

Brussels Brief

A weekly overview of the regulatory, legal and political developments of the institutions and the issues facing the European Union



September 30, 2005

Key Developments

Environment: Strategy to Reduce Greenhouse Gas Emissions from Aviation Industry

Iveta Mikelsone

The European Commission has issued a Communication regarding reducing the impact of aviation on climate change. The rapid growth of the aviation industry contributes to increasing emissions of greenhouse gas (GHG). After considering a number of solutions to reduce GHG emissions the Commission suggested that the aviation industry be brought within the EU's Emission Trading Scheme which has been in operation since the beginning of 2005. The Commission will set up an Aviation Working Group for this purpose and aims to put forward a legislative proposal by the end of 2006. The Commission claims that ticket prices will not be greatly affected by this measure.

Internal Market: Commission Initiative to Cut Red-Tape and Over-Regulation

Mélanie Bruneau

The European Commission initiative on better regulation consists of three elements including withdrawal or modification of pending proposals, simplification of existing European Union (EU) legislation and better quality of new Commission proposals. First, after having screened 183 EU legislative proposals pending at the European Parliament and Council, the Commission has decided to scrap 68 proposals. Some were found inconsistent with the Lisbon Partnership for Growth and Jobs or better regulation criteria. Others were unlikely to make further progress in the legislative process or were outdated. The remaining proposals that constitute significant new legislative initiatives will be maintained. Second, the Commission's efforts will focus on simplifying and updating the existing 80,000 pages of EU legislation. To this end the Commission has started a broad public consultation. Third and last, new Commission proposals will be accompanied by an improved impact assessment that will reinforce economic analysis.

Agriculture: British Beef Back on the Menu?

Anthony Seymour

The European Commission will begin preparing a proposal which could bring the current restrictions on the UK beef trade in harmony with the rest of Europe. Before this could be contemplated, the Commission set two minimum conditions with which Britain had to comply. The first, which stated that the number of instances of Bovine Spongiform Encephalopathy (BSE) had to fall below two hundred per one million animals per year, was satisfied in February 2005. The second hinges on a favourable investigation from the Commission's Food and Veterinary Office (FVO) to assess whether the UK is able to comply with current EU controls against BSE. The FVO report was discussed with other Member States on 28 September 2005 and satisfactory progress was noted in most areas. The Commission will now prepare a proposal which will form the basis of a discussion with the other Member States on the removal of the embargo on British beef.

Trade: EU Requests Second WTO Arbitration on its Revised Proposal for the Banana Import Regime

Michal Cieplinski

The EU has submitted a request for a second arbitration on its proposal for a new import tariff for bananas from countries benefiting from Most Favoured Nation (MFN) status. The current dispute commenced after the EU agreed with Ecuador and the United States in 2001 to move from a complex import system based on combination of tariffs and quotas for MFN bananas to a regime solely based on a tariff by 1 January 2006. The EU has initially proposed a single tariff of EUR 230 per tonne. This tariff, pursuant to the World Trade Organisation (WTO) arbitration requested by Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Venezuela, was found on 1 August 2005 as not resulting in at least maintaining total market access for MFN banana suppliers. As a result, the EU presented a revised proposal for an import duty of EUR 187 per tonne for MFN suppliers and a tariff quota of 775,000 tonnes at zero duty for bananas originating in African, Caribbean and Pacific (ACP) countries (see Brussels Brief of 16 September 2005). This revised EU proposal, after three rounds of consultations, was not accepted by the Latin American and ACP countries and this rejection resulted in the current EU request for a second arbitration. The

arbitrator will now be asked to determine within 30 days of the new arbitration request, whether the EU has sufficiently corrected its initial proposal in order to grant sufficient market access for MFN banana suppliers.

