

EU-US BEEF HORMONE SAGA SIMMERS ON, NEARING A BOIL

As the May 13 deadline for the EU to comply with a WTO ruling against its ban on hormone-treated beef approaches (too late for this month's issue), the stew has considerably thickened.

First, in March, the US took steps to prepare trade sanctions against the EU à la the banana case (i.e. 100% ad valorem tariffs on a list of EU goods, see EURECOM, April 1999), to the tune of \$900 million – ten times the amount of damages the US itself calculated up until three years ago — if a bilateral settlement cannot be reached. In the end, the US damage claim could be less than the initial \$900 million figure but, nevertheless, the US sanctions “gun” is fully loaded and ready for WTO approval if “needed”. (The list of targeted goods is available at <http://www.ustr.gov>.) Canada, a co-complainant with the US, has also targeted EU goods for retaliation.

Next, after an independent study in Europe indicated hormone residues in some 12% of US beef imports that were certified as hormone-free, the European Commission decided to suspend completely *all* imports of beef and bovine from the US as of June 15th. This was a short-lived decision, however, as the US quickly delivered an acceptable plan to increase oversight and sampling of hormone-free US beef bound for the EU.

On April 27, EU foreign ministers called on the Commission to step up negotiations with the US and Canada on provisional compensation for lost trade due to the ban, pending definitive results from EU scientific studies on hormone residues and their effects on human health (see EURECOM, February 1999). They also indicated that the Commission should pursue a labeling option as well, an area where the US and the EU are at loggerheads. In a nutshell,

the US wants a generic label for its beef, with an indication of country of origin only, while the EU wants labels that show whether or not the US beef is hormone-treated.

In the latest twist, a preliminary report released on May 3 by the EU's Scientific Committee on veterinary measures finds that the use of the six growth hormones in cattle poses risks to consumers – in particular 17 beta-oestradiol, (which, according to the committee, “has to be considered a complete carcinogen”) – albeit with different levels of conclusive evidence. Based on these findings (which are not complete and lack enough information for a quantitative assessment at present), the Commission agreed that there could be no question of lifting the ban on hormone-treated beef; hence, some sort of interim EU compensation to the US and Canada is the most likely course. The Commission also expressed deep concerns about the US attempt to belittle the risks identified in the study, especially because the population group at most risk is prepubertal children.

According to special US trade negotiator Peter Scher, the study is a “blatant attempt to politicize” the regulation of food safety, and contains no new evidence. EU Consumer Policy Commissioner **Emma Bonino**, however, had a different take: “The scientific evidence is of enormous importance to European consumers as it demonstrates that the Commission was right to strenuously defend the ban on hormones. We now have a scientific basis to defend our position.”

And so it goes. EURECOM will update this simmering beef about hormone-treated beef in next month's issue.

ANTITRUST, MERGER DECISIONS CONTINUE APACE

While the wait for a “new” Commission could last through September, a great deal of “current and urgent” EU business continues in the interim, especially in the competition policy and mergers arena. The following is a round up of recent Commission decisions in these fields.

The Commission has approved **Deutsche Bank AG's takeover** of the US-based **Bankers Trust Corporation**, an amalgamation of the largest German bank and the eighth largest US bank that will create the largest financial services company in the world, with assets of 780 billion euro (1 EUR=\$1.07), ahead of UBS and Citigroup. This first major transatlantic banking merger will also be the

world's fourth largest asset manager, but will still face intense international competition in this market.

In the European Economic Area (EEA), where Deutsche Bank has two-thirds of its turnover, but Bankers Trust only one-fifth (and no major retail banking and lending presence), the takeover is unlikely to have a major impact on competition, and therefore will neither create or



reinforce a dominant position in any of the relevant markets.

US authorities are still examining the merger.

International telecom giant **AT&T Corp.'s acquisition** of the **IBM Global Network** business (IGN), which offers managed telecommunications solutions services, has also been cleared by the Commission. In its acquisition, AT&T will gain sole control of IGN's business and assets, including part of the existing corporate and consumer customer base. Although the Commission's investigation found that the proposed operation would give rise to overlaps in the managed telecommunications services area, the combined activities would still face significant competition in the EEA.

After a two-year investigation, kicked off by a surprise "dawn raid" in December 1996, the Commission has charged **DaimlerChrysler** with preventing cross-border sales of its passenger cars within Europe from 1985 to 1996.

Although the period concerned was well before Daimler-Benz AG's merger with Chrysler Corp. last year, DaimlerChrysler could face a fine of up to 10% of last year's worldwide turnover (which was 131.78 billion euro).

In its "statement of objections", the Commission alleges that Daimler instructed its dealers in four member states – Germany, Belgium, Spain and the Netherlands – not to sell to consumers from other EU countries, something which violates EU rules and is a major factor in the large and persistent price disparities for car models across the EU. According to the Commission, Daimler specified in its contracts that dealers were not to sell to foreigners, and it used its control over spare parts deliveries and dealer discounts to keep dealers from straying from this policy.

