

AGREEMENT**between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities**

THE EUROPEAN COMMUNITY,

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF KOREA,

of the other part,

(hereinafter referred to as 'the Parties');

RECOGNISING that the world's economies are becoming increasingly interrelated, and in particular that this is true of the economies of the European Community and the Republic of Korea;

NOTING that the European Community and the Republic of Korea share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets, as well as to economic welfare of consumer of both Parties and trade between them;

NOTING that the sound and effective enforcement of the Parties' competition laws would be enhanced through cooperation and, in appropriate cases, coordination between them in the application of those laws;

FURTHER RECOGNISING that cooperation between the Parties' competition authorities will contribute to improving and strengthening their relationship;

BEARING IN MIND that from time to time differences may arise between the Parties concerning the application of their competition laws to conduct or transactions that implicate significant interests of both Parties;

NOTING the revised Recommendation of the Council of the Organization for Economic Cooperation and Development Concerning Cooperation between Member Countries on Anticompetitive Practices Affecting International Trade, adopted on 27 and 28 July 1995;

HAVING REGARD to the Memorandum of Understanding concluded between the Competition Directorate General of the European Commission and the Fair Trade Commission of the Republic of Korea on 28 October 2004,

HAVE AGREED AS FOLLOWS:

*Article 1***Purpose and Definitions**

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.

2. For the purpose of this Agreement, the following terms shall have the following definitions:

(a) the term 'anticompetitive activities' means any activities that may be subject to sanctions or other relief measures by competition authorities under the competition laws of one of the Parties or both Parties;

(b) the terms 'competition authority' and 'competition authorities' mean:

(i) for the European Community, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Community; and

(ii) for the Republic of Korea, the Korea Fair Trade Commission;

(c) the term 'competent authority of a Member State' means one authority for each Member State of the European Community for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of the Republic of Korea. The

Commission will notify to the Government of the Republic of Korea an updated list each time this becomes necessary;

- (d) the term 'competition laws' means:
- (i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, and their implementing Regulations as well as any amendments thereto; and
 - (ii) for the Republic of Korea, the Monopoly Regulation and Fair Trade Act, and its implementing regulations as well as any amendments thereto;
- (e) the term 'enforcement activities' means any application of competition laws by way of investigation or proceedings conducted by the competition authority of a Party.

Article 2

Notifications

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.
2. Enforcement activities that may affect the important interests of the other Party and are relevant to enforcement activities of the other Party include inter alia:
 - (a) enforcement activities against a national or nationals of the other Party (in the case of the European Community a national or nationals of the Member States of the European Community), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;
 - (b) enforcement activities against anticompetitive activities other than concentrations which also take place or took place in significant part within the other Party's territory;
 - (c) enforcement activities which involve a concentration in which one or more parties to the transaction is a company incorporated or organised under the applicable laws and regulations of the territory of the other Party;
 - (d) enforcement activities which involve a concentration in which a company controlling one or more of the parties to the transaction is a company incorporated or organised under the applicable laws and regulations of the territory of the other Party;
 - (e) enforcement activities which involve conduct believed to have been encouraged, required or approved by the other Party; and
 - (f) enforcement activities which involve remedies that expressly require or prohibit conduct in the other Party's territory or

contain binding obligations for the undertakings in that territory.

3. Notifications with respect to concentrations pursuant to paragraph 1 of this Article shall be given:

- (a) in the case of the European Community:
 - (i) when initiating proceedings pursuant to Article 6(1)c of Council Regulation (EC) No 139/2004;
 - (ii) when issuing a Statement of Objections;
- (b) in the case of the Republic of Korea:
 - (i) not later than the time when the competition authority produces a written request either to extend the period of review or to ask for submission of additional materials concerning concentrations with potential anti-competitive effects; and
 - (ii) when issuing the examination report.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than concentrations, notification shall be given:

- (a) in the case of the European Community:
 - (i) when issuing a Statement of Objections;
 - (ii) when adopting a decision or a settlement;
- (b) in the case of the Republic of Korea:
 - (i) when issuing the examination report;
 - (ii) when filing a criminal accusation;
 - (iii) when adopting a decision.

