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APRIL – JULY 2003 TREATY OF ACCESSION

(This article is based on the informal version of the Treaty of Accession as made available on www.europa.eu.int)

The Treaty of Accession has been concluded between the existing fifteen Member States of the European Union and ten countries, including the Czech Republic, Poland and the Slovak Republic, who have applied for membership. From 1st May 2004, the foreseen date of accession, new Member States become subject to European Community law ("EC law") and are required to implement existing EC law. The Act of Accession attached to the Treaty of Accession refers to annexes and protocols, all of which form an integral, and equally binding, part of the Treaty of Accession. Declarations and exchange of letters appended to the Treaty of Accession are not legally binding.

Annexes to the Act of Accession may be generally applicable, such as for example, most of Annex II, Annex III and Annex IV, regarding adaptations to EC law, or may contain transitional measures specific to one country, such as Annex XIV for the Slovak Republic. There are ten Protocols dealing each with specific matters, such as the closure of unit 1 and 2 of the Bohunice VI nuclear power plant in Slovakia (Protocol 9).

The Act of Accession also provides for specific procedures regarding state aid (in particular Annex IV, section 3 "Competition law").

Separately, it contains a safeguard clause enabling the Commission to take, under certain conditions, "appropriate measures" if a new Member State causes a "serious breach of the functioning of the internal market" or "a risk of such breach" as a result of failing to implement EC law (Article 38). Conversely, a new Member State may, in duly substantiated cases, apply before 1st May 2004 for "temporary derogations" from EC law adopted between 1st November 2002 and the date of signature of the Treaty of Accession (16 April 2003)

(Article 55), such derogation could, for instance, be requested, with respect to Directive 2003/6 (see below).

Source: Internet page of the Commission of European Communities

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RIGHTS OF FUTURE MEMBER STATES DURING THE PRE-ACCESSION PERIOD (SINCE THE SIGNATURE OF THE TREATY OF ACCESSION)

(This article is based on the informal version of the Treaty of Accession as made available on www.europa.eu.int)

The Treaty of Accession signed on April 16, 2003 is expected to come into force on 1 May 2004.

Although not yet EU Members, the acceding states are to be kept informed during the period preceding their accession on any proposal, communication, recommendation or initiative which might lead to decisions by the institutions or bodies of the EU. The future Member States can also request that consultations take place before the Council adopts appropriate decision.

The acceding states have been also granted a status of active observers in the work of the Council and of the European Parliament. Through their representatives they participate in the meetings of the Council and its preparatory bodies since 17 April 2003, save for meetings regarding enlargement issues, which remain confidential, and in the plenary sessions of the European Parliament and meetings of its parliamentary committees since 1 May 2003.

Source: web page of the Commission of European Communities

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NEW DIRECTIVE ON INSIDER DEALING AND MARKET MANIPULATION (MARKET ABUSE DIRECTIVE)

(Directive 2003/6/EC of the European Parliament and of the Council on Insider Dealing and Market Manipulation (Market Abuse Directive))

The Directive aims at increasing and stabilising investors' confidence in the European Union securities market, making it more competitive and contributing to its completion and full transparency. The Directive defines both the concept of "insider dealing" and of "market manipulation" and covers a wide scope of financial instruments thus reflecting the increasing number of financial products.

Generally, any financial instrument admitted to trading on a regulated market (within the meaning of Directive 93/22/EC on investment services in the securities field) in at least one Member State, or for which a request for admission to trading on such a market has been made, falls within the scope of its regulation. Prohibitions provided for in the Directive shall not apply to trading in company's own shares or to the stabilisation of a financial instrument provided, however, that such trading is carried out in accordance with implementing measures to be adopted by the Commission.

Under Article 5 of the Directive, any person is prohibited from engaging in market manipulation. Member States are required to ensure that issuers of financial instruments inform the public as soon as possible of inside information directly relevant to them (including posting such information on the Internet for an appropriate period of time). Issuers may postpone such disclosure for legitimate reasons. However, Member States may require that an issuer inform without delay the competent authority of such decision. The Directive imposes an obligation on managers of an issuer or persons closely associated with them to notify to the competent authority the existence of transactions conducted on their own account relating to shares of the respective issuer. Public access to such information is to be made available.