DaimlerChrysler now has until mid-June to respond to the Commission's charges. Based on DaimlerChrysler's response, the Commission will decide whether a prohibition decision is necessary and whether a fine is justified (which could be challenged before the European Court of Justice).

In a similar case and for similar reasons, the Commission fined Volkswagen (VW) a record 102 million euro last year; the outcome of VW's appeal to the ECJ is awaited.

EUROPEAN PARLIAMENT BACKS PRODI NOMINATION

In a first step toward installing a new Commission executive, the European Parliament (EP) approved the nomination of **Romano Prodi**, former Italian prime minister, as President of the European Commission on May 5 (see EURECOM, April 1999).

MEPs voted 392 to 72 with 41 abstentions (and 121 not present) for the appointment of Prodi, who will now draw up a team of Commissioners in conjunction with the member states as per the Treaty of Amsterdam (which came into force on May 1; see EURECOM, July/August 1997). Prodi told the EP that the Commission he had in mind "would have the powers, political awareness and the will to work as a team, to improve efficiency and transparency and to express a strong political program."

He went on to say that his plans to introduce reforms in national markets and EU institutions in preparation for enlargement to the east could be at risk if the Union is unable "over the next three to four months to bring peace to the entire geographical region of Europe." (For a copy of Prodi's speech to the EP, please go to http://europa.eu.int/comm/commissioners/prodi/speeches/040599_en.htm.)

Keeping a promise and setting an example for the recruitment policy he expects from his fellow Commissioners, Prodi has already chosen Commission official and Irish national **David O'Sullivan** as his "chef de cabinet" (chief of staff). According to Prodi, the cabinets "need to acquire a more markedly supranational structure and must simply serve as an instrument supporting the policies developed by the President and the Commissioners." And the task of implementation must be left to the Directorates-General, "which need a greater degree of autonomy and increased responsibility."

He also called for a substantial number of women among the 20 new Commissioners, and declined to rule out the reappointment of some of the current Commissioners as long as they were untainted by the allegations of mismanagement, fraud and nepotism.

Prodi will take office only when the new Commission is fully in place, probably sometime in September.

EU COMPETITION POLICY: REFORM IS IN THE AIR

Aiming for a new, more efficient system of antitrust enforcement "suitable for the EU of the future", the Commission has released a White Paper on reform of EU competition policy rules (i.e. Articles 85 and 86 of the Treaty).

It proposes three main objectives: rigorous enforcement of competition law, effective decentralization of its application and simplification of enforcement procedures.

The reform's primary aim is to decentralize the notification process for – and power to authorize – companies' exemptions from restrictive practices (e.g. production-sharing arrangements). Since 1962, the Commission has had exclusive power in this area, and in the early years this proved effective in the development of a "culture of competition" in Europe. But this has scarcely been modified since, and the EU and its economy have enlarged considerably over the years. In this changed, global environment, a centralized authorization system will no longer ensure effective application of EU competition rules. Hence, the Commission proposes decentralizing many of these Article 85 tasks to national competition authorities and courts, like has already been done for Article 86 cases (abuses of dominant position). This would relieve the growing pressure on the Commission's antitrust resources, freeing them up to investigate complaints and to examine the current slew of large cross-border mergers.

"Our aim now is to prepare the Union for the challenges of the next century by allowing the Commission and the national



competition authorities to concentrate their resources on the most serious restriction of competition," said (acting) EU Competition Commissioner **Karel Van Miert**.

(The complete White Paper is now available at this address: http://europa.eu.int/comm/dg04/entente/other.htm#dgv_pdf_wb_modernization.)

On a related front, change in the EU's approach to "vertical restraints" – agreements between producers and distributors – along the lines set out in an earlier Commission Communication (see EURECOM, October 1999) has been set in motion after a Council agreement on legislation to extend the Commission's powers in this competition policy area.

The legislation will allow the Commission to adopt a regulation (pursuant to Article 85 (3) of the Treaty) for vertical restraints that would introduce one broad "block exemption" covering all vertical restraints affecting finished or intermediate products, as opposed to the various rules for specific sectors (or forms of restraint) that exist at present. Nevertheless, the block exemption would be subject to certain conditions like, most significantly, a market share threshold for the firms in such arrangements. Below the threshold – 30% is now the working level – companies would not have to assess whether their distribution agreements comply with EU competition rules. In addition, the exemption would exclude certain fundamental restrictions, such as the imposition of resale prices (i.e. fixed or minimum prices) and forms territorial restrictions that thwart the objective of market integration.

All vertical agreements would also be freed from the requirement that they be notified to the Commission prior to individual exemption.

Once the Commission completes the draft block exemption and guidelines for vertical restraints, they will circulate to all interested parties for comment.