5. Notifications shall include in particular the names of the parties to the investigation, the activities under examination and the markets they relate to, the relevant legal provisions and the date of the enforcement activities.

Article 3

Enforcement Cooperation

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.
2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:

- (a) inform the competition authority of the other Party with respect to its enforcement activities involving anti-competitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the other Party;
- (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anti-competitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
- (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

Article 4

Coordination of enforcement activities

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities to the extent compatible with their respective laws and regulations.
2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should take into account the following factors, among others:
 - (a) the effect of such coordination on the ability of the competition authorities of both Parties to achieve the objectives of their enforcement activities;
 - (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
 - (c) the possibility of avoiding conflicting obligations and unnecessary burdens for the persons subject to the enforcement activities;
 - (d) the opportunity to make more efficient use of their resources through coordination.
3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.
4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether companies/persons who have provided confidential information in connection with those enforcement

activities will consent to the sharing of such information with the competition authority of the other Party (waiver of confidentiality).

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit the coordination of enforcement activities and proceed independently on a specific enforcement activity.

Article 5

Conflict avoidance (Negative Comity)

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.
2. If a specific enforcement activity envisaged by a competition authority of one Party may affect the important interests of the other Party, the former, without prejudice to its full discretion, shall use its best endeavours:
 - (a) to provide to the other Party timely notice of significant developments relating to the interests of the latter;
 - (b) to give the other Party an opportunity to provide comments; and
 - (c) to take into consideration the comments of the other Party, while fully respecting the independence of each Party to make its own decision.

The application of paragraph 2 of this Article is without prejudice to the obligations of the Parties under paragraphs 3 and 4 of Article 2.

3. Where either Party considers that enforcement activities by its competition authority may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:
 - (a) the relative significance of the effects of the anticompetitive activities on the enforcing Party's important interests as compared to the effects on the other Party's important interests;
 - (b) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of one Party as compared to conduct or transactions occurring within the territory of the other Party;
 - (c) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected;

(d) the extent to which private persons, either natural or legal, will be placed under conflicting requirements by both Parties.

Article 6

Positive comity

1. If the competition authority of a Party believes that anti-competitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.

2. The request shall be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.

3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.

4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from withdrawing its request.

Article 7

Confidentiality

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or if such communication would be incompatible with its important interests.

2. (a) The European Community is not required to communicate to the Republic of Korea under the Agreement confidential information covered by Article 28 of Council Regulation (EC) No 1/2003, and Article 17 of Council Regulation (EC) No 139/2004, except for the information communicated in accordance with the provisions of Article 4(4) of this Agreement.

(b) The Government of the Republic of Korea is not required to communicate to the European Community under the Agreement confidential information covered by Article 62 of the Monopoly Regulation and Fair Trade Act and Article 9 of the Disclosure of Information by Public Agencies Act, except for the information communicated in accordance with the provisions of Article 4(4) of this Agreement.

3. (a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall be used by the receiving Party solely for the purpose of investigating anti-competitive activities under its competition laws in connection with the matter specified in the request.

(b) When a Party communicates confidential information under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.

4. A Party may require that information communicated pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior written consent of the other Party.

5. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.

6. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:

(a) the Party providing the information has given its prior written consent to such use or disclosure; or

(b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:

(i) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior written consent of the Party providing the information;

(ii) shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and

(iii) shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.

7. The competition authority of the European Community:

- (a) will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Korean competition authority;
- (b) will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and
- (c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to subparagraphs (a) and (b) above shall not be used for any purpose other than the one specified in Article 1(1) of this Agreement, as well as that such information shall not be disclosed.

