PROTOCOL 24 {[1]}

ON COOPERATION IN THE FIELD OF CONTROL OF CONCENTRATIONS

GENERAL PRINCIPLES

Article 1

1. The EFTA Surveillance Authority and the EC Commission shall exchange information and consult each other on general policy issues at the request of either of the surveillance authorities.

2. In cases falling under Article 57(2)(a) of the Agreement, the EC Commission and the EFTA Surveillance Authority shall cooperate in the handling of concentrations as provided for in the provisions set out below.

3. For the purposes of this Protocol, the term 'territory of a surveillance authority' shall mean for the EC Commission the territory of the EC Member States to which the Treaty establishing the European Community applies, upon the terms laid down in that Treaty, and for the EFTA Surveillance Authority the territories of the EFTA States to which the Agreement applies.

Article 2

1. Cooperation shall take place, in accordance with the provisions set out in this Protocol, where:

(a) the combined turnover of the undertakings concerned in the territory of the EFTA States equals 25 per cent or more of their total turnover within the territory covered by the Agreement, or

(b) each of at least two of the undertakings concerned has a turnover exceeding EUR 250 million in the territory of the EFTA States, or

(c) the concentration is liable to significantly impede effective competition, in the territories of the EFTA States or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position.

2. Cooperation shall also take place where:

(a) the concentration fulfils the criteria for referral pursuant to Article 6.

(b) an EFTA State wishes to adopt measures to protect legitimate interests as set out in Article 7.

INITIAL PHASE OF THE PROCEEDINGS

Article 3

1. The EC Commission shall transmit to the EFTA Surveillance Authority copies of notifications of the cases referred to in Article 2(1) and (2)(a) within three working days and, as soon as possible, copies of the most important documents lodged with or issued by the EC Commission.

2. The EC Commission shall carry out the procedures set out for the implementation of Article 57 of the Agreement in close and constant liaison with the EFTA Surveillance Authority. The EFTA Surveillance Authority and EFTA States may express their views upon those procedures. For the purposes of Article 6(1) of this Protocol, the EC Commission shall obtain information from the competent authority of the EFTA State concerned and give it the opportunity to make known its views at every stage of the procedures up to the adoption of a decision pursuant to that Article. To that end, the EC Commission shall give it access to the file.

{[1]} Protocol 24 replaced by Decision No 78/2004 (OJ L 219, 19.6.2004, p. 13 and EEA Supplement No 32, 19.6.2004, p. 1), e.i.f. 9.6.2004.

Documents to be transmitted from the Commission to an EFTA State and from an EFTA State to the Commission pursuant to this Protocol shall be submitted via the EFTA Surveillance Authority.

HEARINGS

Article 4

In cases referred to in Article 2(1) and (2)(a), the EC Commission shall invite the EFTA Surveillance Authority to be represented at the hearings of the undertakings concerned. The EFTA States may likewise be represented at those hearings.

THE EC ADVISORY COMMITTEE ON CONCENTRATIONS

Article 5

1. In cases referred to in Article 2(1) and (2)(a), the EC Commission shall in due time inform the EFTA Surveillance Authority of the date of the meeting of the EC Advisory Committee on Concentrations and transmit the relevant documentation.

2. All documents forwarded for that purpose from the EFTA Surveillance Authority, including documents emanating from EFTA States, shall be presented to the EC Advisory Committee on Concentrations together with the other relevant documentation sent out by the EC Commission.

3. The EFTA Surveillance Authority and the EFTA States shall be entitled to be present in the EC Advisory Committee on Concentrations and to express their views therein; they shall not have, however, the right to vote.

RIGHTS OF INDIVIDUAL STATES

Article 6

1. The EC Commission may, by means of a decision notified without delay to the undertakings concerned, to the competent authorities of the EC Member States and to the EFTA Surveillance Authority, refer a notified concentration, in whole or in part, to an EFTA State where:

(a) a concentration threatens to affect significantly competition in a market within that EFTA State, which presents all the characteristics of a distinct market, or

(b) a concentration affects competition in a market within that EFTA State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the territory covered by the Agreement.

