

DECISION OF THE EEA JOINT COMMITTEE No 42/2005
of 11 March 2005
amending Annex XIV (Competition) 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 Decision of the EEA Joint Committee No 17/2005 of 8 February 2005 ⁽¹⁾.
- (2) Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements ⁽²⁾, as corrected by OJ L 127, 29.4.2004, p. 158, is to be incorporated into the Agreement.
- (3) Regulation (EC) No 772/2004 repeals Commission Regulation (EC) No 240/96 ⁽³⁾, which is incorporated in the Agreement and which is consequently to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The text of point 5 (Commission Regulation (EC) No 240/96) of Annex XIV to the Agreement shall be replaced by the following:

'32004 R 0772: Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.4.2004, p. 11), as corrected by OJ L 127, 29.4.2004, p. 158.

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) In Article 6, paragraph 1, the following shall be added after the words "pursuant to Article 29(1) of Council Regulation (EC) No 1/2003": "or the corresponding provision in Article 29(1) of Chapter II of Part I of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice."

⁽¹⁾ OJ L 161, 23.6.2005, p. 39.

⁽²⁾ OJ L 123, 27.4.2004, p. 11.

⁽³⁾ OJ L 31, 9.2.1996, p. 2.

(b) In Article 6, paragraph 2, the following shall be added after the words “pursuant to Article 29(2) of Council Regulation (EC) No 1/2003”: “or the corresponding provision in Article 29(2) of Chapter II of Part I of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.”

(c) The following shall be added at the end of Article 7:

“Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar technology transfer agreements cover more than 50 % of a relevant market in the EFTA States, this Regulation shall not apply to technology transfer agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance by the EFTA State not responding in time.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other on the application of this provision.

Where parallel networks of similar technology transfer agreements cover more than 50 % of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EC Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising the relevant market in question.”

Article 2

The texts of Regulation (EC) No 772/2004, as corrected by OJ L 127, 29.4.2004, p. 158, 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 3

This Decision shall enter into force on 12 March 2005, 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 4

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, 11 March 2005.

For the EEA Joint Committee

The President

Richard WRIGHT

(*) No constitutional requirements indicated.