

# Brussels Brief

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



25 November 2005

## Key Developments

### Competition: Sale of Premier League Media Rights

Alana Tervo

The English Football Association Premier League (FAPL) and the European Commission are close to ending their three-year dispute regarding the sale of media rights over the Premier League competition on behalf of individual clubs. The Commission has received commitments from FAPL which include the following: from 2007 onwards live TV broadcast rights of its matches will be sold in six balanced packages; each package will be sold separately to the highest bidder, and no one bidder will be able to buy all six; and finally, a trustee will monitor the auction to ensure that all rules are followed. The proposal will end thirteen years of exclusive ownership of the TV rights by BSkyB, a UK pay-TV operator. The Commission will now prepare a draft decision making the FAPL's revised commitments legally binding. This will be sent to the competition authorities of the European Union Member States for consultation before the Commission issues a final decision by the first quarter of 2006.

### State Aid: Commission Gives Green Light to Danish Compensation Scheme

Iveta Mikelsone and Anthony Seymour

The European Commission has authorised a Danish scheme designed to compensate farmers who produce organic crops which are found to contain traces of genetically modified material. Under EU law, food and feed products which contain in excess of 0.9 per cent of genetically modified (GM) material must be labelled accordingly. Such products attract a lower price than their pure organic counterparts. The Danish scheme will compensate organic farmers for this difference in price and will be financed from a reserve funded by an annual tax levied on producers of GM crops. The scheme is only intended to last five years after which farmers will have to rely on private insurance policies. The authorisation of this scheme is significant as it is the first time State aid has been granted for such purpose.

### Internal Market: Recommendation to Annul Agreement on Transfer of Passenger Data

Philip Torbøl

Since 2003, European airlines flying to the United States have been obliged to provide in advance data on their passengers to US authorities. However, the legal basis for this data transfer may be removed by the European Court of Justice (ECJ). This potentially chaotic situation could become reality if the ECJ were to follow an opinion by Advocate General Léger in a case brought by the European Parliament against the Council and the European Commission. In this case, the Parliament has asked the Court to annul the 2004 Council Decision approving the conclusion of an agreement between the European Union and the United States on the transfer of passenger data collected in the Community to the US Bureau of Customs and Border Protection (CBP). The Advocate General considers that the Decision could not be based on Article 95 EC because this provision is expressly designed to serve the establishment and the functioning of the internal market. While recognising that a secondary purpose of the Decision could be to prevent different regimes in the EU if the Member States were to conclude bilateral agreements with the US, the Advocate General found that the principal objectives of the Decision fell outside the scope of Article 95 EC. These objectives were (i) the fight against terrorism and other serious crimes and (ii) the protection of personal data.

### Internal Market: New Rules on Registration of Medicines by the EMEA

Elena Kostadinova

The European Council has amended the Regulation on fees payable to the European Medicines Agency (EMA) in line with the new pharmaceutical legislation in the EU and the new responsibilities conferred to the EMA. Registration by the EMA enables companies to obtain EU-wide marketing authorisation for medicinal products based on a single application. The amended rules include flexibility for EMA to adapt certain fees to the type of service and the related costs, extension of payment to 45 days after notification and incentives for small and medium sized enterprises. The amendments aim to take into account the principle of proportionality between fee levels and the services provided by the EMA.

## **Environment: CFI Ruling on Amendments to National Allocation Plans**

Philip Bentley QC

After the United Kingdom had notified the Commission of its provisional National Allocation Plan (NAP) for greenhouse gas emissions, it notified an amended NAP with increased total allocations, following consultation with stakeholders. The Commission, who had already taken a decision on the provisional NAP, claimed that the amended NAP was inadmissible. The Court of First Instance has just ruled that the Commission could not reject the amended NAP simply because a decision had already been taken on the provisional NAP. Member States were entitled to amend their NAPs provided they did not implement any such amendments unless and until approved by the Commission as being in conformity with the criteria laid down by Directive 96/61/EC on greenhouse gas emissions.

## **State Aid: Investigation into Long Term Power Purchase Agreements in Poland**

Iveta Mikelsone

The European Commission has launched a formal investigation into the long term power purchase agreements (PPAs) in force in Poland as well as a draft law which provides compensation for the rescission of such agreements. Under these PPAs the State-owned network operator Polskie Sieci Energetyczne S.A. must purchase a fixed quantity of electricity from private power generators for a fixed price. The PPA agreements cover about half of the Polish power generator sector and were concluded in order to encourage power companies to invest in the Polish market. The Commission doubts whether PPAs and the proposed law complies with EU State aid rules and whether they fulfil the conditions for analysing State aid regarding stranded costs. Interested parties are invited to submit their comments to the Commission.

