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TOUGHER EU LINE ON MEGA-MERGERS

Competition Commissioner Karel Van Miert recently indicated that the Commission will likely take a more restrictive (or even negative view) on certain corporate mergers as more and larger cases come to it for clearance, particularly in the media sector.

Of the three mergers the Commission has blocked since 1990 (when the EU merger regulation came into effect), two have been media joint ventures (see EURECOM, November 1994).

According to Van Miert, the Commission will examine even more mergers this year than last year — when the number of cases falling under the merger regulation almost doubled to 95 cases. While agreeing that the creation of large entities does not necessarily harm competition, he stressed that each sector had to be analyzed separately.

Signalling a tougher attitude, the Commission has opened an investigation into the Luxembourg-based computer on-line services joint venture "Europe Online" between Burda of Germany, France's Matra-Hachette and the UK's Pearson.

The Commission's main goal in investigating on-line cases is to prevent at an early stage the establishment of anti-competitive situations which could stifle the development of online services, knocking out viable competition before an effective market has had a chance to grow. Although Europe's on-line services market is less than half that of the US — and two to three years behind the US in terms of available products and consumer interest — it is expected to double by the year 2000, reaching around 5 to 6 billion ecu (1 ecu=$1.30). To ensure stronger innovation, investments and benefits to European consumers, a careful monitoring is required, especially to ensure respect for competition rules.

In addition to Europe Online, the Commission and US authorities are cooperating in a review of the Microsoft Network, an on-line service that is part of the new Windows 95 operating system recently launched by the US software behemoth Microsoft.

FULL EU PROBE INTO KIMBERLY-CLARK/SCOTT PAPER MERGER

In a case with extraterritorial implications, the Commission has initiated a full investigation into the proposed merger between US-based companies Kimberly-Clark and Scott Paper to determine if it is compatible with EU antitrust rules.

The merger would create Europe's (and the world's) largest manufacturer of tissue products, with more than twice the worldwide capacity of the next largest competitor. It would also combine the marketing and technical strengths of both companies, as well as their Kleenex, Scottex and Andrex brands for facial tissue.

After a preliminary one-month inquiry, the Commission has provisionally identified several markets, especially as regards branded tissue products, where the companies' combined market share could create a dominant position, impeding competition. In particular, the merged company would appear to control over 75% of the UK's branded toilet and facial tissue market, and 50% of its branded paper towel market. Similarly, the parties enjoy strong positions in Italy and Ireland, and their brand strengths may give rise to competition concerns in other EU member states as well.

Now the Commission has a further four months to assess whether the proposed merger would create or strengthen a dominant position in any market contrary to EU competition rules.

In a joint statement, the Kimberly-Clark and Scott said they were optimistic that US and EU competition authorities would clear the merger after full-scale investigations.

COUNCIL AGREES ON CASH TRANSFER RULES

EU finance ministers have reached political agreement on binding rules to speed-up service and lower costs associated with cross-border money transfers, a crucial objective for the single market.

Based on surveys of EU cross-border money transfers, which found excessively high costs, rampant "double charging" (where both the sending and receiving banks charge the customer) and long delays for transactions, the Commission decided to propose binding legislation rather than voluntary guidelines last year (see EURECOM, November 1994).

Under the finance ministers' accord (which falls considerably short of what the Commission wanted), bank transfers of less than 25,000 ecu will have to arrive at their destination within six working days. Double charging will be banned unless the sender specifies that the cost of the transfer be split. Banks will also have to provide a guarantee for lost funds when the sum is less than 10,000 ecu. And banks will have to make available written (and understandable) information to consumers on all costs and details of transfers.

The directive, which now goes to the European Parliament (EP) for final approval, will come into effect 30 months after EP adoption. Two years thereafter, the maximum threshold for transfers will be raised from 25,000 ecu to 30,000 ecu. However, the directive is not out of the woods yet: the EP has already indicated it would like to see an overall ceiling of 50,000 ecu.

1994: A GOOD YEAR FOR EU EXPORTERS

In 1994, for the second year in a row, the EU posted a modest trade surplus with the US, while its trade deficit with Japan fell by 10% compared with the previous year.

According to Eurostat, the EU's statistical office, the EU ran a 1.9 billion ecu surplus with the US in 1994 (excluding the three new member states), which follows a 1.4 billion ecu surplus in 1993 (the EU's first surplus with the US since 1988). The EU registered a 13 billion ecu deficit with the US in 1992.

Nevertheless, the onset of economic recovery in Europe spurred healthy growth in 1994 EU imports from the US, up 11.3% to 93.1 billion ecu, and only slightly below the 11.7% rise in EU exports to the US. The US accounts for 17.6% of total EU trade.