2. In cases referred to in paragraph 1, any EFTA State may appeal to the European Court of Justice, on the same grounds and conditions as an EC Member State under Articles 230 and 243 of the Treaty establishing the European Community, and in particular request the application of interim measures, for the purpose of applying its national competition law.

3.**{[2]}** Where the concentration may affect trade between one or more EC Member States and one or more EFTA States, the EC Commission shall inform the EFTA Surveillance Authority of any request received from an EC Member State pursuant to Article 22 of Regulation (EC) No 139/2004 without delay.

One or more EFTA States may join a request as referred to in subparagraph 1 where the concentration affects trade between one or more EC Member States and one or more EFTA States and threatens to significantly affect competition within the territory of the EFTA State or States joining the request.

Upon receipt of a copy of a request as referred to in subparagraph 1, all national time limits relating to the concentration shall be suspended in the EFTA States until it has been decided where the concentration shall be examined. As soon as an EFTA State has informed the Commission and the undertakings concerned that it does not wish to join the request, the suspension of its national time limits shall end.

{[2]} Paragraph 3 inserted by Decision No 79/2004 (OJ L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005.

Where the Commission decides to examine the concentration, the EFTA State or States having joined the request shall no longer apply their national legislation on competition to the concentration.

4. Prior to the notification of a concentration within the meaning of Article 4(1) of Regulation (EC) No 139/2004 the persons or undertakings referred to in Article 4(2) of Regulation (EC) No 139/2004 may inform the EC Commission, by means of a reasoned submission, that the concentration may significantly affect competition in a market within an EFTA State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that EFTA State.

The EC Commission shall transmit all submissions pursuant to Article 4(4) of Regulation (EC) No 139/2004 and this paragraph to the EFTA Surveillance Authority without delay.

5. With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and at least one EFTA State, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.

The EC Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 to the EFTA Surveillance Authority without delay.

Where at least one such EFTA State has expressed its disagreement as regards the request to refer the case, the competent EFTA State(s) shall retain their competence, and the case shall not be referred from the EFTA States pursuant to this paragraph.

Article 7

1. Notwithstanding the sole competence of the EC Commission to deal with concentrations of a Community dimension as set out in Council Regulation (EC) No 139/2004, EFTA States may take appropriate measures to protect legitimate interests other than those taken into consideration according to the above Regulation and compatible with the general principles and other provisions as provided for, directly or indirectly, under the Agreement.

2. Public security, plurality of media and prudential rules shall be regarded as legitimate interests within the meaning of paragraph 1.

3. Any other public interest must be communicated to the EC Commission and shall be recognized by the EC Commission after an assessment of its compatibility with the general principles and other provisions as provided for, directly or indirectly, under the Agreement before the measures referred to above may be taken. The EC Commission shall inform the EFTA Surveillance Authority and the EFTA State concerned of its decision within 25 working days of that communication.

ADMINISTRATIVE ASSISTANCE

Article 8

1. When the EC Commission requires by decision a person, an undertaking or an association of undertakings located within the territory of the EFTA Surveillance Authority to supply information, it shall without delay forward a copy of the decision to the EFTA Surveillance Authority. At the specific request of the EFTA Surveillance Authority, the EC Commission shall also forward to the EFTA Surveillance Authority copies of simple requests for information relating to a notified concentration.

2. At the request of the EC Commission, the EFTA Surveillance Authority and the EFTA States shall provide the EC Commission with all necessary information to carry out the duties assigned to it by Article 57 of the Agreement.

3. When the EC Commission interviews a consenting natural or legal person in the territory of the EFTA Surveillance Authority, the EFTA Surveillance Authority shall be informed in advance thereof. The EFTA Surveillance Authority may be present during the interview, as well as officials from the competition authority on whose territory the interviews are conducted.

4.**{[3]}** At the request of the EC Commission, the EFTA Surveillance Authority shall undertake inspections within its territory.

5.**{[4]}** The EC Commission is entitled to be represented and take an active part in inspections carried out pursuant to paragraph 4.

6.**{[5]}** All information obtained during such inspections on request shall be transmitted to the EC Commission immediately after their finalization.