Each Member State is obliged to designate a single administrative authority to ensure that the provisions adopted pursuant to this Directive are applied. The Directive also encourages further co-operation amongst national supervisory authorities while they are to be supported and extended in terms of competence. Council Directive 89/592/EEC on coordinating regulations on insider dealing is repealed as of 12 April 2003. Member States are obliged to implement this Directive by 12 October 2004.

Separately, acceding Member States may, in duly substantiated cases, as provided under Article 55 of the Act of Accession, apply for temporary derogations from the Directive, as it was adopted between 1 November 2002 and the date of signature of the Treaty of Accession.

Source: Official Journal of the European Union, L 96, 12 April 2003, p. 16 .

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COMMISSION DECISION CONCERNING THE AWARD OF THE COMMUNITY ECO-LABEL TO TOURIST ACCOMMODATION SERVICE

(Commission Decision of 14 April 2003 establishing the ecological criteria for the award of the Community eco-label to tourist accommodation service)

As of May 1, 2003, any tourism operator - from a large hotel chain to a small farmhouse - can apply for the Community Eco-label based on the above Commission decision ("Decision") implementing Regulation No. 1980/2000 on revised Community eco-label award scheme ("Regulation").

This is the first time the European Commission has adopted a decision establishing ecological criteria for services sector. In order to be awarded the Eco-label under the Regulation, the service provided must fall within the product group of tourist accommodation service (as defined in the Decision), and must comply with defined ecological criteria. These are divided into mandatory criteria, all of which must be complied with, and optional criteria, only a number of which

must be complied with. The aim of the criteria is to reduce the main environmental impacts of the three phases of the service cycle, i.e. purchasing, provision of service and waste. The mandatory criteria include the use of renewable energy sources, an overall reduction in energy and water consumption, measures to reduce waste, environmental policy setting and the provision of non-smoking areas. In order to obtain the Community Eco-label, a number of optional criteria must be complied with, each of which has been awarded score points, the minimum number of points required being 16.5. The award of the Eco-label is subject to payment of an initial single fee as well as of an annual fee, micro-enterprises and mountain huts being eligible to substantial reductions.

European consumers have long relied on the Eco-label to help them find environmentally friendly products. The Community Eco-label scheme was established in 1992 (Regulation (EEC) No. 880/92 superseded by the Regulation) to promote products (and services) with a reduced environmental impact by allowing manufacturers that have been awarded the Eco-label to display the "Flower" logo on their products. Eco-label products are checked by independent bodies to ensure that they comply with strict environmental performance criteria. There are currently 21 different product groups, including textiles and footwear, detergents, household appliances, paper products, paints. Work on other product groups, such as printed paper and campsites, is ongoing. More than 141 companies have been awarded licences so far, covering several hundred different products. Over the last two years, sales of eco-labelled items have risen by more than 300%. The highest Eco-label rates so far have been achieved in France, Denmark, Italy, Greece and Spain.

As the Treaty of Accession does not provide for any transitional period, Eco-label rules must be implemented in future Member States upon accession.

Source: Official Journal of the European Union, L 102, 24 April 2003, p. 82.

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JUDGEMENTS OF THE EUROPEAN COURT OF JUSTICE CONCERNING PUBLIC SHAREHOLDINGS IN PRIVATISED COMPANIES

(Judgements of European Court of Justice in Cases C-98/01 Commission v United Kingdom of Great Britain and Northern Ireland and C-463/00 Commission v Kingdom of Spain)

On 13 May 2003 the European Court of Justice ("ECJ") issued two judgments in which it found United Kingdom and Spanish regulations governing disposal of public shareholdings in privatised companies to be in breach of EC Treaty provisions on the free movement of capital and the freedom of establishment.

Articles of Association of a privatised British airport company in which the government holds a "Special Share" were subject of the ECJ's assessment in Case C-98/01. Provisions limiting acquisition of voting rights and introducing procedure that makes disposal of the company's assets, the control of subsidiaries and winding-up of the company subject to consent of the "Special Share" holder were of main concern.

