

AGREEMENT

on telecommunications procurement between the European Community and the Republic of Korea

THE EUROPEAN COMMUNITY,

(hereinafter 'the EC'),

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF KOREA,

(hereinafter 'Korea'),

of the other part,

(hereinafter referred to as the 'Parties' and singularly as a 'Party'),

CONSIDERING the Parties' efforts and commitments to liberalize their respective public procurement markets notably through the Government Procurement Agreement (1994 GPA);

DESIROUS to pursue liberalization efforts among themselves by granting reciprocal access to procurement by their respective telecommunications operators, subject to the conditions provided for in this Agreement;

MINDFUL of the need to ensure a successful outcome to negotiations under the auspices of the World Trade Organization (WTO) on the liberalization of telecommunications services,

HAVE AGREED AS FOLLOWS:

contracts for the procurement of products or incidental services by the Parties' TOs.

Article 1

Objective, definitions and scope of coverage

1. The purpose of this Agreement is to secure reciprocal, transparent and non-discriminatory access for the Parties' suppliers and service providers to the procurement of products and incidental services by designated telecommunications operators listed in Annex I ('TOs').

4. In the case of contracts, or series of contracts, awarded by Korean TOs for the procurement of products and incidental services, this Agreement shall apply only to those with an estimated value of which, excluding VAT or comparable turnover tax, is not less than SDR 450 000, unless otherwise agreed between the Parties.

2. For the purpose of this Agreement:

(a) TOs shall be those listed in Annex I. The Parties shall update that list by mutual consent where appropriate;

In the case of contracts, or series of contracts, awarded by EC TOs for the procurement of products and incidental services, this Agreement shall apply only to those with an estimated value of which, excluding VAT or comparable turnover tax, is not less than ECU 600 000, unless otherwise agreed between the Parties.

(b) 'products' include any equipment, supplies and materials that are used to install, operate, maintain, repair or manage transmission networks as well as research and development equipment, test and measuring equipment, training equipment and terminal equipment;

The value of SDR in Korean Won shall be fixed in accordance with the procedures set out in the 1994 WTO Agreement on Government Procurement (GPA).

(c) 'incidental services' are the services that TOs procure, incidental to the procurement of a product.

5. This Agreement does not apply to the following contracts:

(a) procurement of products and services with a view to commercial resale or use in the production of goods for commercial sale;

3. This Agreement applies to any law, regulation or practice affecting the procurement of products and incidental services by the Parties' TOs and to the award of all

(b) for the EC:

— procurement contracts entered into by TOs that are subject to complete and effective competition in the market place, pursuant to the requirements under Article 8 of the EC's utilities Directive,

— the award of contracts for the procurement of products and incidental services entered into before 1 January 1998 by TOs established in Portugal and Greece;

(c) for Korea:

— single tendering procurement involving set-asides for small and medium-sized businesses stipulated under Korea's Government Invested Enterprise Management Law and the Accounting Regulations on Government-Invested Enterprises, and

— procurement of satellites pursuant to Korea's Aviation and Space Industry Development Promotion Law for a five-year period commencing on the date on which Korea's accession to the GPA becomes effective.

Article 2

National treatment and non-discrimination

1. Each Party shall ensure that in all procurement procedures and practices and in the award of procurement contracts, the TOs established in its territory provide (i) products and incidental services, and (ii) suppliers⁽¹⁾ of the other Party with treatment no less favourable than that accorded to:

- (a) (i) domestic products and incidental services, and/or (ii) suppliers; and
- (b) (i) products and incidental services, and/or (ii) suppliers of any third country.

2. The Parties shall ensure that the TOs established in their respective territories shall not, with respect to the procurement contracts covered by this Agreement:

- (a) treat a locally-established supplier less favourably than another locally-established supplier on the basis of the degree of affiliation to, ownership of or control by natural or legal persons from the other Party;
- (b) discriminate against a locally-established supplier on the basis of the fact that the product or service being supplied originates from the other Party.

3. The Parties shall ensure that the TOs do not, in the application and selection of suppliers, products or incidental services, or in the evaluation of tenders and award of contracts, impose or seek offsets⁽²⁾.

4. With regard to challenge procedures and disclosure of information concerning these procedures, a Party and

its TOs shall not treat the other Party and its suppliers less favourably than its domestic suppliers or those of other third countries.

