EURECOM

Monthly bulletin of European Union Economic and Financial News

VOLUME 6, NUMBER 2 FEBRUARY 1994

"WISE MEN" BACK COMPETITION, NOT AID, TO REVIVE EUROPEAN AIRLINES

Based on the recommendations of a committee of "wise men" established by the Commission last June, Transport Commissioner Abel Matutes has announced his intention to prepare an action plan to make the European airline industry more competitive.

Chaired by Belgian Senator and former Transport Minister Hermann de Croo, the 12-man panel ("Comite des Sages"), which included prominent airline, travel and civil aviation representatives, was established to analyze problems in the EU air transport sector. After six months' of work, the committee presented its (non-binding) findings to Commissioner Matutes on February 1.

Entitled "Expanding Horizons - Civil Aviation in Europe: An Action Program for the Future", the report asserts that the present financial strains of most European airlines stem not only from the deep, Europe-wide recession, but also from low productivity, high operating costs (European airlines' operating costs are 48% higher than their US counterparts) and structural problems tied to the sector's historic fragmentation along national lines.

It clearly rejects any rolling back of the three air transport liberalization packages agreed under the single market program (see EURECOM, September 1991). Further, however, it says that "the single aviation market exists so far only in law." For the European industry to survive as a global competitor, Europe's single air transport market "must be transformed urgently into economic and aeropolitical reality."

To revive the European airline industry, the report recommends: full enforcement of single market rules in sensitive areas like slots, state aids, mergers and alliances; removal of infrastructure bottlenecks (e.g. establishing a single European air traffic management system); demonstrated cost savings in any future harmonization of national regulations; updated taxation and ownership rules to promote new investment and to help carriers through the financial crisis; and a genuine European approach to external aviation relations.

On the sensitive subject of state aid to state-owned flag carriers, the report calls on the Commission to apply EU rules strictly while safeguarding competitors' interests, allowing aid only on a "one time/last time" basis linked to a restructuring plan to make an airline commercially viable. Ultimately, this "restructuring" would lead to privatization of these state-owned airlines.

"EUROPE" ACCORDS TAKE EFFECT IN POLAND AND HUNGARY

Association ("Europe") agreements between the European Union and Poland and Hungary took effect on February 1, paving the way for their eventual full membership in the European Union (see EURECOM, December 1991). "Europe" accords have also been concluded but not yet ratified for the Czech Republic, Slovakia, Romania and Bulgaria.

The new agreements, which required ratification by all EU member states and the assent of the European Parliament, replace more general trade and cooperation agreements in place since the late 1980s. They also reflect the significant progress made by Poland and Hungary in transforming their economies and establishing pluralist democracies. In the process of "association", the EU has become their most important trading partner and the largest provider of foreign aid.

Commented External Economic Affairs Commissioner Sir Leon Brittan: "These agreements are very far reaching: they aim at nothing less than the preparation of these countries for Union membership. They provide for close political cooperation using the structure of the EU; for economic and political cooperation; for continued assistance...in the development of their economies; and most significantly...for the establishment of a free trade area which will stretch from the Atlantic to the Black Sea, embracing 475 million people."

All Europe Agreements have free trade as their ultimate goal. Trade concessions aimed at dismantling barriers are reciprocal, but are being implemented asymmetrically (i.e. more rapidly on the EU side) in favor of the reforming countries. In most cases, EU tariffs on imports from the associated countries have been eliminated. Further, in Copenhagen last June, EU leaders agreed to accelerate the timetable for opening the Western European market to these countries (see EURECOM, July/August 1993). As a result, removal of remaining EU industrial tariffs has been brought forward to 1994, while textile tariff barriers will disappear in 1996. The associated countries will take longer to reciprocate: Poland, in (principle) 7 years, and Hungary, Slovakia, the Czech Republic, 10 years.

Illustrating the dramatic reorientation in trade patterns since 1989, the EU now takes 25 billion ecu (1 ecu=$1.10) in imports from Central and Eastern Europe, or well over 80% of their total exports to OECD countries. In comparison, the US takes only 1.2 billion ecu of their exports. Between 1989 and 1992, Eastern European exports to the EU rose 83%, while exports to the US dropped by 9%.

COMMISSION CLEARS CONTROVERSIAL STEEL TUBE MERGER

In a "split decision", the Commission formally approved a pan-European steel tubes joint venture between Mannesmann Roehren-Werke, ILVA SpA's Dalmine and Vallourec's Valtubes under EU merger rules, even though it effectively creates a duopoly in the production and sale of seamless steel tubes in Western Europe.

Once completed, the joint venture, known as DMV, will undoubtedly increase the degree of concentration in the steel tubes industry: taken together, DMV and Sweden's Sandvik will control 69% of the Western European market. Given market conditions — slack demand, relative price inelasticity and structural overcapacity — the two producers could have a common interest in pursuing "parallel anti-competitive behavior".

