PROTOCOL 21

ON THE IMPLEMENTATION OF COMPETITION RULES APPLICABLE TO UNDERTAKINGS

Article 1

The EFTA Surveillance Authority shall, in an agreement between the EFTA States, be entrusted with equivalent powers and similar functions to those of the EC Commission, at the time of the signature of the Agreement, for the application of the competition rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community, enabling the EFTA Surveillance Authority to give effect to the principles laid down in Articles 1(2)(e) and 53 to 60 of the Agreement, and in Protocol 25.

The Community shall, where necessary, adopt the provisions giving effect to the principles laid down in Articles 1(2)(e) and 53 to 60 of the Agreement, and in Protocol 25, in order to ensure that the EC Commission has equivalent powers and similar functions under this Agreement to those which it has, at the time of the signature of the Agreement, for the application of the competition rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community.

Article 2

If, following the procedures set out in Part VII of the Agreement, new acts for the implementation of Articles 1(2)(e) and 53 to 60 and of Protocol 25, or on amendments of the acts listed in Article 3 of this Protocol are adopted, corresponding amendments shall be made in the agreement setting up the EFTA Surveillance Authority so as to ensure that the EFTA Surveillance Authority will be entrusted simultaneously with equivalent powers and similar functions to those of the EC Commission.

Article 3

1. In addition to the acts listed in Annex XIV, the following acts reflect the powers and functions of the EC Commission for the application of the competition rules of the Treaty establishing the European Economic Community:

Control of concentrations

1.**{[1]}** **32004 R 0139**: Article 4(4) and (5) and Articles 6 to 26 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

2.**{[2]}** **32004 R 0802:** Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1), as corrected by OJ L 172, 6.5.2004, p. 9, as amended by:

- **32006 R 1792:** Commission Regulation (EC) No 1792/2006 of 23 October 2006 (OJ L 362, 20.12.2006, p. 1),
- **32008 R 1033**: Commission Regulation (EC) No 1033/2008 of 20 October 2008 (OJ L 279, 22.10.2008, p. 3).

{[1]} Text of point 1 (Council Regulation (EEC) No 4064/89) replaced by Decision No 78/2004 (OJ No L 219, 19.6.2004, p. 13 and EEA Supplement No 32, 19.6.2004, p. 1), e.i.f. 9.6.2004, and subsequently replaced by Decision No 79/2004 (OJ No L 219, 19.6.2004, p. 24 and EEA Supplement No 32, 19.6.2004, p. 10), e.i.f. 1.7.2005.

{[2]} This point, introduced by Decision No 77/98 (OJ No L 172, 8.7.1999, p. 56 and EEA Supplement No 30, 8.7.1999, p. 153), e.i.f. 1.9.1998, replaces former point 2. See also Decision No 13/97 (OJ No L 182, 10.7.1997, p. 44 and EEA Supplement No 29, 10.7.1997, p. 59), e.i.f. 1.4.1997 and subsequently replaced by Decision No 117/2009 (OJ No L 334, 17.12.2009, p. 20 and EEA Supplement No 68, 17.12.2009, p. 20) e.i.f. 23.10.2009

General procedural rules

3.**{[3]}** **32003 R 0001**: Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1), as amended by:

-**{[4]}** **32004 R 0411**: Council Regulation (EC) No 411/2004 of 26 February 2004 (OJ L 68, 6.3.2004, p. 1),

-**{[5]}** **32006 R 1419**: Council Regulation (EC) No 1419/2006 of 25 September 2006 (OJ L 269, 28.9.2006, p. 1).

4.**{[6]}** **32004 R 0773**: Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18), as amended by:

-**{[7]}** **32006 R 1792**: Commission Regulation (EC) No 1792/2006 of 23 October 2006 (OJ L 362, 20.12.2006, p. 1),

-**{[8]}** **32008 R 0622**: Commission Regulation (EC) No 622/2008 of 30 June 2008 (OJ L 171, 1.7.2008, p. 3).

5. [ ] **{[9]}**

Transport

6. [ ] **{[10]}**

7. [ ] **{[11]}**

8. [ ] **{[12]}**

9. [ ] **{[13]}**

10. **374 R 2988**: Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ No L 319, 29.11.1974, p. 1), as amended by:

{[3]} Text replaced by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[4]} Indent and words “, as amended by:”, added by Decision No 40/2005 (OJ No L 198, 28.7.2005, p. 38 and EEA Supplement No 38, 28.7.2005, p. 22), e.i.f. 19.5.2005.

