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**COMPETITION**

○ **Acquisition of Tele Atlas by TomTom given the go ahead**

On May 14<sup>th</sup>, the European Commission approved without conditions the proposed acquisition of the Dutch company Tele Atlas by equally Dutch company TomTom. Whereas the latter is a producer of portable navigation devices (PNDs alias SatNavs), Tele Atlas is one of the two providers of navigable digital maps which are essential inputs for PNDs (these products therefore are in vertical relationship in the supply chain).

While conducting an in-depth investigation of the proposed merger in line with its recently adopted guidelines on the assessment of non-horizontal mergers, the Commission focused on the following hypothesis: Whether the merged company would be able and have, post-merger, the incentives to increase the costs of other PND manufacturers for navigable digital maps or to limit their access to these maps. But neither such a strategy per se nor its potential impact on PND consumers was found to be threatening competition in the relevant market.

But, since a significant upstream competitor, Navteq, was present, it would limit the merged entity's ability to restrict access to digital maps for other PND manufacturers. On this note it is worth





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mentioning that the Commission is currently investigating the proposed acquisition of Navteq by mobile phone producer Nokia. Moreover, there would be no such incentive since, if that strategy were pursued, the sales of digital maps lost by Tele Atlas would not be compensated by additional sales of PNDs.

Furthermore, Competition Commissioner Neelie Kroes pointed out to the efficiencies (innovation spin-offs) likely to occur by the proposed transaction. She expressed her satisfaction “that the innovation and competition we have seen in SatNavs until now will continue after this merger”, which will be beneficial to consumers. In view of the above, the Commission cleared the transaction which would not significantly impede effective competition in the European Economic Area or a substantial part of it.

- **Electrabel’s acquisition of Compagnie Nationale du Rhône cleared**

On April 29<sup>th</sup>, the European Commission gave the go-ahead to the Belgian electricity producer Electrabel SA to acquire the sole control of the second largest electricity producer in France, Compagnie Nationale du Rhône (CNR). Electrabel, a subsidiary of the Suez Group, produces and sells among other things electricity, natural gas, and also manages electricity and natural gas distribution networks in Belgium. CNR also generates and supplies electricity



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generator and, furthermore, provides river engineering services in France (Rhône) and some twenty countries worldwide.

The overlapping activities of the two companies entail the wholesale electricity generation and sale, electricity trading, regulating power and ancillary services as well as the supply of electricity to final customers. River engineering is another relevant services' market in which both companies are present.

However, the Commission came to the conclusion that the two energy providers' activities do not overlap significantly on any of the relevant markets and, moreover, they face strong competition, in particular from French energy giant EDF in France. In view of the above, the merger, yet another to be added to the latest consolidation wave between European energy players, was cleared since it was not expected to give rise to any competition concerns in the common market.

- **Oracle's acquisition of BEA approved**

The European Commission gave the go-ahead, on April 29<sup>th</sup>, to Oracle Corporation to acquire the US independent provider of middleware software BEA Systems. Middleware is a layer which enables other software – e.g. operating systems and databases – to



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communicate with each other. US company Oracle provides enterprises with software solutions and related services, including “middleware”, database and applications software.

The Commission first examined the potential effects of the proposed merger on the overall middleware software sector and its sub-divisions, namely application servers, portals, enterprise service bus software (providing means of communication between applications) and software allowing the integration of applications. The horizontal overlaps between the parties’ activities were not found to be significant ones so as to give rise to competition concerns, in particular since Oracle and BEA were not perceived to be head-to-head competitors.

Furthermore, the merger entity would continue to face several strong competitors in both the overall middleware market and in each of the sub-segments. Such alternative suppliers include IBM, Sun, Microsoft and SAP, to whom the new entity’s customers could switch to in case of anticompetitive behaviour. Given the complexity of middleware software and the absence of market transparency, which was concluded from the fact that most vendors apply varying discounts, the Commission also dismissed the fear that the proposed merger might lead to co-ordinated effects among the remaining competitors.