Despite this evidence, however, the Commission took an international perspective and cleared the venture (going against Competition Commissioner Karel Van Miert's recommendation), asserting that competition from non-EU states will prevent abuse of dominant position.

According to the Commission, "a position of joint dominance would not be created following the merger, as it was likely that any joint price increase would be successfully constrained by actual (Japanese) and potential (Eastern European) competitors."

As European steel tube prices recover and import duties fall (as a result of the Uruguay Round agreement), Japanese producers will increasingly turn to the Western European market as an outlet for their production. And while East European producers face a number of problems, in particular meeting Western European quality standards, they are widely recognized to have modern production facilities. Through increasing partnerships with Western firms, Eastern producers should be able to meet certification requirements and enter the Western European market in the near future.

Since the merger regulation took effect in September 1990, the Commission has blocked only one merger, the De Havilland case (see EURECOM, October 1991). It has, however, attached conditions to a number of others.

PINHEIRO: EUROPEAN FILMS NEED MORE COMMERCIAL APPROACH

If Europe is to compete with Hollywood in making movies, it will have to produce films for a world-wide public and tap international financing according to Audiovisual Commissioner João de Deus Pinheiro.

Speaking at a recent conference on the European film industry, Pinheiro said that the weakness in the industry, with its failure to ensure distribution across borders, is due in part to its own behavior. It fails both to produce films that meet public expectations and to implement a real commercial strategy to boost film production. "European film producers seem to find it difficult to reconcile 'art' and 'money'," he said.

"Europe is in danger not only of becoming a passive consumer of other countries' audiovisual products, but of experiencing a real brain and capital drain," remarked Pinheiro.

Thanks to the outcome of the Uruguay Round world trade talks, however, which left the audiovisual industry outside the new trade liberalizing accord, the Europeans have "a brief respite" from US competition. "Either we use this respite to create efficient industries that match our ambitions or we give up and take the economic and cultural consequences that lack of action would entail," he said.

Pinheiro hopes the US does not view this as an "aggressive approach". Europe is a continent in its own right with a myriad of cultures where, historically, attempts at cultural hegemony have always produced a return to nationalism and protectionism. And the US film industry needs a healthy competitor to stimulate its own competitiveness and to create greater public interest and demand. But at present, the European industry "is not able to stand on its own two feet."

The Commission will publish a "Green Paper" on audiovisual policy this spring, which will include an EU action-plan to promote the European film industry.

BETTER INDUSTRIAL ACCIDENT PREVENTION

After ten years of experience with the "Seveso" directive, which aims to prevent major industrial accidents dealing with dangerous substances, the Commission has proposed a number of improvements.

The Commission's overhaul centers on improved application of the directive, tighter controls on the human factor in major accidents and the introduction of rules on land use plans.

At present, almost 2,000 enterprises fall under "Seveso" in the member states. Since it took effect in 1984, 130 major accidents have occurred in "Seveso" companies, 90% of which were either due to bad management (i.e. a simple organizational fault), inadequate training of employees or failure to recognize the risk of human error.

To address these shortcomings, the Commission has proposed a number of amendments, including: more attention to management systems and human factors in the companies concerned; introduction of land use planning to protect population centers and sensitive environments from major accident hazards; adoption of EU criteria for the most important aspects of control systems; simplification of control systems by eliminating the distinction between manufacture and storage of dangerous substances; and more public information and input, including availability of safety reports and the right to comment on location plans and on control policies established by local authorities.

QUOTES

"The time is certainly past for what I would call talk of aggression. It is now time for reconciliation...The film world is a family — be they French, American or Japanese. We all try to tell stories that attract the public wherever they are shown...We are one fraternity." ***Jack Valenti,*** *head of the Motion Pictures Association of America.*

"No longer can the economic interests of the European Union be defined as limited to EU boundaries or EU-based companies. This is particularly true vis-a-vis our relations with the former Soviet Union and Eastern Europe, where the European Union has done a great deal already to open up trade but must do even more in the future." External Trade Commissioner ***Sir Leon Brittan.***

"When and if we are focusing our efforts on common standards, it would be of utmost importance that we are trying to have worldwide standards and not European standards." Industry Commissioner ***Martin Bangemann.***

"It's my position...that in the longer run a (European) monetary union among the bigger countries is not feasible without a functioning political union." German Bundesbank President ***Hans Tietmeyer.***

"We are developing our national information infrastructure, the EU has its trans-European networks...We want to make sure we learn from each other as we develop these new systems and that we build a transatlantic bridge so those two important networks will be able to communicate with each other." US Under-Secretary of State for Economics and Agriculture ***Joan Spero.***

US BACKS CALIFORNIA IN UNITARY TAX CASE

Under pressure from the White House, the US Justice Department has filed a "friend-of-the-court" brief in support of California in the Barclays Bank Plc (and Colgate-Palmolive) v. Franchise Tax Board of California case in front of the US Supreme Court (see EURECOM, November 1993).