7. Where the EC Commission carries out investigations within the territory of the Community, it shall, as regards cases falling under Article 2(1) and (2)(a), inform the EFTA Surveillance Authority of the fact that such inspections**{[6]}** have taken place and on request transmit in an appropriate way the relevant results of the investigations.

PROFESSIONAL SECRECY

Article 9

1. Information acquired as a result of the application of this Protocol shall be used only for the purpose of procedures under Article 57 of the Agreement.

2. The EC Commission, the EFTA Surveillance Authority, the competent authorities of the EC Member States and of the EFTA States, their officials and other servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States and of the EFTA States shall not disclose information acquired by them as a result of the application of this Protocol and of the kind covered by the obligation of professional secrecy.

3. Rules on professional secrecy and restricted use of information provided for in the Agreement or the legislation of the Contracting Parties shall not prevent the exchange and use of information as set out in this Protocol.

NOTIFICATIONS

Article 10

1. Undertakings shall address their notifications to the competent surveillance authority in accordance with Article 57(2) of the Agreement.

2. Notifications or complaints addressed to the authority which, pursuant to Article 57 of the Agreement, is not competent to take decisions on a given case shall be transferred without delay to the competent surveillance authority.

Article 11

The date of submission of a notification shall be the date on which it is received by the competent surveillance authority.

{[3]} Paragraph 4 inserted by Decision No 79/2004 (OJ L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005, as corrected by Corrigendum noted by the EEA Joint Committee Meeting on 24.09.2004.

{[4]} Paragraph 5 inserted by Decision No 79/2004 (OJ L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005, as corrected by Corrigendum noted by the EEA Joint Committee Meeting on 24.09.2004.

{[5]} Paragraph 6 inserted by Decision No 79/2004 (OJ L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005, as corrected by Corrigendum noted by the EEA Joint Committee Meeting on 24.09.2004.

{[6]} Word 'investigations' replaced by the word 'inspections' by Corrigendum Decision No 78/2004, e.i.f. 9.6.2004, noted by the EEA Joint Committee Meeting on 24.09.2004.

LANGUAGES

Article 12

1. Undertakings shall be entitled to address and be addressed by the EFTA Surveillance Authority and the EC Commission in an official language of an EFTA State or the Community which they choose as regards notifications. This shall also cover all instances of a proceeding.

2. If undertakings choose to address a surveillance authority in a language which is not one of the official languages of the States falling within the competence of that authority, or a working language of that authority, they shall simultaneously supplement all documentation with a translation into an official language of that authority.

3. As far as undertakings are concerned which are not parties to the notification, they shall likewise be entitled to be addressed by the EFTA Surveillance Authority and the EC Commission in an appropriate official language of an EFTA State or of the Community or in a working language of one of those authorities. If they choose to address a surveillance authority in a language which is not one of the official languages of the States falling within the competence of that authority, or a working language of that authority, paragraph 2 shall apply.

4. The language which is chosen for the translation shall determine the language in which the undertakings may be addressed by the competent authority.

TIME LIMITS AND OTHER PROCEDURAL QUESTIONS

Article 13

As regards time limits and other procedural provisions, including the procedures for referral of a concentration between the EC Commission and one or more EFTA States, the rules implementing Article 57 of the Agreement shall apply also for the purpose of the cooperation between the EC Commission and the EFTA Surveillance Authority and EFTA States, unless otherwise provided for in this Protocol.

The calculation of the time limits referred to in Article 4(4) and (5), Article 9(2) and (6) and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the EFTA Surveillance Authority and the EFTA States, upon receipt of the relevant documents by the EFTA Surveillance Authority **{[7]}**.

TRANSITION RULE

Article 14

Article 57 of the Agreement shall not apply to any concentration which was the subject of an agreement or announcement or where control was acquired before the date of entry into force of the Agreement. It shall not in any circumstances apply to a concentration in respect of which proceedings were initiated before that date by a national authority with responsibility for competition.

{[7]} In second paragraph, the words 'Article 4(4) and (5) and Article 9(2) and (6)' replaced by Decision No 79/2004 (OJ L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005.