By far, Germany is the main EU exporter to the US, accounting for 30% of the EU total, followed by the UK at 21.5%. In terms of US exports to Europe, the reverse is true: the UK is the US' main market, taking 27% of total US exports to Europe, with Germany (20%) in second position. Germany and Italy had the largest trade surpluses with the US at 9.5 billion ecu and 5.8 billion ecu, respectively. The Netherlands (5.4 billion ecu) and the UK (4.6 billion ecu) had the largest deficits.

Manufactured products dominate EU-US trade. In value terms, machinery and electrical equipment and optical and photographic instruments make up 46% of EU imports and 36% of EU exports. These figures indicate the importance of intra-industry trade in transatlantic commercial relations.

The improvement in the EU's deficit with Japan (22.2 billion ecu in 1994) was primarily due to a 19.2% rise in EU exports (from 22.8 billion ecu to 26.6 billion ecu) combined with only a 3.6% increase in imports from Japan over the previous year. The largest EU trade deficits were in machinery, electrical equipment, optical and photographic instruments, vehicles, aircraft and transport equipment. The EU recorded moderate surpluses in agricultural products, textiles, footwear and miscellaneous manufactures.

CONSULTATIONS ON PROTECTION FOR PART-TIME WORKERS

The Commission has decided to consult the "social partners" (i.e. management and labor representatives at the EU level) on what actions, if any, the EU should take to protect part-time, fixed- term and temporary workers.

Acting under the Social Protocol of the (Maastricht) Treaty on European Union, which gives the UK an "opt-out" from EU labor legislation (see EURECOM, October 1994), the Commission is giving the "partners" six weeks to indicate whether they believe EU action is appropriate. If the consensus is yes, the Commission will consult them again on what exactly the measures should cover, and if the three areas — part-time, fixed-term and temporary — need separate treatment.

Eventually, the partners, if willing, could negotiate an accord that the EU could then turn into law.

The UK has consistently vetoed legislation to guarantee part-time workers the same rights as full-time employees, but these blocks have come under the normal EU social policy provisions, which require a unanimous vote in the Council to pass into law.

While recognizing that there is real demand on both sides of industry for part-time employment, and that it has considerable potential for job creation, the Commission believes the establishment of certain basic rules at a European level would be desirable. These would seek to: bring about equal treatment in the labor market for part-time workers, thereby improving their working conditions and reducing their sense of insecurity; eliminate a major source of indirect job discrimination against women; and ensure fair competition between the member states.

Commented Social Affairs Commissioner Padraig Flynn: "Now is the time...to encourage further job creation and to reconcile the need for flexibility within companies with the need to ensure proper working conditions for these 'non-standard' workers."

EU-US BANANA DISPUTE MOVES TO WTO

After months of consultations, the Clinton Administration has decided to take its long-running complaint against the EU's banana import policy, which has allegedly caused "significant harm" to US banana marketing companies, to the World Trade Organization (WTO).

The EU banana import regime gives preference to produce from the 70 countries of the Lomé Convention, the EU's major development aid pact, over the "dollar" banana producers of South and Central America. The US does not export bananas to the EU, but US-based firms, like Chiquita Brands, export the fruit grown in various Central and South American countries to Europe.

Preempting a deadline for unilateral action against the EU under Section 301 of

US trade law, the US action is a tacit acceptance of the WTO's role in resolving trade disputes (see EURECOM, January 1995). However, US Trade Representative Mickey Kantor said he would start new action — which could possibly result in sanctions — under Section 301 at the end of WTO hearings or by March 27, 1997.

In response to the US move, the Commission indicated it would defend the EU policy in the WTO "if it goes that far." Over 150 countries (including the US) signed on to the Uruguay Round GATT agreement, which included the EU's banana policy and a waiver for the EU's obligations to Lomé countries. In addition, the regime is a delicate compromise respecting the interests of EU consumers and producers, Lomé producers and the EU's international obligations. "It took many years to put together...and will be difficult to change," said Gerard Kiely, the Commission's agricultural spokesman. Further, banana imports from Latin America have increased by nearly 100% over the past 10 years, and a recent independent report by Arthur D. Little found that if any US banana marketing or distribution companies had lost EU market share, it was due to competition from other exporters.

At present there are no plans for further EU-US discussions on the issue.