{[5]} Indent added by Decision No 153/2006 (OJ No L 89, 29.3.2007, p. 25 and EEA Supplement No 15, 29.3.2007, p. 20), e.i.f. 1.8.20076.

{[6]} Text of point 4 (Commission Regulation (EC) No 3385/94) replaced by Decision No 178/2004 (OJ No L 133, 26.5.2005, p. 35 and EEA Supplement No 26, 26.5.2005, p. 25), e.i.f. 1.7.2005.

{[7]} Indent and words “, as amended by:”, added by Decision No 132/2007 (OJ No L 100, 10.4.2008, p. 1 and EEA Supplement No 19, 10.4.2008, p.1), e.i.f. 9.11.2011.

{[8]} Indent added by Decision No 118/2009 (OJ No L 334, 17.12.2009, p. 22 and EEA Supplement No 68, 17.12.2009, p. 22), e.i.f. 23.10.2009.

{[9]} Text of point 5 (Commission Regulation (EC) No 2842/98) deleted by Decision No 178/2004 (OJ No L 133, 26.5.2005, p. 35 and EEA Supplement No 26, 26.5.2005, p. 25), e.i.f. 1.7.2005.

{[10]} Text of point 6 (Council Regulation (EEC) No 141/62) deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[11]} Text of point 7 (Article 6 and articles 10 to 31 of Council Regulation (EEC) No 1017/68) deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[12]} Text of point 8 deleted by Decision No 60/1999 (OJ No L 284, 9.11.2000, p. 38 and EEA Supplement No 50, 9.11.2000, p. 118), e.i.f. 1.5.1999.

{[13]} Text of point 9 deleted by Decision No 60/1999 (OJ No L 284, 9.11.2000, p. 38 and EEA Supplement No 50, 9.11.2000, p. 118), e.i.f. 1.5.1999.

-{[14]} **32003 R 0001**: Council Regulation (EC) No 1/2003 of 16 December 2002 (OJ L 1, 4.1.2003, p. 1).

11. [ ] **{[15]}**

12. [ ] **{[16]}**

13. **387 R 3975**: Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ No L 374, 31.12.1987, p. 1), as amended by:

- **391 R 1284**: Council Regulation (EEC) No 1284/91 of 14 May 1991 (OJ No L 122, 17.5.1991, p. 2),

-{[17]} **392 R 2410**: Council Regulation (EEC) No 2410/92 of 23 July 1992 (OJ No L 240, 24.8.1992, p. 18),

-{[18]} **32003 R 0001**: Council Regulation (EC) No 1/2003 of 16 December 2002 (OJ L 1, 4.1.2003, p. 1),

-{[19]} **32004 R 0411**: Council Regulation (EC) No 411/2004 of 26 February 2004 (OJ L 68, 6.3.2004, p. 1).

14.**{[20]}**

15. [ ] **{[21]}**

16. [ ] **{[22]}**

2. In addition to the acts listed in Annex XIV, the following acts reflect the powers and functions of the EC Commission for the application of the competition rules of the Treaty establishing the European Coal and Steel Community (ECSC):

1. Article (ECSC) 65(2), subparagraphs 3 to 5, (3), (4), subparagraph 2, and (5).

2. Article (ECSC) 66(2), subparagraphs 2 to 4, and (4) to (6).

3. **354 D 7026**: High Authority Decision No 26/54 of 6 May 1954 laying down in implementation of Article 66(4) of the Treaty a regulation concerning information to be furnished (OJ of the European Coal and Steel Community No 9, 11.5.1954, p. 350/54).

{[14]} Indent and words “, as amended by:”, added by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[15]} Text of point 11 (Section II of Council Regulation (EEC) No 4056/86) deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[16]} Text of point 12 deleted by Decision No 60/1999 (OJ No L 284, 9.11.2000, p. 38 and EEA Supplement No 50, 9.11.2000, p. 118), e.i.f. 1.5.1999.

{[17]} Indent added by Decision No 3/94 (OJ No L 85, 30.3.1994, p. 65 and EEA Supplement No 1, 30.3.1994, p. 5), e.i.f. 1.7.1994.

{[18]} Indent and words “, as amended by:”, added by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[19]} Indent added by Decision No 40/2005 (OJ No L 198, 28.7.2005, p. 38 and EEA Supplement No 38, 28.7.2005, p. 22), e.i.f. 19.5.2005.

