EURECOM
Monthly bulletin of European Union Economic and Financial News

VOLUME 8, NUMBER 2 FEBRUARY 1996

EU MOBILE COMMUNICATIONS FULLY LIBERALIZED

Keeping up the pace of telecom liberalization, the Commission has formally adopted an Article 90 directive to open the EU mobile and personal communications market to full competition (see EURECOM, July/August 1995).

(Article 90 allows the Commission to issue legislation curbing public monopolies contrary to the public interest without Council approval.)

The legislation requires member states to abolish all exclusive and special rights (i.e. national monopolies) in mobile communications and to establish — where it does not already exist — open and fair licensing procedures for digital services like GSM (Global System for Mobile Communications). It also removes all existing restrictions on operators' use of their own infrastructure as well as third party infrastructure, such as utilities' networks.

Access to infrastructure other than that controlled by the incumbent telecom operator is essential to the success of new entrants to the mobile market, giving them much more control over their cost base. At present, leasing capacity represents a cost factor of between 30 and 50% for second operators. Further, this access affords mobile operators significantly more flexibility, aiding further development and innovation in the mobile market.

By far the most dynamic sector in the EU telecommunications market, the mobile communications industry has been experiencing annual average growth of around 60%. In fact, the number of cellular subscribers in Europe has grown from around 12 million to over 20 million over the last year, far outstripping the growth of "fixed" phone customers. And the vast majority of new mobile users are enjoying digital services, which allow them to travel throughout Europe with the same handset. Commission studies forecast 38 million cellular phone users by 2000, and around 80 million by 2010.

While the directive takes effect immediately, member states have nine months to notify the Commission of their implementing legislation. Greece, Portugal, Spain and Ireland — countries with "less developed networks" — may apply for derogations of up to five years (from January 1996).

US CHALLENGES EU'S MEAT-HORMONE BAN

In a long-simmering dispute, the US has filed a complaint with the World Trade Organization (WTO) against the EU's ban on hormone-treated meat, citing recent scientific evidence that use of natural hormones in livestock does not threaten human or animal health (if used correctly).

The US and the EU have been at odds on the issue since January 1989, when the EU's ban on the use of hormones in livestock production went into effect. Under Section 301, the US government imposed unilateral retaliatory measures — 100% ad valorem duties — on a range of EU exports valued at around $100 million, the US's perceived loss in exports to the EU in beef and beef products due to the ban. For the most part, these sanctions remain in force. Despite periodic efforts to de-escalate the dispute (and the steady increase in US exports of hormone-free beef to the EU), the quarrel now continues under the new WTO dispute settlement mechanism.

"We don't contemplate lifting the ban or negotiating with the Americans, bearing in mind consumer trends," said EU Farm Commissioner Franz Fischler recently after both the European Parliament and the Agriculture Council gave "virtually unanimous" support for a continuation of the ban.

Although the EU has agreed to consultations with the US under the WTO procedure, the EU's WTO Ambassador, Jean-Pierre Leng, said that "it is not acceptable that the US take the case to the WTO for eventual adjudication while they have already determined unilaterally that we are in violation of the rules and are imposing sanctions...If they are challenging us in the WTO, they should respect the WTO rules (and drop the sanctions)," he said.

If initial talks fail (as expected), the US can ask for a WTO dispute panel after 60 days. However, even if the WTO rules against the EU's policy, the ban would not be necessarily lifted: other forms of compensation could be offered.

EU PARENTAL LEAVE ACCORD TAKES NEXT STEP

On the heels of the historic framework agreement on parental leave reached by the "Social Partners" (see EURECOM, December 1995), the Commission has proposed a Council directive designed to transpose the agreement into EU law.

Based on the Social Protocol (SP) of the Maastricht treaty and decided between UNICE (European employers' confederations), the ETUC (European trade unions) and the CEEP (public enterprises), the agreement guarantees a minimum of three month's unpaid parental leave, regardless of gender. It also allows workers to take time off for urgent family reasons.

Under the SP, legislation is decided by qualified majority voting in the Council of Ministers, minus the UK, which has an opt-out. Hence, if adopted, the directive would apply in 14 member states, although UK companies could voluntarily follow the directive's provisions . Both member states and companies could also go further than the framework's minimum standards, but those EU countries offering more generous parental leave plans would not be allowed to scale back benefits.

EU MERGER RULES REVISITED

Taking account of the single market's growth and development — and to initiate debate — the Commission has issued a Green Paper on a range of possible, pragmatic changes to the EU's merger regulation, which offers speedy reviews and legal certainty for companies engaging in large cross-border mergers.

Encouraged by the success of the "one-stop-shop" examination procedure, and because a number of important mergers with cross- border effects fall outside the regulation's present scope (at least 5 billion ecu in worldwide turnover, and 250 million ecu at the EU level), the Commission advocates reducing the thresholds to 2 billion ecu and 100 million ecu (1 ecu=$1.24), respectively.