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**INFORMATION & COMMUNICATION TECHNOLOGIES**

○ **Protecting minors from inappropriate audiovisual content**

On April 22<sup>nd</sup>, two Commissioners held a joint press conference in Strasbourg to stress the importance of industry self-regulation as a tool to protect children from violent or other video games which are inappropriate for minors. A successful instrument in the field is the PEGI ((Pan European Games Information) rating system, put in place by the major console manufacturers. The system uses symbols/content descriptors for bad language, discrimination, drugs, fear, sex, violence or gambling and an age rating (from 3+ to 18+) to video games so as to give parents and retailers an idea of the suitability of the content of the games for their children.

While most Member States apply the PEGI system of video games rating and some others have explicit legislation on the issue, some countries do not have system in place yet to deal with the threats. Moreover, most of them have no legislation concerning retail sales of video games to minors and national legislations are very diverging on this point. Only four countries have up to now banned violent video games.

"PEGI, as an example of responsible industry self-regulation and the only such system with almost pan-European coverage, is





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certainly a very good first step. However, I believe it can be greatly improved, in Europe and beyond, by making the public more aware about its existence and fully implementing PEGI Online" said Viviane Reding, EU Commissioner for the Information Society and Media. In the same wave length, Meglena Kuneva, the EU Consumer Commissioner, added: "All consumers need clear, accurate information to make informed choices. But this is particularly about children – some of the most vulnerable consumers in society. And our clear message today is that industry and national authorities must go further to ensure that all parents have the power to make the right decisions for themselves and their child".

To achieve these goals, awareness should be raised for PEGI and PEGI Online, which are subject to constant improvement. Another idea would be to initiate cooperation on new age verification solutions between Member States, classification bodies and other parties. Last but not least, the Commission called upon the industry and the national authorities to come up with a pan-European Code of Conduct on the retail sale of games to minors within two years. However, advertising of violent video games – restrictions exist only in exceptional cases of content inciting racial or religious hatred.

In a parallel move to protect minors from dangers of internet use, major companies – such as Telecom Italia, Microsoft, Vodafone etc.





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– have launched the website [www.teachtoday.eu](http://www.teachtoday.eu), to inform – especially parents and teachers – on the web possibilities and potential dangers with which children are confronted. There, one can find simple explanations of the new features of Web 2.0, like blogs or wikis, and the most worrying aspects of the new technologies, like privacy abuse or cyber-bullying. It is worth mentioning that the European Commission will adopt the second edition of the EU Safer Internet Programme this year, with a budget of €55 million, which will run between 2009 and 2013.

On May 6th, Jacques Barrot, Commissioner responsible for Justice, Freedom and Security, promised to help support the planned EU Coalition of Stakeholders against commercial sexual exploitation of children on the Internet, which is put forward by Missing Children Europe and other stakeholders. More specifically, the Commission is planning to contribute towards setting up a mechanism to stop payments made with a credit card or an electronic payment when purchasing images of sexual abuses of children on the Internet. An idea which has emerged from the preparatory meetings would be to come up with an adequate platform for all parties involved, i.e. banks, credit card and on-line payment companies, Internet access providers and national authorities.





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### ○ Parliament's first scrutiny of telecoms' review proposals

On April 24th, the Committee on Industry, Research and Energy of the European Parliament presented its first report on the Commission's telecom review proposal. The Rapporteur, French MEP Catherine Trautmann, showed the determination of the Parliament to take a stance on these issues: "[W]e absolutely want the telecoms package to be decided before the end of the term" (in 2009). In order to reach that objective, a quick agreement among EU institutions is needed to bridge their diverging views on the subject.

The Rapporteur agreed with the Commission's proposal on the functional separation remedy imposed by national regulators provided it is been explained and adequately justified. However, she was against the purely market-driven approach adopted by the Commission on the Radio spectrum allocation issue: "Market mechanisms [...] are not alone able to serve the general interest and provide public goods indispensable for achieving an information society for all". Next Generation (fibre) Networks, which are extremely important to the MEPs' view, should be deployed as parallel networks if possible. As to the geographical market segmentation, national telecoms markets should be split into different regional ones when appropriate.