Keeping a campaign promise, the Clinton Administration has reversed a long-established federal opposition to California's unitary tax system, which assesses tax on multinational corporations based on their worldwide income.

Three previous US administrations filed briefs supporting Barclays' claim (which the EU supports) that the unitary tax violates internationally accepted taxation methods and undermines the federal government's constitutional authority over foreign commerce. In fact, in an earlier brief, the Justice Department described the unitary approach as "an irritant in the commercial relations of the US and its major trading partners."

In an unusual action, President Clinton wrote members of Congress about Administration activities in the Barclays case, explaining that no federal policy precluded California from using the 'worldwide combined reporting' method, and that California would not, in any event, have to refund retroactively the tax payments Barclays and Colgate now challenge.

The Supreme Court has set March 28, 1994 as the date for oral arguments in the consolidated case.

(STILL) WAITING FOR SCHENGEN

The already thrice-delayed Schengen agreement to eliminate passport controls among nine EU member states has missed yet another deadline (February 1), this time because of difficulties in setting up computer links between member countries' immigration and police authorities.

Originally slated to coincide with the beginning of the single market on January 1, 1993, the accord has been plagued by ratification delays in some Schengen countries, fears of illegal immigration and, most recently, technical glitches.

Schengen members, which include all EU member states except Denmark, Ireland and the UK, have declined to set another deadline since they cannot predict when the Schengen computer system will be working well enough to replace border surveillance. It is hoped the agreement will be in place before the end of Germany's current Schengen presidency in June.

In fairness to Schengen, however, most controls at land borders, as many tourists can confirm, have been eliminated; checks at airports and other crossings persist, however.

The Commission has promised to enforce the legal obligation for all EU member states to lift their border controls, yet it also faces legal action from the European Parliament in the Court of Justice for (allegedly) not pressuring member countries enough.

...IN BRIEF

...Luxury-goods makers have received a boost from a recent European Court of Justice decision. The Court ruled that a company (in this case, Cartier SA) could limit guarantees on its products to those purchased from its approved dealer network. Because its selective distribution network is allowed under EU law, Cartier did not breach competition rules by refusing to accept guarantees on watches sold by a German retailer outside the network. The Court said that guarantees are essential to a selective distribution system for luxury goods.

...In a major overhaul of the Union's import regime, EU foreign ministers have agreed to scrap thousands of national import quotas which have existed for 30 years or more against mainly state-trading countries. The only remaining quantitative restrictions will be new EU-wide quotas for a limited number of textile products as well as seven categories of Chinese imports, including low-cost footwear, crockery and transistors. The ministers also confirmed the strengthening and streamlining of EU trade defense instruments described in last month's EURECOM.

...Denmark had the highest per capita GDP in the European Union in 1992 at 21,294 ecu ($27,640) per head, compared with an EU average of 15,617 ecu ($20,270) and a US figure of 17,950 ecu ($23,299). Following closely behind Denmark was Luxembourg ($26,954) and Germany ($24,081). In purchasing power terms, however, which reflect GDP per capita based on prices for comparable goods, the US exceeds all EU countries, and the EU rankings change dramatically: Luxembourg finishes first, followed by France and Belgium. Germany alone continues to account for more than a quarter of aggregate EU output, and the big five EU countries — Germany, France, Italy, the UK and Spain — produce 87% of EU GDP.

...On April 7 and 8, 1994, Fordham University School of Law will present its second annual conference on International Intellectual Property and Policy in New York City. Featuring speakers from the European Commission, the US government, academia and the US and international bars, the two-day conference will analyze international developments in copyright, patent and trademark law. For more information, please contact Helen Herman at (212) 636-6777.

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If you would like additional information on any article in this issue, please write or telephone Christopher Matthews or Kerstin Erickson at (212) 371-3804.

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EURECOM is published by Barbara Noël, Director of Press & Public Affairs, the European Commission, 3 Dag Hammarskjöld Plaza, 305 East 47th Street, New York, NY 10017. It is edited by Christopher Matthews. The contents of EURECOM do not necessarily reflect the views of the European Union's institutions. Any article may be reproduced without express permission. However, acknowledgement of the source and a copy of any material published would be appreciated.

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European Commission
3 Dag Hammarskjöld Plaza, 305 East 47th St., New York, NY 10017
Telephone (212) 371-3804

Bulk Rate
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Permit #88
Rutherford, N.J.

Head of Publications Sect
Commission of the EC
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Washington, DC 20037