Failing sufficient member state support for lowering the thresholds — and several are strongly opposed — the Commission recommends that it examine deals affecting several member states even if they fall under the thresholds. This "second option" would only partially address the problem posed by the high level of present thresholds, but it would solve the problems related to multiple notifications, ensuring that companies benefit from the "one-stop-shop" principle. In some EU mergers, as many as five or six competition authorities need to be notified.

The Commission broached the lowering of thresholds in 1993 (see EURECOM, September 1993), but decided to keep them at their current levels in the face of member state opposition. Businesses, however, were (and still are) broadly supportive of extending the Commission's scope in the mergers area.

Concerning the treatment of joint ventures (JVs), the Green Paper also entertains a range of improvements. Under the present system, a distinction is made between "concentrative" JVs and "cooperative" ones: the former are covered by the merger regulation, and the latter fall under Article 85 of the EC treaty. This separate treatment leads to certain disparities, particularly in terms of time limits: the merger regulation has a time limit of one month for a first review period and four months for a second, while Article 85 has no such time limits. The options for improvement vary between a simple improvement in existing procedures to the application of the merger rules to cooperative JVs.

COMMISSION CLEARS KIMBERLY-CLARK/SCOTT PAPER MERGER

After five months of extensive investigation, the Commission has approved the proposed merger between the US-based paper industry giants Kimberly-Clark and Scott Paper (see EURECOM, October 1995). This approval, however, was granted only after the parties agreed to substantial modifications to the merger in Ireland and the UK, where the Commission had a number of competition concerns in markets for toilet tissue, facial tissues and kitchen towels.

The Commission's clearance was the last regulatory obstacle to the creation of the world's (and Europe's) largest paper tissue manufacturer. On the US side of the transaction, the US Department of Justice authorized the merger in December.

To satisfy the Commission's caveats on the deal, the parties agreed to the following changes in Irish and UK markets: divestment of Kimberly-Clark's existing branded consumer toilet tissue under the Kleenex nameplate; divestment of Scott's "Scotties" and "Handy Andies" brands of facial tissue and an undertaking not to use the Andrex trademark for an indefinite period; and divestment of Kimberly Clark's 80,000 ton-per-year tissue mill in Prudhoe, England.

Had the merger not been modified, the Commission believes there would not have been sufficiently strong inter-brand competition in the "separate geographical reference markets" of Ireland and the UK. Taken together, the companies' share of both branded and private label products lies between 40% and 60% for each of the three relevant product markets at present.

STREAMLINED TAKEOVER RULES PROPOSED

The Commission has put forward a new and streamlined directive on public takeover bids in the EU, replacing the previous proposal for a 13th Company Law Directive on takeover bids, which was part of the 1985 White Paper program on completing the single market.

The new proposal aims to ensure that minority shareholders' rights are respected in a change of control of a listed company, and that minimum guidelines on information about and conduct of a takeover are followed. Further, it calls for the board of a target company to act in the interests of the company as a whole, especially with regard to shareholders' interests.

Unlike the previous proposal, however, which featured elaborate, harmonized requirements on the publication of bids, contents of offer documents and revisions of bids, the new draft leaves it to the member

states to determine how best to meet the directive's requirements in line with their existing traditions and structures. It would allow national differences to remain as long as they do not undermine the directive's common principles.

Similar to the earlier legislation, the new proposal obligates the member states to designate an authority to supervise all aspects and rules of takeover bids; unlike the previous draft, however, this authority could be a self-regulating body.

Even if the directive is eventually adopted, takeover barriers in the member states will persist, preventing a completely "level playing field" for takeovers in the EU. These are primarily due to either the different level of capitalization of national markets or to company law provisions which allow the control of a company to remain with "friendly" shareholders (i.e. disproportionate voting rights for certain categories of shares). The Commission is fully aware these obstacles may hinder the restructuring of EU companies, but they will have to be addressed through future legislation.

QUOTES

"As a small boat moored offshore from a big European currency, we (the UK) shall be so affected by cross-currents and winds coming off the big ship that...sterling will be a sitting target for speculators." Former Commission President ***Lord Jenkins****.*

"European monetary union should be far less a priority than European growth...If the bar is set too high, and that means stagnant growth and high unemployment, that is not without its real costs." ***Jeffrey E. Garten****, Dean of the Yale School of Management and former US Under Secretary of Commerce.*

"In 1998 there will be a moment of political evaluation and the element of political willingness to realize monetary union will be very important then, but it can only have full play if we...concentrate now on meeting the (EMU) criteria." Belgian Prime Minister ***Jean-Luc Dehaene****.*

"We are running the risk of reaching the third millennium with an Orwellian situation of having 'alphas' and 'betas', a society divided by those who have and those who don't have a job. We will have a rich Europe, but with serious problems in its social structure...We will probably have a frustrated Europe." Commissioner ***Joao de Deus Pinheiro****.*