The challenged Spanish legal regulation governs the privatisation of undertakings in the public sector with specified public shareholding. It introduced a system of prior administrative approval relating to (i) voluntary winding up, demerger or merger of the undertaking, (ii) any kind of disposal or charging of the assets or shareholdings necessary for the attainment of the undertaking's object and which are defined as such, and (iii) change in the undertaking's object. ECJ confirmed its established approach that there may be justification for retention by Member States of a degree of influence within undertakings that were initially State held and subsequently privatised, where those undertakings are active in fields involving the provision of services in the public interest or strategic services. Free movement of capital may be restricted only exceptionally, by national rules that are justified by reasons referred to in Article 58 (1) of the EC Treaty or by overriding requirements of the general interest. Under all circumstances, the restrictions must be in full compliance with the principle of proportionality. However, with respect to the above cases, the exception was considered to be either not applicable or not justified.

Source: Internet page of the European Court of Justice.

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PROTOCOL ON CONFORMITY AND ACCEPTANCE OF INDUSTRIAL PRODUCTS

(Council decision on the adoption of a Protocol on Conformity and Acceptance of Industrial Products under the Europe Agreement between the European Community and its Member States and the Slovak Republic)

On its session held on April 14, 2003 in Luxembourg, the Council "External Affairs" adopted a decision on the conclusion of a Protocol on Conformity and Acceptance of Industrial Products ("PECA") under the Europe Agreement establishing an Association between the European Community and its Member States, on the one hand, and the Slovak Republic on the other hand ("Parties").

The Protocol shall result in the mutual acceptance of industrial products fulfilling the requirements for being lawfully placed on the market in one of the Parties and progressive adoption of EC law by the Slovak Republic relating to certain sectors already before accession. The sectors concerned include machinery, personal protective equipment, electrical safety, electromagnetic compatibility and equipment and protective systems intended for use in potentially explosive atmospheres. A safeguard clause is included.

Under Article 3 of the Protocol, the Slovak Republic agrees to take appropriate measures, in consultation with the Commission, to maintain or complete the implementation of EC law, in particular in the areas of standardisation, metrology, accreditation, conformity assessment, market surveillance, general product safety and producer's liability. The Protocol shall enter into force on the first day of the second month following the date on which the Parties have exchanged diplomatic notes confirming the completion of their respective procedures for its entry into force.

Source: Internet page of the Council of the European Union.

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RELEVANT PRODUCT AND SERVICES MARKETS WITHIN THE ELECTRONIC COMMUNICATIONS SECTOR SUSCEPTIBLE TO ex-ante REGULATION ACCORDING TO THE DIRECTIVE 2002/21/EC

(Commission Recommendation of February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services)

By a recommendation addressed to the Member States of the European Union, the European Commission put in place the final piece of new framework for electronic communications. As required under Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (also called "the Framework Directive"), the Commission identified 18 (7 retail and 11 wholesale) markets in the electronic communications sector, the characteristics of which may be such as to continue to justify sector specific regulations at national level.

National regulators (Slovak Telecommunication Office in the Slovak Republic) will be required upon accession to take markets listed in the Recommendation as a starting point for their own market analyses to be undertaken as soon as possible after the adoption of the Recommendation. The fact that the Recommendation identifies certain markets where ex ante regulation may be justified, however, does not mean that such regulation will automatically apply or that these markets will be always subject to the imposition of regulatory obligations. Any regulation may apply only if there is no effective competition on these markets. National regulators may, subject to specific conditions, define additional markets to these of the Recommendation.

The list of markets has been drawn in accordance with competition law principles subject to public consultation and consultation with national regulatory authorities. By listing the markets where the Commission

considers that regulation at national level may be justified, the Recommendation aims at withdrawing national regulation where it is no longer required and providing greater legal certainty for suppliers of communication networks and services. As a result, sector-specific obligations will, in principle, only be imposed on undertakings, which are designated by national regulatory authorities as having significant market power. The Commission is required to review by 30 June 2004 the need of any update of the Recommendation on the basis of market developments.

The Recommendation is a key element of the new regulatory framework for electronic communications in Europe to take effect from 25 July this year. As the Treaty of Accession does not provide for any transitional provisions, the new regulatory framework, including the Recommendation, will apply to Slovakia as of the first day of accession.

Source: Official Journal of the European Union, L 114, 8 May 2003, p. 45.