5. To the extent applicable, the WTO Agreement on technical barriers to trade shall apply to the laws, regulations and policies of the Parties as they relate to the procurement of products and incidental services by their respective TOs.

6. The Parties shall also ensure that, where appropriate, their TOs define the technical specifications set out in the tender documentation in terms of performance rather than design or descriptive characteristics. Such specifications shall be based on international standards, where such exist, otherwise on national technical regulations or recognized national standards. Any technical specifications adopted or applied with a view to, or with the effect of creating unnecessary obstacles to procurement by a Party's TO of products or services from the other Party and to related trade between the Parties, shall be prohibited.

Article 3

Procurement procedures

The Parties shall ensure that the procurement procedures and practices followed by their TOs comply with the principles of non-discrimination, transparency and fairness. Such procedures shall at least contain the following elements:

- (a) the call for competition shall be made by means of a tender notice inviting submission of tenders, an indicative notice or a notice on the existence of a qualification system. These notices, or a summary of the important elements thereof, shall be published at least in one of the 1996 GPA official languages on a national level or, as regards the EC, on a Community level. They shall contain all necessary information about the intended procurement, including where applicable the type of award procedure being followed;
- (b) time limits shall be adequate to allow suppliers or service providers to prepare and submit tenders;
- (c) tender documentation shall contain all information necessary, notably technical specifications and selection and award criteria, to enable tenderers to submit eligible tenders. Tender documentation shall be forwarded to suppliers or service providers upon request;

⁽¹⁾ 'Suppliers' shall be construed as meaning suppliers of products and incidental services.

⁽²⁾ Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

- (d) selection criteria shall be objective. Where a TO runs a qualification system, such a system shall operate on the basis of pre-defined and objective criteria and the procedure and conditions for participation shall be made available upon request;
- (e) award criteria may be either the most economically advantageous, involving specific evaluation criteria such as delivery or completion date, cost-effectiveness, quality, technical merit, after-sales service, commitments with regard to spare parts, price, etc., or the lowest price only.

Article 4

Challenge procedures

1. With respect to procurements by its TOs, the Parties shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers and service providers to challenge alleged breaches of this Agreement arising in the context of procurements in which they have, or have had, an interest. Challenge procedures compatible with those set out in Article XX of the GPA shall apply.
2. The Parties shall ensure that its TOs retain relevant documentation relating to all aspects of the process concerning procurements covered by this Agreement for at least three years.
3. The Parties shall also ensure that decisions taken by bodies responsible for challenge procedures are enforced effectively.

Article 5

Information exchange

To the extent necessary to ensure effective implementation of this Agreement, the Parties shall, upon the request of either Party, exchange information on legislation, other measures or imminent changes affecting or likely to affect TOs' procurement policies or practices.

Article 6

Consultation and dispute settlement

1. The Parties shall consult regularly and, in any case, at least once a year to ensure adequate operation of the Agreement.
2. When a Party requests consultations on any matter affecting the operation of the Agreement, such consultations shall be held not later than 30 days following the date on which the request is received, unless otherwise mutually agreed to by the Parties.
3. If either Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired by the failure of the other Party to

carry out its obligations under this Agreement, it may request consultations under paragraph 2.

4. In the event of such a dispute, the Parties shall endeavour to resolve the dispute by means of consultations within three months of the date of the initial request for consultations. The consultation period can be extended subject to mutual agreement by the Parties.

5. If a dispute is not resolved through consultations between the Parties, either Party may refer the dispute to binding arbitration and notify the other Party of its decision to resort to arbitration. The essential elements of the arbitration procedure are set forth in Annex II.

Article 7

Access to procurement information

1. The Parties shall make their best efforts to cooperate with a view to ensuring that the type of procurement information, notably in tender notices and documentation, held on their respective databases, is comparable in terms of quality and accessibility. Likewise, they shall make their best efforts to cooperate with a view to ensuring that the type of information exchanged through the respective electronic means between interested parties for the purpose of public procurement is comparable in terms of quality and accessibility.

2. Paying due attention to issues of interoperability and interconnectivity, and after having agreed that the type of procurement information referred to in paragraph 1 is comparable, the Parties shall make their best efforts to secure reciprocal access for suppliers and service providers of the other Party to relevant procurement information, such as tender notices, held on their respective databases. They shall also make their best efforts to ensure reciprocal access for suppliers and service providers of the other Party to their respective electronic procurement systems, such as electronic tendering. The Parties shall also take due account of Article XXIV (8) of the 1996 GPA.