"I would regard it as a disastrous development if Europe's strength were to diminish with its enlargement. However, I would find it equally disastrous if Europe were only able to derive its strength from keeping others out." German Chancellor ***Helmut Kohl****.*

"The time is ripe to abandon old cliches and stereotypes...Post-communist countries are sensitive about being treated as something strange, potentially unstable or dangerous and unknown. I know there is no Iron Curtain anymore, but there is a curtain of textile, a velvet curtain." Czech Prime Minister ***Vaclav Klaus****.*

CZECH REPUBLIC JOINS EU MEMBERSHIP LINE

The Czech Republic recently presented its application for EU membership to (now former) Italian Prime Minister and EU Council President Lamberto Dini, saying its commitment to economic liberalization and its multi-ethnic history qualify it to join.

"The significant headway made by the Czech Republic in the reconstruction of a democratic society and open market economy under conditions of political and economic stability justifies such a step," said the Czech application.

"I foresee that (the Czech Republic) will be among the first, if not the first, to enter after the intergovernmental conference (IGC)," said Dini.

At the Madrid summit in December (see EURECOM, January 1996), EU leaders agreed that new membership negotiations could start six months after the conclusion of the IGC (probably mid-1997), which aims to prepare the EU treaties and institutions for enlargement to 27 members or more in the future.

The list of candidates for EU membership is long and growing. The following is a rundown of the 12 applicant countries along with their dates of application: **Turkey** (4/14/87); **Cyprus** (7/3/1990); **Malta** (7/16/90); **Hungary** (3/31/94); **Poland** (4/5/94); **Romania** (6/22/1995); **Slovakia** (6/27/1995); **Latvia** (10/27/1995); **Estonia** (11/28/1995); **Lithuania** (12/8/1995); **Bulgaria** (12/16/1995); **Czech Republic** (1/23/1996).

FIRST ASIA-EUROPE SUMMIT SLATED FOR MARCH

The first-ever summit meeting of leaders from the EU member states, the European Commission and the leading Asian countries will take place March 1-2 in Bangkok, Thailand.

Hosted by the Thai government, the two-day Asia-Europe (ASEM) meeting will cover a full range of political and economic matters, offering an unprecedented opportunity to set new goals for the rapidly developing EU-Asian relationship. While the main thrust of the meeting will be economic cooperation — trade, technology transfer, investment and development aid — political issues, including controversial topics like labor standards, will be fielded.

The meeting will be attended by the heads of state and government of the 15 EU member states (as well as the European Commission), the seven ASEAN countries (Brunei Darussalem, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam) plus China, Japan and South Korea.

Reflecting the increased political significance of the fast growing Asian economies, this initiative builds on calls within Europe for a new strategic approach toward Asia, outlined by the Commission in the July 1994

Communication "Towards a New Asian Strategy". The report advocated a stronger EU economic presence in Asia, in particular through increased European investment, coupled with enhanced political dialogue. Still, the summit idea was initially proposed by Singapore, and then endorsed by ASEAN and the European Council.

...IN BRIEF

...Not all economic news coming out of Europe is gloomy. Average annual EU inflation remained at 3% in December 1995, the same as in November 1995 and compared with a year ago. According to Eurostat, Finland registered the most impressive performance, with prices rising a mere 0.3%, followed by Luxembourg (1.3%) and Belgium (1.5%). Although down from over 10% in December 1994, Greece had the highest EU inflation rate at 8.1%, trailed distantly by Italy at 5.7%.

...The WTO has established a new committee to analyze the impact of about two dozen (and growing) regional trading arrangements on the global trading system. Under certain strict criteria, the WTO allows regional trading groups as an exception to the most-favored- nation (MFN) principle; in practice, however, such pacts are never ruled as violating GATT rules. Taking over the work of 20 separate working parties on individual regional pacts, the committee will also examine the consistency of such groupings with international trade rules. Among the regional pacts under scrutiny are the North American Free Trade Agreement (NAFTA), the most recent EU expansion (Austria, Finland and Sweden) and Mercosur (Argentina, Brazil, Uruguay and Paraguay).

...The **European Union Studies Center** at the Graduate Center of CUNY is sponsoring a lecture by **Dan Bavly**, a Harvard University Kennedy Center Fellow, on EU-US rivalries in the Middle East Peace Process. It will take place Tuesday, March 12, 1996 from 12:15 pm - 2:00 pm. To reserve a seat, please call (212) 642-2977.

EURECOM Monthly bulletin of European Union Economic and Financial News

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.

Please send a regular free copy of EURECOM to:

Name ____________________

Position ____________________

Organization ____________________

Address ____________________

Special Interests ____________________

EURECOM is published by Barbara Noël, Director of Press & Public Affairs, the European Commission, 3 Dag Hammarskjold 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.

Printed on Recycled Paper.

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