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MEP Pilar del Castillo Vera, Parliament Rapporteur on the new Telecoms Authority, summarised his opposition to the Commission's new European Electronic Communication Market Authority (EECMA) proposal as follows: "The new body would have three fundamental problems. It would end up creating a very large bureaucracy; it would pose a threat to the principle of subsidiarity; it would send a contradictory signal against the general desire to move from ex-ante regulation to a fully competitive market."

An alternative solution would be to strengthen the role of the existing European Regulators Group (ERG), which could be transformed into a Body of European Regulators in Telecoms (BERT), funded on principle by the Member States' national authorities. The subsidiarity argument was also used to reject the idea of the Commission having more power to block national regulators' decisions on remedies. If national instances decide against EU principles, the Commission together with the Regulators' Body (BERT) could jointly decide to block them, the MEPs suggested.

The Parliament's Committee on Industry, Research and Energy (ITRE) will vote on the reports at the end of June and the first reading will take place in the European Parliament session of July 7<sup>th</sup>–11<sup>th</sup>.



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- **Google's 'Street View' under fire over privacy**

During the presentation of his annual data protection report earlier this month, the EU data protection supervisor, Peter Hustinx, expressed his concerns over some features of the Google Maps' service, in particular 'Street View'. This feature, currently available only in the US and Canada, provides users of Google's online map service with a clear, 360-degree look around city streets. To built these streets, composites of thousands of photographs taken by roaming cars with roof-mounted cameras are been used. Therefore, pictures of individuals are likely to be posted on the web in a Big Brother scenario i.e. against their will and better knowledge and without their concession.

If this service is launched in the EU, as are the plans of the company for the coming year, it would most likely infringe upon EU privacy legislation, the data protection supervisor explained. "Making pictures on the street is in many cases not a problem, but making pictures everywhere is certainly going to create some problems. (...) Complying with European data protection law is going to be part of their business success or failure. If they would ignore it, it is likely to lead to [court] cases, and I think they would be hit hard", Mr Hustinx added.



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The global dominant search engine Google's privacy policy has been questioned again, most notably during the announced acquisition of the biggest online advertising company, DoubleClick (see: *Pappas&Associates* Newsletter, March 2008, "Google/DoubleClick merger given go-ahead amid criticism", p. 2). The European Commission cleared the merger without examining the privacy claims, since its remit was limited to the examination of the pure competition concerns.

### ENVIRONMENT AND ENERGY

- MEPs in favour of energy giants' ownership unbundling

On May 6<sup>th</sup>, the European Parliament's Industry Committee (ITRE) voted in favour of the Commission's proposal of full ownership unbundling in a bid to step up competition in the EU energy market (cf. *Pappas&Associates* Newsletter, November 2007, "EU energy liberalisation opposed by Member States", p. 7). This amounts to the obligation of the incumbents to separate production and distribution plants and would amount to their selling their transmission networks.

The alternative plan of keeping a 'transmission system operator' (TSO) or 'the third option' was rejected. According to this solution, brought forward by Austria, Bulgaria, Germany, Greece, France,





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Latvia, Luxembourg and Slovakia, there would be a separate firm distinct from the electricity producer yet still owned by the shareholders of the parent firm. UK MEP Eluned Morgan, who was reporting on the issue, said she is hoping "this gives a clear indication to the council [representing EU states] that we're not in the mood to compromise".

However, with the result being narrow, other Parliamentarians were not that sure of the outcome of the legal option which will be followed. "There will be a compromise, including the third way, or there will be nothing" said German MEP Angelika Niebler.

Still, the Commission's proposal is foreseeing only one alternative to the full ownership unbundling: that would be the creation of an independent system operator (ISO) who would not have the same shareholders as the parent company. This option consists in big energy companies retaining ownership of the transmission lines, but passing on the managing control to an entirely separate operator. The final vote, which would assume a unanimous political agreement at member state level, will take place in June.



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**CONSUMER AFFAIRS**

○ [Commission takes a stance on misleading ticket sales](#)

At the end of 2006, the so-called Consumer Protection Co-operation Regulation, enforced by the Member States and coordinated by the European Commission, came into force. A new kind of enforcement action, the EU Sweep, is a systematic check carried out simultaneously in different countries to check compliance with consumer protection law. Back in September 2007, the first sweep, most of the airline ticket selling websites did not indicate prices, offers and contract terms in a clear and transparent way. Thereupon, national authorities contacted these companies asking them to correct their sites or clarify their position.