COUNCIL ACCORD ON ELECTRONIC SIGNATURES

Moving to eliminate one of the last obstacles to cross-border electronic com-

QUOTES

"If we put liberalizing markets and social Europe in contradiction, we shall ruin the market and social Europe at the same time." Newly nominated European Commission President Romano Prodi.

"We have to fight for our Europe where boundaries no longer matter, against old notions of a Europe of ethnic identity and race-based violence. An integrated Europe with an open wound in the Balkans is unimaginable." German Deputy Foreign Minister and Green Party member Ludger Volmer.

"If European governments (unwisely) pushed... US legislation on trade with Cuba to a WTO trade panel, Americans would insist that political priorities must override legal determination. Yet where European domestic politics con-

strain trade negotiations, as on beef hormones and genetically modified organisms, Washington is narrowly litigious." Professor William Wallace, London School of Economics.

"These disputes tend to get exaggerated out of proportion. This is just a blip on the screen." Julius Katz, former US trade negotiator, commenting on the banana dispute.

"How the EU handles biotechnology will help determine the future of our enormously important bilateral economic relationship, and the international trade rules we have worked so hard to establish." US Undersecretary of State for Economic, Business and Agricultural Affairs Stuart Eizenstat.

merce ("e-commerce") in the EU, the Council has reached a Common Position on a legal framework for the use of "electronic signatures" (see EURECOM, June 1998).

Electronic signatures allow someone receiving data over electronic networks to determine the data's origin (identity) and to verify whether the data has been altered or not (integrity). By laying down minimum rules concerning security and liability, the directive would ensure that electronic signatures are legally recognized throughout the EU on the basis of the single market principles of free movement of services and home country control.

The main elements of the Common Position, which now goes to the European Parliament for approval under the co-decision procedure, are:

- **Essential requirements** for electronic signature certificates, services and products to ensure minimum levels of security, allowing their free movement throughout the EU;
- **Minimum liability rules** for service providers, who would be liable for the validity of a certificate's content;

- **Legal recognition**, whereby an electronic signature would be legally equivalent to hand-written signatures as long as certain essential requirements are met;
- **A technology neutral framework**, providing for legal recognition of electronic signatures irrespective of the technology used (because it is changing so rapidly);
- **Limited scope**, so that closed user groups (e.g. corporate intranets, where a trust relationship exists) would not necessarily have to apply the directive;
- **An international dimension** to facilitate e-commerce at the world level on the basis of mutual recognition of certificates and on bilateral or multilateral agreements.

...IN BRIEF

...The three-year transition period before euro notes and coins are introduced should not be shortened, recommended the Commission recently. Any



benefits from a swifter changeover would be outweighed by the lead times needed to produce euro-denominated currency, demands on computing resources and public authorities and potential legal complications. Hence, it concludes that the introduction of euro notes and coins should start on January 1, 2002, as has long been foreseen. In January, the ECOFIN Council had asked the Commission to examine the scope for shortening the transition period.

...The **Stuttgart region** of Germany is the "high-tech capital" of the EU according to a new Eurostat report, which identifies the top 15 EU regions in terms of their share of total employment accounted for by the high technology sectors of the economy. Stuttgart tops the list with 23.3%, followed by Karlsruhe with 21.1%. In fact, **Germany accounts for 10 of the 15 regions**, France two, and Italy, Sweden and the UK one each. Some 16 million people (1997 figures) work in high-tech sectors EU-wide, around 10.6% of total employment. Of these, 4.4 million jobs (2.9% of total employment) are in high-tech services, as opposed to manufacturing. Germany is also the main high-tech employer, providing 27.5% of all EU high-tech jobs, followed by the UK (19.9%), France (15.1%) and Italy (11.7%). Taken together, these

countries encompass three-quarters of total EU employment in high-tech sectors, compared with just under 70% of total EU employment in all sectors.

...The EU has decided to delay by one year the entry into force of a law to limit aircraft noise, defusing a row with the US over limits on "hush-kitted" airplanes (i.e. older aircraft fitted with noise mufflers that the EU still considers too noisy). The regulation would have banned the addition of newly hush-kitted aircraft to national air registers from April 29 of this year, and as of April 2002, it would have

prevented the use of such aircraft from third countries that were not operating in the EU prior to April 1999. Now the legislation will apply one year from now, giving (mainly US) companies an extra year to introduce newly hush-kitted aircraft in the EU. The EU and the US will continue talks on possible amendments to the regulation, which the US believes is discriminatory toward US firms like Boeing. For the EU, the motivation behind the measure is to reduce noise and pollution around Europe's congested airports, rather than for any for trade reasons.



MONTHLY BULLETIN OF EUROPEAN UNION
ECONOMIC AND FINANCIAL NEWS

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EURECOM is published by Wouter Wilton, 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.

Printed on Recycled Paper.

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