, the Community's share is rising. According to EC Environmental Commissioner Carlo Ripa di Meana, fiscal measures to combat greenhouse gases are "the least expensive", and send a signal to industry and consumers that "environmental costs must be internalized."

European industry has warned that a unilateral EC energy tax could undermine its competitive position unless major trading partners follow suit. To address this issue, the Commission proposes that energy-intensive industries which are subject to international competition—steel, chemicals, non-ferrous metals, pulp and paper, glass and cement—should receive a zero rate until countries like the US and Japan commit to similar measures. Still, the zero-rate concession could be made conditional on these industries' voluntary efforts to reduce emissions.

Although the first comments on the draft from EC environmental ministers were generally favorable, the proposed tax faces a long, hard battle: all tax matters require unanimity in the Council to become law.

DENMARK LIBERALIZES EXPRESS COURIER SERVICES

Bowing to competition policy pressure from the Commission (based on Article 90 of the EEC Treaty), the Danish government has changed its legislation to allow private courier services to operate within Denmark. This paves the way for more consumer choice in package and letter delivery in Denmark and bodes well for further liberalization in EC postal services.

Previously, a 1983 Danish postal law ensured that the national postal service retained exclusive rights for the collection, forwarding and delivery of mail, preventing private operators established in Denmark from providing competitive services.

By removing this obstacle, Denmark joins Germany, Belgium, France and Italy in complying with Commission demands that express courier services should not be offered solely by postal monopolies. Spain has also agreed to comply soon.

EMU DEBATE PROGRESSES

While the waters in the intergovernmental conference (IGC) on political union remain murky (and turbulent), the IGC on economic and monetary union is finding consensus and gaining definition.

Recent weeks have seen the shelving of the "two-speed EMU" concept, in which the lower-inflation [largely] northern EC countries would go ahead and fix their exchange rates (leading to a European central bank and a single currency), leaving the higher-inflation [largely] southern member states to join EMU when they are able (or willing). Instead, the member states have reached a compromise which calls for any move toward EMU to be decided by the Twelve collectively, even if some member states are not ready to join economically at the start. The treaty would allow derogations for member states that need more time to prepare for stages two and three of EMU. The UK remains opposed to the "imposition" of a single currency, but it will most likely sign an EMU treaty if it can leave the ultimate decision on its participation to the British parliament.

EC finance ministers agree in principle that once an EMU treaty is ratified, the member states could proceed to fixed exchange rates as early as 1997, but only after the Commission publishes a "convergence" report in late 1996, showing which member states have met the three basic criteria for EMU—low inflation, a sustainable budget deficit and a stable currency within the European Monetary System. Debate continues on the stringency of these criteria, but compromises are crystallizing, particularly on budget deficits.

In fact, the Council is nearing agreement on "strict, clear and comparable" measures to prevent individual member states from running "excessive" budget deficits that could endanger EMU. The current Dutch EC presidency has proposed guidelines which would allow EMU participants a ratio of national debt to GDP of no more than 60% and an annual budget deficit of no more than 3% of GDP. To enforce such criteria, Dutch Finance Minister Wim Kok suggests that member states exceeding these strictures would have to make interest-free deposits with a "Eurofed" as a penalty. These funds would be returned when the country's performance improves. According to Kok, this type of mechanism would be "politically more realistic" than withholding EC budget funds. Another option, suggested by EC Economic Affairs Commissioner Henning Christophersen, would be the establishment of a European debt-rating service—like Standard and Poors or Moodys in the US—to monitor member states' indebtedness.