The new investigation, the results of which were announced earlier this month, focused on unfair contract terms. Among the findings, it was indicated that several sites were in breach of consumer law, exhibiting several problems such as misleading pricing, irregular contract terms and advertised offers which were actually unavailable. Also, amendments and corrections of cross-border infringements (where the complaint relates to a company operating from another country) were not really enforced. With several cases still to be decided in court, lack of transparency is another issue to be taken into account.





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Consumer commissioner Meglena Kuneva highlighted the "determination of the commission to act on behalf of consumers where necessary" and went on to add that if the airlines in question don't improve their sales and marketing practices by May 1<sup>st</sup>, 2009, the commission "will have no choice but to intervene". To be on the safe side, airlines sites should provide clear information about price (no non-optional charges added throughout the booking process, resulting in a different end price e.g. taxes, booking fee, credit card fee, handling fees), availability of offers, clear legible contract terms and conditions in the language of the site consulted and possibility to contact the company (indication of contact details for the site). In the coming twelve months the Commission will monitor developments before deciding where it needs to intervene.

### PUBLIC AFFAIRS

- [Parliament in favour of common lobbyists' register](#)

On May 8<sup>th</sup>, the European Parliament's Constitutional Affairs Committee adopted a landmark report on a mandatory lobbying register, an issue which raises many individual questions (cf. *Pappas&Associates* Newsletter, April 2008, "Parliament proposes joint obligatory lobbyists' register", p. 16). The report, originally drafted by Finnish MEP Alexander Stubb, but followed by





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German MEP Ingo Friedrich, aims at a "full financial disclosure" of all EU lobbying activities in a bid to improve transparency of the EU institutions.

According to the report, rapporteurs would be responsible for leaving a non-obligatory 'legislative footprint' of documents adopted by the Parliament. It is in their discretion to attach lists, if relevant, of consulted lobbyists and documents provided by them to help formulate the legislative text.

The definition of lobbyist is quite broad, including "anyone influencing the policy formulation and decision-making processes of the European institutions" in whichever capacity. Therefore, it would capture not only professional lobbyists, but also NGOs, think tanks, trade associations, trade unions and employers' organisations and lawyers when their purpose is to influence policy rather than case law. Lobbyists who infringe upon the rules of the accompanying planned Code of Conduct would even be expelled and therefore banned from further lobbying.

When it comes to the contentious point of the financial disclosure, the report asks, on the one hand, professional consultancies as well as law firms to "disclose the relative weight of their major clients and the costs associated with lobbying". On the other hand,





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NGOs and think tanks should only have to "state their overall budgets and main sources of funding".

After the positive vote, the European Commission announced its plans to introduce a voluntary lobbyists' register and a Code of Conduct, which should be published on June 23<sup>rd</sup>. Administration and Anti-Fraud Commissioner, Siim Kallas, expressed his wish to cooperate with the Parliament to develop a joint register soon, but also his immediate plans to launch a register only for the Commission already in June in order "to test the practicalities of a register" which will serve to provide "a common structure of information" on lobbyists.

- More transparency required by EU officials and Parliamentarians

On April 22<sup>nd</sup>, the European Parliament voted largely in favour of the report drafted by Finnish MEP Anneli Jäätteenmäki on amending the Ombudsman's statute in order to improve his access to EU documents. According to these, EU officials will not be able to refuse disclosing information to the European Ombudsman on 'secrecy grounds'. However, the requirement remains that the Ombudsman should "not divulge any sensitive information or any document falling under the scope of Community legislation



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regarding the protection of personal data" while handling classified information during the course of his enquiries.

The European Ombudsman, Nikiforos Diamandouros, who had requested himself changing his statute, stated: "By supporting these changes, the European Parliament has demonstrated its confidence in the work of the Ombudsman. The changes will help me to improve the service that I can provide for citizens, thus strengthening their trust in the European Union and its institutions". On the issue of EU officials' testimonies, despite the strict wording, according to which these should speak "in accordance with instructions from their [the civil servants'] administrations", it was clarified that, when acting as witnesses, European civil servants always have to tell the truth.