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BEST PRACTICE GUIDELINES FOR DIVESTITURE COMMITMENTS IN MERGER CASES

(European Commission's Best Practice Guidelines for divestiture commitments in merger cases of 2 May 2003)

On 2 May 2003 the Commission published Model Texts for Divestiture Commitments and Trustee Mandates ("Model Texts") designed to be of assistance to notifying undertakings submitting commitments to the Commission under EC Merger Regulation with a view to obtaining clearance of a merger that would otherwise lead to the creation or the strengthening of a dominant position impeding competition. Best Practice Guidelines, prepared in line with the Commission's Notice on Remedies Acceptable, aim to increase the transparency, effectiveness and consistency of negotiations with the Commission and implementation of divestiture commitments.

The Model Text for Divestiture Commit-

ments deals with clear description of commitments to divest, the divested business, the divestiture procedure and periods, and obligations of the parties to a merger ("Parties"). Further, provisions on related commitments comprising preservation of viability, marketability and competitiveness of divested business, hold-separate obligations of the Parties, protection of competitively sensitive information, non-solicitation and performance of due diligence by prospective purchaser are included. Finally, requirements to be met by the prospective purchaser, the approval process, conditions for appointment of Monitoring and Divestiture Trustees as well as their duties and obligations are set out. It also contains a review clause that allows the Commission to extend the periods specified in the commitments or to modify the undertakings in the commitments.

As regards Trustee Mandates, a standard mandate contract to be concluded with Monitoring and Divestiture Trustee is provided. It governs mainly rights and obligations of the Trustees, duties of the divesting Party towards the Trustees, provides the conditions of its termination and cases of Commission's involvement. Also Trustee related provisions on conflict of interest, remuneration, indemnity and confidentiality are to be incorporated in the mandate.

The Models Texts are not legally binding upon Parties and may, where appropriate, be applied also in cases involving commitments other than divestiture commitments.

Source: Internet page of the Commission of European Communities.

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JUDGEMENTS OF THE COURT OF FIRST INSTANCE CLARIFYING CRITERIA FOR IMPOSING FINES IN CARTEL CASES

(Judgements of the Court of First Instance in cases T-220/00, T-223/00, T-224/00 and T-230/00)

The Court of First Instance rendered on 9 July 2003 four judgements in a cartel case in which it clarified the criteria for fixing the

amount of fines for breaching Community antitrust rules. It also significantly dealt with various aspects of anticompetitive behaviour and principles of EC law reflecting them in determining final amount of fines.

In 1996, five undertakings were charged by American authorities with having formed a cartel to fix lysine prices and to allocate sales of lysine between 1990 and 1995. Following the offer of one of the undertakings in question to cooperate with the Commission and further procedural steps carried out by the Commission in line with Regulation 17/62 ("Regulation"), the Commission adopted Decision 2001/418/EC of 7 June 2000 in which it held that there had been a series of agreements on prices, sales volumes and exchange of individual information on sales of synthetic lysine, having a real impact on the lysine market covering the entire of the EEA, from July 1990 to June 1995.

In deciding on the amount of fines, the Commission applied the Guidelines for calculating fines imposed pursuant to Article 15 (2) of the Regulation. In this respect the Court assessed the alleged breach of several principles of EC law, including the principle of legitimate expectations, the principle of non-retroactivity of penalties, the principle of equal treatment and proportionality. As a specific issue, two of the applicants objected that the Commission did not take into account the penalties imposed upon them in the United States by which fact the applicants claimed that the principle of the prohibition of concurrent sanctions had been breached by the Commission.

The Court found that the principle of non bis in idem, according to which a person who has already been tried may not be prosecuted or fined for the same conduct, cannot be applied in the present case, since the fines imposed by American authorities and the Commission pursued different objectives. It also held that the percentage increases or reductions adopted on the account of aggravating (e.g. playing a leading role in the cartel) or mitigating circumstances (e.g. less extensive

implementation of cartel practices or termination of infringement upon first intervention of public authority) must be applied to the basic amount of the fine determined by reference to the gravity and duration of the infringement, not to the amount of any increase already applied for the duration of the infringement or to the figure derived from any initial increase or reduction to reflect an aggravating or mitigating circumstance. According to the Court, the above method of calculation of fines ensures equal treatment between various undertakings involved in a cartel. Finally, the Court reduced the fines imposed by the Commission on undertakings involved in the respective cartel by an amount totalling to approximately EUR 7,000,000.