Article 8

Final provisions

1. This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Korean languages, each of these texts being equally authentic.

2. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other that their ratification or conclusion or adoption process, according to the rules applicable to each Party, has been completed.

3. This Agreement shall not affect the rights and obligations of the Parties under the WTO and other multilateral instruments negotiated under the auspices of the WTO.

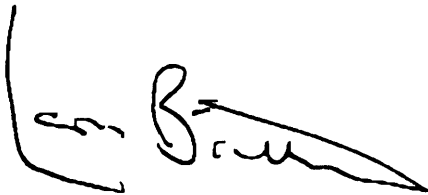
4. The Parties shall review the functioning of the provisions of this Agreement within three years of the

entry into force of this Agreement with a view to improving its operation when necessary.

5. If a Party wishes to withdraw from the Agreement, it shall notify the other Party in writing of such intention and the withdrawal will take effect six months after the date on which the notification was received.

6. The Annexes attached to the Agreement shall form an integral part of this Agreement.

For the European Community



For the Republic of Korea



ANNEX I

European Community

- Belgacom (Belgium)
- Tele Danmark A/S and subsidiaries (Denmark)
- Deutsche Telekom (Germany)
- OTE/Hellenic Telecom Organization (Greece)
- Telefónica de España SA (Spain)
- France Telecom (France)
- Telecom Eireann (Ireland)
- Telecom Italia (Italy)
- Administration des postes et télécommunications (Luxembourg)
- Koninklijke PTT Nederland NV and subsidiaries ⁽¹⁾ (Netherlands)
- Portugal Telecom and Companhia Portuguesa Rádio Marconi (Portugal)
- British Telecommunications (BT) (United Kingdom)
- City of Kingston upon Hull (United Kingdom)
- Österreichische Post und Telekommunikation (PTT) (Austria)
- Telecom Finland (Finland)
- Telia (Sweden)

Korea ⁽²⁾

- Korea Telecom

⁽¹⁾ Except PTT Post BV.

⁽²⁾ This list will include in the future government-invested corporations, as defined by the relevant Korean laws and regulations, with respect to their purchase of telecommunications equipment, where (1) such corporations are licensed to provide basic telecommunications services pursuant to the substance and content of Article 5 of the Telecommunications Business Act; (2) one of the main purposes of the corporations is to provide telecommunications services; and (3) the procurement by the corporations is subject to the laws and regulations of the Republic of Korea.

ANNEX II

1. An arbitration panel shall consist of three members. The Party initiating an arbitration proceeding shall appoint an arbitrator and notify the other Party of such appointment. Within 15 days of such notice, the other Party shall appoint a second arbitrator.
 2. The two arbitrators appointed by the Parties shall appoint a third arbitrator, selected from a list of potential arbitrators compiled by Korea and the EC, or random selection from that list if necessary, within 15 days after the appointment of the second arbitrator. The third arbitrator shall not be a national of either Party and shall serve as chairman of the arbitration panel.
 3. No arbitrator shall have a financial interest in the dispute or take instructions from either Party.
 4. The rules of the arbitration procedure shall be established jointly by the arbitrators. In addition the procedure shall assure a right to at least one hearing as well as the opportunity for the Parties to submit written arguments and rebuttals. Unless otherwise agreed, such meetings shall take place either in Brussels or in Seoul.
 5. Each Party shall bear the cost of its own arbitrator and its presentation, including legal fees, in the proceeding. The remaining costs of the proceedings shall be borne equally by the Parties.
 6. The panel shall make its decisions by majority vote. The Parties always retain the right to terminate the arbitration proceeding at any stage if they so agree by notifying such an agreement to the chairman.
 7. Within three months after the chairman is appointed, the panel shall publish a report which will rule on the question whether benefits under this Agreement have been nullified or impaired. The report will also indicate appropriate remedies. In extraordinary circumstances that prevent the panel from meeting the required deadline, the parties may agree to extend the deadline, but only to the extent necessary and, in any event, not to exceed 180 days.
 8. The Parties shall implement the panel report. If either Party cannot comply with the remedies indicated by the panel, it will notify the other Party within a month of the rendering of the panel report. The non-complying Party may propose compensation or other remedial action to the other Party. If the other Party cannot agree to such proposed compensation or other remedial action within two months after the rendering of the panel report, it may propose to the panel the suspension or withdrawal of equivalent benefits under this Agreement. Such suspension or withdrawal shall take effect 30 days after it is proposed to the panel, unless the panel disapproves such action.
-

Side letter on qualification procedures

Sir,

I refer to the recent discussions in Brussels between the Republic of Korea ('RoK') and the European Community (the 'EC') on the subject of telecommunications procurement.