At the same time however, many MEPs came into criticism due to the misused staff payments scandal. The Parliament's Auditors report showing some of them misused funds to their benefit was not published after all. Nor was the list of contributors to the Parliament's voluntary pension fund made public. UK Liberal Democrat MEP Chris Davies asked the Parliament to bear down on some of his colleagues who put funding meant for "parliamentary duties" into the MEPs' pension funds on top of what the Parliament currently pays. He labelled this practice as "embezzlement" which brings "shame and dishonour" on the Parliament by "allowing greed



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and self-interest to triumph over the proper financial management of public money".

### SPORTS

#### ○ Mavrommatis report on White Paper on Sport adopted

On May 8<sup>th</sup>, the European Parliament rejected the idea of granting intellectual property rights to certain major sporting events and reassured that the broadcasting rights of important sport events such as the Olympic Games and the World/European Football Cup will not be sold exclusively to pay-tv providers. Instead, events of significant importance will be listed by Member States in order to make sure they are transmitted by free-to-air television accessible to the wide public.

Sporting federations have been asking for broadcasting, information and spin-offs arising from certain football matches and other popular sport events to be granted copyright protection. But concerns voiced against this trend suggest, in the words of Francisco Pinto Balsemao, chair of the European Publishers Council, that this would amount to "unjustified protectionism and [be] injurious to press freedom".





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The report on the European Commission's white paper on sport, drafted by Greek MEP Manolis Mavommatis, which was adopted by a large majority, asks the European Commission to develop clearer guidelines on how to apply EU rules in the area of sport (see: *Pappas&Associates* Newsletter, April 2007, "Parliament's report on future sport policy", p. 18). Also, it calls for the next budget (2009) to include a special line for preparatory actions in the field in line with the new provision of the Lisbon Treaty.

Sports organisations and Member States should adopt the strictest measures to combat racism and discrimination in sports. It is essential that professional sports organisations and sports clubs launch campaigns to tackle discrimination, racism, and xenophobia in connection to matches and sports activities both inside and outside stadiums.

Also, an equity provision was included stipulating that broadcast monies should be split equally between the larger and smaller clubs. A collective selling of media rights, which could be introduced by Member States and national sporting federations, could reinsure that income is equally distributed not only between different leagues but also between professional and amateur sport.

Regarding the thorny issue of protecting home-grown players, the majority of MEPs did not try to challenge the Bosman ruling,





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according to which professional football players have just like any other EU citizen, the right to work in a different Member State without any limitation. This is why setting a minimum number of domestic players, the way FIFA president Sepp Blatter has suggested (“six-plus-five” formula i.e. six players from the club’s nation), should not be applicable. Still, the Parliamentarians identified benefits in having a minimum number of locally trained players, in the same way UEFA seeks for a minimum of players to be trained in the same club or league. In this context, it is also worth noting that the president of the international volleyball federation (FIVB), Ruben Acosta, said he was ready to go to court in order to defend his organisation’s proposed “four-plus-two” rule similar to the FIFA regulation one.

An important issue related thereto is the de facto human trafficking of minors in professional sport. Talented players from outside the EU should only be recruited in line with the immigration laws applicable, highlighted the MEPs. They called on the sports governing bodies to subscribe to a European Charter for solidarity and create a solidarity fund to finance programmes in the most affected countries. Also, FIFA should review its rules of transfer referring to minors (it was suggested that transfers of players aged under 16 should be banned) and prohibit minor players to sign their first professional contract with a club other than the one which has trained them.





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In a bid to ensure transparency and fair competition, the report calls for stricter rules which will consider treating trade in illicit doping substances in the same way as trade in illicit drugs. Complementary to such rules, policies should be developed such as avoiding excessively busy sports calendars that put excessive pressure on the athletes. Moreover, the Parliament is concerned about the possible deregulation of lotteries and gambling markets. Lottery profits should be used for purposes that are in the public interest, and improper influence relating to betting should be eliminated, suggests the report.