Source: Internet page of the Court of First Instance.

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Other significant acts adopted by institutions of the European Communities published in the Official Journal of the European Union in the time period of April to July 2003 comprise:

Commission Regulation (EC) No. 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security.

Source: Official Journal of the European Union, L 89, 5 April 2003, p. 9.

Council Regulation (EC) No. 778/2003 of 6 May 2003 amending Commission decision No. 283/2000/ECSC and Council Regulations (EC) No. 584/96, (EC) 763/2000 and (EC) 1514/2002 with regard to the anti-dumping measures applicable to certain hot-rolled coils and to certain tube and pipe fittings, of iron or steel.

Source: Official Journal of the European Union, L 114, 8 May 2003, p. 1.

Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport.

Source: Official Journal of the European Union, L 123, 17 May 2003, p. 42.

Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

Source: Official Journal of the European Union, L 124, 20 May 2003, p. 36.

Council Regulation (EC) No. 953/2003 of 26 May 2003 to avoid trade diversion into the European Union of certain key medicines.

Source: Official Journal of the European Union, L 135, 3 June 2003, p. 5.

Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

Source: Official Journal of the European Union, L 152, 20 June 2003, p. 16.

Commission Regulation (EC) No. 1028/2003 of 16 June concerning regulation (EC) No. 788/2003 laying down detailed rules for the application of Council Decision 2003/299/EC as regards the concessions in the form of Community tariff quotas on certain cereal products originating in the Slovak Republic and amending Regulation (EC) No. 2809/2000.

Source: Official Journal of the European Union, L 149, 17 June 2003, p. 14.

Information of the Council relating to the entry into force of the Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, on Conformity Assessment and Acceptance of Industrial Products (PECA).

Source: Official Journal of the European Union, L154 21 June 2003, p. 92.

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

Source: Official Journal of the European Union, L 156, 25 June 2003, p. 17.

Decision No. 1/2003 of the EU-Slovak Republic Association Council of 6 February 2003 amending Protocol 4 to the Europe Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Source: Official Journal of the European Union, L 166, 3 July 2003, p. 1.

Decision No. 2/2003 of the EU-Slovak Republic Association Council of 30 April 2003 extending the double-checking system established by Decision No. 3/97 of the Association Council for the period from the date of entry into force of this Decision up to the date of accession by the Slovak Republic to the European Union.

Source: Official Journal of the European Union, L 160, 28 June 2003, p. 70.

Council Regulation (EC) No. 1129/2003 of 21 January 2003 concerning the export of certain steel products from the Slovak Republic to the Community for the period from the date of entry into force of this Regulation to the date of accession by the Slovak Republic to the European Union (extension of the double-checking system).

Source: Official Journal of the European Union, L 160, 28 June 2003, p. 3.

Council Regulation (EC) No. 1089/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Slovak Republic and the exportation of certain processed agricultural products to the Slovak Republic.

Source: Official Journal of the European Union, L 163, 1 July 2003, p. 56.

Commission Regulation (EC) No. 1217/2003 of 4 July 2003 laying down common specifications for national civil aviation security quality control programmes.

Source: Official Journal of the European Union, L 169, 8 July 2003, p. 44.

Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

Source: Official Journal of the European Union, L 176, 15 July 2003, p. 1.

Decision No. 1229/2003/EC of the European Parliament and of the Council of 26 June 2003 laying down a series of guidelines for trans-European energy networks and repealing Decision No. 1254/96/EC.

Source: Official Journal of the European Union, L 176, 15 July 2003, p. 11.

Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC.

Source: Official Journal of the European Union, L 176, 15 July 2003, p. 37.

Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

Source: Official Journal of the European Union, L 176, 15 July 2003, p. 57.

Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.

Source: Official Journal of the European Union, L 178, 17 July 2003, p. 16.

Commission Recommendation of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

Source: Official Journal of the European Union, L 190, 30 July 2003, p. 13.

Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

Source: Official Journal of the European Union, L 192, 31 July 2003, p. 54.

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