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DECISION OF THE EEA JOINT COMMITTEE
No 178/2004

of 3 December 2004

amending Protocol 21 (On the implementation of competition rules applicable to undertakings) and Protocol 23 (Concerning the cooperation between the surveillance authorities) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Protocol 21 to the Agreement was amended by Decision of the EEA Joint Committee No 130/2004 of 24 September 2004¹.
- (2) Protocol 23 to the Agreement was amended by Decision of the EEA Joint Committee No 130/2004 of 24 September 2004².
- (3) 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 Treaty³ is to be incorporated into the Agreement.
- (4) Regulation (EC) No 773/2004 repeals Commission Regulations (EC) No 3385/94⁴, (EC) No 2842/98⁵ and (EC) No 2843/98⁶, which are incorporated into the Agreement and which are consequently to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Article 3 of Protocol 21 to the Agreement shall be amended as follows:

1. The text of point 1(4) (Commission Regulation (EC) No 3385/94) shall be replaced by the following:

¹ OJ L 64, 10.3.2005, p. 57.

² OJ L 64, 10.3.2005, p. 57.

³ OJ L 123, 27.4.2004, p. 18.

⁴ OJ L 377, 31.12.1994, p. 28.

⁵ OJ L 354, 30.12.1998, p. 18.

⁶ OJ L 354, 30.12.1998, p. 22.

‘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).’

2. The text of points 1(5) (Commission Regulation (EC) No 2842/98), 1(15) (Commission Regulation (EC) No 2842/98) and 1(16) (Commission Regulation (EC) No 2843/98) shall be deleted.

Article 2

The following shall be added after Article 10 of Protocol 23 to the Agreement:

‘ACCESS TO THE FILE

Article 10A

When a surveillance authority grants access to the file to the parties to whom it has addressed a statement of objections, the right of access to the file shall not extend to internal documents of the other surveillance authority or of the competition authorities of the EC Member States and the EFTA States. The right of access to the file shall also not extend to correspondence between the surveillance authorities, between a surveillance authority and the competition authorities of the EC Member States or EFTA States or between the competition authorities of the EC Member States or EFTA States where such correspondence is contained in the file of the competent surveillance authority.’

Article 3

The texts of Regulation (EC) No 773/2004 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 4

This Decision shall enter into force on 4 December 2004, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee*, or on the day of entry into force of Decision of the EEA Joint Committee No 130/2004 of 24 September 2004, whichever is the later.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

*Constitutional requirements indicated.

Done at Brussels, 3 December 2004.

*For the EEA Joint Committee
The President*

Kjartan Jóhannsson

*The Secretaries
To the EEA Joint Committee*

Ø. Hovdikkinn M. Brinkmann