With regard to vendor qualification process, I am pleased to inform you that Korea Telecom ('KT') will accept preliminary proposals for qualification submitted by telecommunications equipment suppliers established in the EC or their Korean subsidiaries ('EC suppliers') from the date on which the EC and Korea initial a bilateral agreement regarding telecommunications procurement (the 'Agreement'). I have been assured by KT that it will use its best endeavours to limit the time period necessary to carry out the qualification procedure.

After reviewing a preliminary proposal for qualification submitted by an EC supplier, if KT determines the proposal acceptable in technical and economic terms, KT will hold discussions with the proposing supplier and request him to present a formal application for qualification. If KT finds the preliminary proposal unacceptable, KT will explain to the supplier in writing the reasons for refusal.

Additionally, KT is allowed under its qualification procedures to limit the number of suppliers for a procurement contract if an excessive number of suppliers may result in incompatibility, technical difficulties or disproportionate costs in KT's operation and maintenance of its network. Such a limitation of suppliers, however, is not allowed with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination against EC suppliers or protection to domestic producers or suppliers.

Agreed minutes of the signing of the Agreement on telecommunications procurement between the European Community and the Republic of Korea

The plenipotentiaries of both Parties this day signed the Agreement on telecommunications procurement between the European Community and the Republic of Korea and agreed on the following:

1. On procurement, qualification and challenge procedures

As regards the Agreement on procurement by telecommunications operators, the two Parties agree that Articles 2, 3 and 4 of the Agreement require the application of procurement, qualification and challenge procedures compatible with the 1996 GPA. As regards the EC, the procurement and qualification procedures set out in Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9. 8. 1993, p. 84) fulfil this requirement. The EC confirms that the procurement procedures of EC TOs are subject to this Directive⁽¹⁾.

As regards qualification procedures, both Parties agree that TOs may limit the number of suppliers who qualify where that may result in incompatibility, technical difficulty or disproportionate costs in the operation and maintenance of their networks. However, such a limitation of suppliers may not be applied to avoid maximum possible competition or to constitute a means of discriminating against suppliers of the other Party or protecting domestic suppliers.

Also, as regards the EC, the challenge procedures set out in Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23. 3. 1992, p. 14) are compatible with Article 4 of the Agreement.

Both Parties further agree that the provisions of Article 2 (6) on technical specifications are compatible with Article VI of the GPA.

2. On national treatment

Both Parties confirm that telecommunications operators of the EC and the Republic of Korea, as annexed to the Agreement, do not treat telecommunications equipment suppliers of the Party less favourable than domestic telecommunications equipment suppliers for contracts, or series of contracts, above a threshold of SDR 130 000.

This threshold can be reviewed upon the request of either Party.

3. On the status of Korean suppliers under Article 36 of the Utilities Procurement Directive

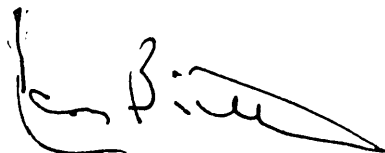
The European Community (EC) informs that, as a result of the recent conclusion of the Korea-EC bilateral agreement on procurement by telecommunications operators, Korean suppliers will not be subject to the provisions of Article 36 of the Utilities Procurement Directive with regard to the procurement by the European telecommunications operators covered by the Directive as soon as the Korea-EC bilateral agreement enters into force.

⁽¹⁾ The transitional arrangements for Portugal and Greece apply, as referred to in Article 1 (5) of the Agreement.

The Republic of Korea

Handwritten signature in Korean script, consisting of three characters: '정' (Jeong), '영' (Yeong), and '호' (Ho), followed by a long horizontal stroke.

The European Community

Handwritten signature in cursive script, appearing to be 'L. P. ...' followed by a long horizontal stroke.