Mergers: Commission Opens Second Phase Investigation into Omya Acquisition of J.M. Huber's On-Site Paper Mineral Business

Yannis Virvilis

The European Commission has initiated second phase proceedings in the acquisition by the Swiss-based company Omya of the on-site precipitated calcium carbonate ("PCC") business of the US company J.M. Huber. This case was referred to the Commission by the Finnish competition authority. The Austrian, French and Swedish authorities also joined the referral. Omya is active in industrial minerals supplied to the paper industry such as PCC and natural ground marble calcium. These products are used as filling and coating agents in the paper business. The Commission found that the market for on-site PCC is characterised by high concentration and high barriers to entry, thus necessitating a closer scrutiny. The Commission's further investigation will focus on the possible creation of single or collective dominant position among the suppliers of carbonates to the European paper industry.

Mergers: Acquisition of Lynx by UPS approved

Patrice Corbiau

The European Commission has approved the proposed acquisition of Lynx Express Limited (Lynx), a UK-based parcel delivery company, by UPS (UK Holding) Limited (UPS UK), the UK-based subsidiary of the US company United Parcel Service. UPS UK provides international parcel and document delivery solutions as well as freight services and logistics. Lynx provides domestic and international delivery services, road and airfreight forwarding services and, to a limited extent, mail and spare part services. The Commission's investigation showed that the horizontal overlaps between the activities of UPS and Lynx are limited and that the combined entity would continue to face several strong competitors with significant market shares.

Mergers: Book Manufacturing Merger Cleared

Javier Berasategi

The European Commission has cleared the acquisition of joint control by Electra Partners Europe SA, France, and CVC Capital Partners Advisory Company (CVC), Luxembourg, over the monochrome book manufacturing activities of the Chevrillon Philippe Industrie group (CPI), France. The proposed joint venture will have vertical effects as a result of the activities of CVC's portfolio companies upstream markets of the book production market in which CPI is engaged,

namely in the printing inks and graphic boards sectors. However, CPI's limited share of the downstream market for book production rules out the risk of competition being reduced in the upstream markets for printing inks and boards.

Competition: European Commission Review of Market Abuse under Article 82 of the EC Treaty

Alana Tervo

On 23 September 2005, Commissioner Neelie Kroes presented initial thoughts on the review of EU policy concerning the abuse of a dominant position. This current review will focus on exclusionary abuses (including price-fixing, tying, exclusive dealing, etc). A radical shift in enforcement policy is not intended - instead the aim is to provide a set of guidelines, built upon existing EU practice, with an emphasis on robust economic assessment. Ms Kroes also emphasised that "it is competition, and not competitors, that is to be protected... ultimately the aim is to avoid consumers harm" in the short, medium and long term. Going forward, enforcement will focus on behaviour that has actual or likely restrictive effects and the Commission will undertake and encourage full economic analyses of overall competitive landscapes instead of just applying traditional market share dominance tests. Efficiencies will also form part of the analysis even though an "efficiency defence" is not envisaged in Article 82.

Next Week's Events

Monday 3 October – Friday 7 October 2005

COUNCIL MEETINGS

- EU-Turkey start of accession negotiations, General Affairs and External Relations Council (3 October 2005)
- Transport, Telecommunications and Energy Council (6 – 7 October 2005)

COURT OF JUSTICE

Judgments

Approximation of laws

- C-9/04 Geharo
- C-120/04 Medion

Environment and consumers

- C-502/03 Commission v Greece

State aid

- C-276/03 P Scott v Commission

Taxation

- C-204/03 Commission v Spain
- C-243/03 Commission v France

- C-291/03 MyTravel

Transport

- C-429/04 Commission v Belgium

Opinions

Common Customs Tariff

- C-311/04 Algemene Scheeps Agentuur Dordrecht

COURT OF FIRST INSTANCE

Judgments

Competition

- Joined Cases T-22/02, T-23/02 Sumitomo Chemical v Commission

Environment and consumers

- Joined Cases T-366/03, T-235/04 Land Oberösterreich v Commission

Intellectual property

- T-423/04 Bunker & BKR v OHMI - Marine Stock (B.K.R.)

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