## **State Aid: Commission Opens Probe into Polish Machinery Company Huta Stalowa Wola**

Michal Cieplinski

The European Commission has launched an in-depth investigation to establish whether the restructuring aid in favour of Huta Stalowa Wola (HSW), a Polish industrial machinery company, is compatible with EU State aid rules. The Commission's preliminary examination has shown that some aid was granted before accession (at least EUR 26 million), and some after accession (up to EUR 27 million). The Commission has no competence to assess the compatibility of individual aid granted before accession but is able to act with regard to State aid granted after accession even in the context of a restructuring plan launched prior to accession. HSW, a mostly State-owned company, has received State aid in the form of refunds, write-offs, deferrals, loans on preferential

terms and capital injections by various Polish authorities. The Commission has doubt whether the aid meets all the requirements laid down in the Community guidelines on State aid for rescuing and restructuring firms as the HSW aid is largely focused on debt-serving and coverage of operating costs and not on restoring the long-term viability of the company.

## **Mergers: Acquisition of Ford Lease Business Partner by Société Générale Approved**

Patrice Corbiau

The European Commission has cleared the proposed acquisition of several business assets of the Ford Group (Ford Lease Business Partner) in the full fleet leasing and management market by Société Générale. Société Générale is a French full-service bank that operates internationally and is also active in fleet management services through its specialised division operating under the name of ALD. Over the past two years, Société Générale has acquired by separate transactions Ford Lease Business Partner assets in Italy, Spain, Denmark, France, Germany and Belgium. The proposed deal also concerns the transfer of business assets in Finland and the Netherlands. In accordance with Article 5(2) of the EU Merger Regulation, the Commission has treated these different transactions as one and the same concentration. After examining the operation, the Commission concluded that the acquisition would not significantly impede competition as (i) the parties' activities in the full fleet leasing and management services sector are limited in Italy, Spain, Germany, the Netherlands and Belgium, and (ii) the combined entity would continue to face strong competition from other important operators in France, Denmark and Finland.

## **Internal Market: Commission Publishes Communication on Public-Private Partnerships**

Yannis Virvilis

The European Commission has published a Communication laying down new policy options on Public-Private Partnerships (PPPs) in the framework of public procurement rules. The Communication follows a public consultation that took place after the publication of the PPP Green Paper in 2004. PPPs are forms of co-operation between public authorities and private undertakings. Interest in this form of partnership stems from the benefit that public authorities could gain from the know-how of the private sector. One of the main goals of the Commission is to secure transparency and fair competition in the selection of private partners. The Communication concentrates mainly on two issues. The first is how the PPP rules should apply in "institutionalised PPPs" (public service undertakings held jointly by both a public and a private partner). The second concerns concessions and whether there should be a legislative initiative to clarify the term 'concessions' and the rules that apply to their award.

## Internal Market: Internal Market Committee Votes in Favour of Draft Services Directive

Anthony Seymour

Following months of debate, the Internal Market Committee of the European Parliament has given its support to the draft Services Directive. This seeks to liberalise the provision of services in the internal market by abolishing legal and administrative barriers, thus encouraging the provision of services between EU Member States. Its remit covers services considered to be of general economic interest including health and social services as well as electricity, gas and water supply. The proposed Directive has received opposition from, amongst others, the British Medical Association, the French Government and trade unions, who argue that the Directive would lower the standard of services and lead to an influx of cheap labour from the new EU Member States. Nevertheless, the Committee voted in its favour, backing in particular a clause which would prevent a Member State from imposing restrictions aimed at hindering service providers from other Member States.

## Next Week's Events

**Monday 28 November – Friday 2 December 2005**

### COUNCIL MEETINGS

- Competitiveness Council (28 - 29 November 2005)
- Justice and Home Affairs Council (1 - 2 December 2005)
- Telecommunications and Energy Council (1 - 2 December 2005)
- Environment Council (2 December 2005)

### COURT OF JUSTICE

#### Judgments

##### Agriculture

- C-309/04 Fleisch-Winter

##### Free movement of capital

- C-213/04 Burtscher

##### Regional policy

- C-46/03 United Kingdom v Commission
- C-301/03 Italy v Commission

##### Social policy

- C-14/04 Dellas and Others

##### Taxation

- Joined Cases C-394/04, C-395/04 Ygeia

### Opinions

#### Agriculture

- C-313/04 Franz Egenberger

#### EA

- C-65/04 Commission v United Kingdom

#### State aid

- C-368/04 Transalpine Ölleitung in Österreich

#### Taxation

- Joined Cases C-181/04, C-182/04, C-183/04 Elmeke
- C-5/05 Joustra

### COURT OF FIRST INSTANCE

#### Judgments

##### Competition

- T-33/02 Britannia Alloys & Chemicals v Commission
- T-52/02 SNCZ v Commission
- T-62/02 Union Pigments v Commission
- T-64/02 Heubach v Commission

#### EA

- T-250/02 Autosalone Ispra v Commission

##### Intellectual property

- T-12/04 Almdudler-Limonade v OHMI (Forme d'une bouteille de limonade)

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