Article 8

Consultation

1. The Parties shall consult with each other, upon request of either Party, on any matter which may arise in the implementation of this Agreement.
2. The competition authorities of the Parties shall meet at least once a year and may:
 - (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each Party;
 - (b) exchange information on economic sectors of common interest;
 - (c) discuss policy issues of mutual interest; and
 - (d) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

Article 9

Communications under the Agreement

Communications under this Agreement may be carried out directly between the competition authorities of the Parties. Notifications under Article 2(3) and requests under Article 6(1) shall, however, be confirmed promptly in writing through diplomatic channels and shall contain the information initially exchanged between the competition authorities.

Article 10

Existing law

1. This Agreement shall be implemented within the respective laws and regulations of the Parties.
2. Nothing in this Agreement shall be construed to prejudice the policy or legal jurisdiction of either party regarding any issues related to jurisdiction.
3. Nothing in this Agreement shall be construed to affect the rights or obligations of either Party under other international agreements or under the laws of the Republic of Korea and the European Community.

Article 11

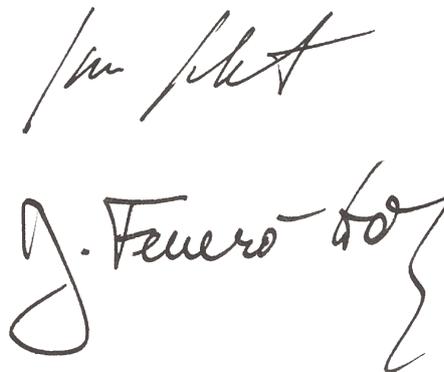
Entry into force, termination and review

1. This Agreement shall enter into force on the date when the Parties exchange written notifications that their respective legal requirements for the entry into force of this agreement have been fulfilled.
2. This Agreement shall remain in force until sixty (60) days after the date on which either Party notifies the other Party in writing through the diplomatic channel of its intention to terminate the Agreement.
3. The Parties shall consider reviewing the operation of this Agreement not later than five (5) years from the date of its entry into force, with a view to assessing their cooperative activities, identifying additional areas in which they could usefully cooperate and identifying any other ways in which the Agreement could be improved. The Parties agree that this review will include, among other things, an analysis of actual or potential cases to determine whether their interests could be better served through closer cooperation.
4. This Agreement may be amended with the mutual written consent of the Parties. Such amendment shall enter into force through the same procedures as set forth in paragraph 1 of this Article.

In WITNESS WHEREOF, the undersigned, being duly authorised thereto by the respective Parties, have signed this Agreement.

Done in duplicate, at Seoul on 23 May 2009 in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Korean languages. In case of divergence the English and Korean texts shall prevail over the other language texts.

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduse nimel
 Για την Ευρωπαϊκή Κοινότητα
 For the European Community
 Pour la Communauté européenne
 Per la Comunità europea
 Eiropas Kopienas vārdā
 Europos bendrijos vardu
 Az Európai Közösség részéről
 Ghall-Komunitá Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapen vägnar
 유럽공동체를 대표하여



За правителството на Република Корея
 Por el Gobierno de la República de Corea
 Za vládu Korejské republiky
 For Republikken Koreas regering
 Für die Regierung der Republik Korea
 Korea Vabariigi Valitsuse nimel
 Για την Κυβέρνηση της Δημοκρατίας της Κορέας
 For the Government of the Republic of Korea
 Pour le gouvernement de la République de Corée
 Per il governo della Repubblica di Corea
 Korejas Republikas valdības vārdā
 Korėjos Respublikos Vyriausybės vardu
 A Koreai Köztársaság kormánya részéről
 Ghall-Gvern tar-Repubblika tal-Korea
 Voor de Regering van de Republiek Korea
 W imieniu rządu Republiki Korei
 Pelo Governo da República da Coreia
 Pentru Guvernul Republicii Coreea
 Za vládu Kórejskej republiky
 Za Vlado Republike Korejo
 Korean tasavallan hallituksen puolesta
 På Republiken Koreas regerings vägnar
 대한민국 정부를 대표하여

