

DECISION OF THE EEA JOINT COMMITTEE**No 79/2004****of 8 June 2004****amending Annex XIV (Competition), Protocol 21 (on the implementation of competition rules applicable to undertakings) and Protocol 24 (on cooperation in the field of control of concentrations) 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) Annex XIV to the Agreement was amended by the Agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the European Economic Area signed on 14 October 2003 in Luxembourg ⁽¹⁾.
- (2) Protocol 21 to the Agreement was amended by the Agreement on the participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the European Economic Area signed on 14 October 2003 in Luxembourg.
- (3) Protocol 24 to the Agreement has not previously been amended by the EEA Joint Committee.
- (4) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ⁽²⁾ was incorporated into the Agreement by Decision of the EEA Joint Committee No 78/2004 of 8 June 2004 ⁽³⁾.
- (5) Articles 13 and 22 of Regulation (EC) No 139/2004 were not incorporated by Decision of the EEA Joint Committee No 78/2004 of 8 June 2004.
- (6) Articles 13 and 22 of Regulation (EC) No 139/2004 should be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

In point 1 (Council Regulation (EC) No 139/2004) of Annex XIV to the Agreement, the text of adaptation (a) shall be replaced by the following:

'In Article 1(1), the phrase "or the corresponding provisions in Protocol 21 and Protocol 24 to the EEA Agreement" shall be inserted after the words "Without prejudice to Article 4(5) and Article 22";

furthermore, the term "Community dimension" shall read "Community or EFTA dimension";

⁽¹⁾ OJ L 130, 29.4.2004, p. 3.

⁽²⁾ OJ L 24, 29.1.2004, p. 1.

⁽³⁾ See page 13 of this Official Journal.

Article 2

The text of point 1(1) (Council Regulation (EC) No 139/2004) in Article 3 of Protocol 21 to the Agreement shall be replaced by the following:

'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).'

Article 3

Protocol 24 to the Agreement shall be amended as follows:

1. The following new paragraph 3 shall be inserted in Article 6:

'3. 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.

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.'

2. The following new paragraphs 4, 5 and 6 shall be inserted in Article 8:

'4. At the request of the EC Commission, the EFTA Surveillance Authority shall undertake investigations within its territory.

5. The EC Commission is entitled to be represented and take an active part in investigations carried out pursuant to paragraph 4.

6. All information obtained during such investigations on request shall be transmitted to the EC Commission immediately after their finalization.'

3. In Article 13, second subparagraph, the words 'Article 4(4) and (5) and Article 9(2) and (6)' shall be replaced by the words 'Article 4(4) and (5), Article 9(2) and (6) and Article 22(2)'.

Article 4

This Decision shall enter into force on 9 June 2004, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

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*.

Done at Brussels, 8 June 2004.

For the EEA Joint Committee

The President

S. GILLESPIE

(*) Constitutional requirements indicated.