QUOTES

"If the single currency is not created, in ten or 15 years, Germany will have overcome all of the difficulties posed by reunification, and the German mark will dominate the European continent. In the light of history, this is something that must be avoided at all costs, because Germany's neighbors would band together against it." ***Helmut Schmidt.***

"A misconstrued currency union would not only endanger economic stability and prosperity. It would also be a setback to the process of European integration." German Bundesbank President ***Hans Tietmeyer.***

"If we have to adjust this or that criterion or the timetable (for a single currency), we could not tell where the process would end. When you open the Pandora's box, you don't know when you can close it again." Commissioner ***Yves-Tibault de Silguy.***

"The integration of the countries of Central and Eastern Europe will take place. But the Union must gain muscle as it gains weight." Commission President ***Jacques Santer.***

"The word 'Maastricht' is unlucky. I suggest we call the new Intergovernmental Conference 'Messina II' rather than 'Maastricht II'. With the Treaty of Maastricht, public opinion was placed before a fait accompli and took it quite badly...This time, we need a readable treaty." Spanish Secretary for European Affairs and Chairman of the Reflection Group preparing the 1996 Intergovernmental Conference (IGC) ***Carlos Westendorp.***

COMMISSION TACKLES MOBILE PHONE DISCRIMINATION

GSM (Global System for Mobile communications) is the digital mobile phone system developed in the EU which is currently achieving large-scale success. Acting in advance of liberalizing EU legislation (see EURECOM, July/August 1995), nearly all member states have introduced some competition in the sector, something the Commission welcomes.

Still, to provide a level playing field between new mobile communications operators and the incumbents — almost always the former monopoly telecom operators that enjoy the advantages of their universal phone networks, entrenched market dominance and established mobile subscriber bases — the Commission has intensified its screening of GSM licensing procedures in the member states.

For example, governments that charge entry fees for new GSM operators must either charge similar fees to the incumbents or compensate new entrants by easing regulatory requirements. In one recent case, Belgium is now charging the state telecom company, Belgacom, the same fee that was charged Mobistar, a Belgo-French consortium, after it won the second Belgian GSM license. In another, the Commission is threatening legal action against the Italian government for charging a GSM fee to a second operator, Omintel, without charging the state company Telecom Italia for its existing license.

The Commission opposes entry fees in principle because those costs are passed on to consumer, but if they are imposed, they must be applied equally.

...IN BRIEF

...Against a background of jittery financial markets, stemming from recent high profile disagreements and controversy over monetary union (EMU) among some member states, EU finance ministers and central bankers met "informally" in Valencia, Spain, where some important issues were clarified and the process was put back on track. First, January 1, 1999 remains the starting date for the single currency, but the political decision on which EU countries meet the Maastricht treaty criteria will be taken on actual 1997 economic data (likely ready in early 1998) rather than on forecasts or quarterly results. Second, the Valencia meeting reaffirmed a strict interpretation of the EMU criteria, particularly as regards budget deficits. Third, efforts to introduce the new currency rapidly for most monetary transactions will proceed slower (over 3.5 years) than called for in the Green Paper (see EURECOM, June 1995), and it will be market-led. Last, though not yet official, "euro" appears to be the front-runner for the name of the future single currency in lieu of the "ecu".

...On September 17, Sweden held its first post-accession election to the European Parliament (EP), which reflected the very strong anti-EU winds blowing over Sweden lately. The big winners were the two "No-parties", the Greens and the Leftists, which together took over 30% of the vote and increased their number of seats from one a piece to four and three, respectively, of Sweden's 22 in the EP. The chief loser was the governing Social Democrats, who are extremely split on the EU issue. Emboldened by their success, the No-parties will try to force referenda on the outcome of the 1996 IGC and Swedish accession to the final stage of EMU.

...Over 50% of packaged business software is illegally copied in western Europe, compared with 35% in the US according to a report prepared by Price Waterhouse for the Business Software Alliance (BSA), a group of US software publishers formed to fight piracy. "Software theft is the single biggest threat to the ongoing health of the computer software industry," said BSA president Robert Holleyman. By cutting piracy in Europe to US levels over the next five years, the report contends that Europe could generate 87,000 jobs and $2.3 billion in extra tax revenues. The main reason for such high levels of piracy in Europe: ignorance. Often nobody manages software within a company, and it is rarely treated as an asset. The BSA wants EU countries to make software piracy a criminal rather than civil offense, so that higher fines can be imposed.

...EU Humanitarian Affairs Commissioner Emma Bonino will be in New York on October 23, 1995, where she will address the National Committee on American Foreign Policy on "The Political Dimension of Humanitarian Affairs". The event will take place at CUNY's Graduate School and University Center, 33 W. 42nd St., Room 1700A, at 5:00 pm. To register, please call (212) 224-1120.

...The European Union Studies Center of the Graduate School and University Center of CUNY and the Foreign Policy Association will host a lecture by European Parliamentarian Elizabeth Guigou at 5:45 pm on Monday, October 30, 1995 at 33 W. 42nd St., Room 1700A, in Manhattan. A former French minister for European affairs, Mrs. Guigou is a member of the Reflection Group that is preparing the EU's 1996 IGC to review the Maastricht treaty. Appropriately, the title of her presentation is "The EU's Intergovernmental Conference: A Constitution for Europe?" To RSVP, please call (212) 642-2977. Seating is limited.

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