QUOTES

"Overall, I expect the Community to expand...and I wholeheartedly welcome the prospect. Previous accessions have served to galvanize the European Community. By contrast, it has been least effective when it has turned in upon itself." EC Commission Vice President ***Sir Leon Brittan****.*

"We consider the main strategic direction of [Lithuanian] foreign policy will be to become a full member of the European Community. Lithuanian Foreign Minister ***Algirdas Saudargas****.*

"A federal Europe...would contribute to instability...It would construct a rich countries' set of economic and political arrangements that would keep out the poorer East European countries indefinitely...And it would be unstable, because in the long term separate national interests and allegiances...will eventually shatter the supra-national institutions intended to contain them." Former British Prime Minister ***Margaret Thatcher*** *in a speech to the Heritage Foundation in Washington DC.*

"In the final analysis, we will have to make a choice and if we can only reach a consensus on an extremely weak basis, then we should judge whether it is worthwhile to enter into that treaty [on political union]." Dutch Foreign Minister ***Hans van den Broek****, commenting after the rejection of the Dutch EC presidency's draft treaty on political union.*

"The most important task facing Europe is to tackle the situation in Poland, Hungary and Czechoslovakia, with the aim of achieving a Western market economy and an adequate social system through the establishment of stable democracies." Former British Defense Minister and Chancellor of the Exchequer ***Denis Healey****.*

"If for one reason or another the European Economic Area does not happen, then the Federal Council (of Switzerland) would be called to examine other options...The bilateral road remains an option to be explored." Swiss President ***Flavio Cotti****.*

EC PREPARING FOR "IP" OFFENSIVE

Following the US example, the Commission has asked companies to identify countries where intellectual property (IP) violations—counterfeiting, commercial piracy and patent infringement—are rampant.

Through a questionnaire-based project, the Commission is creating a data base of IP difficulties experienced by EC copyright, trademark and patent holders in third countries. This information will be used both in bilateral and multilateral (i.e. GATT) negotiations to improve IP protection. For EC rightholders, questionnaires are available by written request from the following address: Commission of the European Communities, DGIII/F-4, 200 rue de la Loi, B-1049 Brussels, Belgium.

Already the Commission has officially complained to South Korea about patent infringements and to Thailand about copyright violations.

...IN BRIEF

...A recent KPMG Peat Marwick study of European investors in the US found that the growth rate of European foreign direct investment (FDI) in the US has slackened considerably over the last two years. According to the report, a weaker world and US economy, coupled with new business opportunities in Eastern Europe and elsewhere, have stanched the flows into the US. Still, the total value of

European FDI skyrocketed in the 1980s, growing from $55 billion in 1980 to $427 billion in 1990. European investment accounts for 63.5% of all FDI in the US.

The study, conducted on behalf of the European Institute in Washington by KPMG, discovered that European-owned firms in the US rate economic issues such as exchange rates and interest rates as their primary concern. Location of operations is an important but secondary issue, and hinges primarily on proximity to key markets and suppliers and access to air transport. At the local level, labor quality and availability, housing costs and the quality of education are the most important factors in investment decisions. Somewhat surprisingly, the Europeans indicated an overwhelming preference for "greenfield" investments rather than acquisitions or joint ventures.

...Spain plans to remove all remaining capital controls before the end of this year, putting it a year ahead of schedule (Spain has until the end of 1992 to scrap all controls on capital flows). Already this year Spain has lifted some controls (see EURECOM, May 1991), and the forthcoming steps would enable Spanish residents to hold foreign bank accounts by 1992.

...After decades under a command economy, the three newly independent Baltic states—Estonia, Latvia and Lithuania—aim to form a customs union patterned after the European Community to foster economic growth. Baltic leaders have stated that an accord to eliminate economic borders between the three countries would be signed before year's end. It would establish uniform tariff and customs regulations approximating EC levels.

...Incorporating state-of-the-art graphics and thorough, up-to-date analysis, MultiMedia, Inc. has just released—to rave reviews—a 45-minute video business guide to the EC's single market. Entitled "Shedding Light on the Single Market", it is geared to US business audiences and provides a useful informational tool for companies, business schools, libraries and associations. For more information or to order the video, please call MultiMedia at (800) 682-1992 or (201) 569-7599.

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