{[20]} Text deleted by Decision No 60/1999 (OJ No L 284, 9.11.2000, p. 38 and EEA Supplement No 50, 9.11.2000, p. 118), e.i.f. 1.5.1999.

{[21]} Text of point 15 (Commission Regulation (EC) No 2842/98) deleted by Decision No 178/2004 (OJ No L 133, 26.5.2005, p. 35 and EEA Supplement No 26, 26.5.2005, p. 25), e.i.f. 1.7.2005.

{[22]} Text of point 16 (Commission Regulation (EC) No 2843/98) deleted by Decision No 178/2004 (OJ No L 133, 26.5.2005, p. 35 and EEA Supplement No 26, 26.5.2005, p. 25), e.i.f. 1.7.2005.

4. **378 S 0715**: Commission Decision No 715/78/ECSC of 6 April 1978 concerning limitation periods in proceedings and the enforcement of sanctions under the Treaty establishing the European Coal and Steel Community (OJ No L 94, 8.4.1978, p. 22).

5. **384 S 0379**: Commission Decision No 379/84/ECSC of 15 February 1984 defining the powers of officials and agents of the Commission instructed to carry out the checks provided for in the ECSC Treaty and decisions taken in application thereof (OJ No L 46, 16.2.1984, p. 23).

Article 4 **{[23]}**

Article 5 **{[24]}**

Article 6 **{[25]}**

Article 7 **{[26]}**

Article 8 **{[27]}**

Applications submitted to the EC Commission prior to the date of entry into force of the Agreement shall be deemed to comply with the provisions on application under the Agreement.

The competent surveillance authority pursuant to Article 56 of the Agreement and Article 10 of Protocol 23 may require a duly completed form as prescribed for the implementation of the Agreement to be submitted to it within such time as it shall appoint. In that event, applications shall be treated as properly made only if the forms are submitted within the prescribed period and in accordance with the provisions of the Agreement.

*Article 9***{[28]}**

Article 10

The Contracting Parties shall ensure that the measures affording the necessary assistance to officials of the EFTA Surveillance Authority and the EC Commission, in order to enable them to make their investigations as foreseen under the Agreement, are taken within six months of the entry into force of the Agreement.

Article 11

As regards agreements, decisions and concerted practices already in existence at the date of entry into force of the Agreement which fall under Article 53(1), the prohibition in Article 53(1) shall not apply where the agreements,

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{[23]} Text of article 4 deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[24]} Text of article 5 deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[25]} Text of article 6 deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[26]} Text of article 7 deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[27]} Words "and notifications" deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

{[28]} Text of article 9 deleted by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.

decisions or practices are modified within six months from the date of entry into force of the Agreement so as to fulfil the conditions contained in the block exemptions provided for in Annex XIV.

Article 12

As regards agreements, decisions of associations of undertakings and concerted practices already in existence at the date of entry into force of the Agreement which fall under Article 53 (1), the prohibition in Article 53(1) shall not apply, from the date of entry into force of the Agreement, where the agreements, decisions or practices are modified within six months from the date of entry into force of the Agreement so as not to fall under the prohibition of Article 53(1) any more.

Article 13

Agreements, decisions of associations of undertakings and concerted practices which benefit from an individual exemption granted under Article 85(3) of the Treaty establishing the European Economic Community before the entry into force of the Agreement shall continue to be exempted as regards the provisions of the Agreement, until their date of expiry as provided for in the decisions granting these exemptions or until the EC Commission otherwise decides, whichever date is the earlier.

Review clause{[29]}

By the end of 2005 and at the request of one of the Contracting Parties, the Parties shall review the mechanisms for the enforcement of Articles 53 and 54 of the Agreement as well as the co-operation mechanisms of Protocol 23 to the Agreement, with a view to ensuring the homogenous and effective application of those Articles. The Parties shall in particular review the decision of the EEA Joint Committee No 130/2004 of 24 September 2004 in light of the Parties' experiences with the new system of enforcing the competition rules and explore the possibility of mirroring in the EEA the system established in the EU by Council Regulation (EC) No 1/2003 as regards the application of Articles 81 and 82 of the Treaty by national competition authorities, the horizontal co-operation between national competition authorities and the mechanism for ensuring uniform application of the competition rules by national authorities.

{[29]} Review clause added by Decision No 130/2004 (OJ No L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42), e.i.f. 19.5.2005.