



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

concerning the conclusion of an Agreement on telecommunications procurement and an Agreement in the form of a memorandum concerning the procurement of private operators between the European Community and the Republic of Korea.

(presented by the Commission)

EXPLANATORY MEMORANDUM

The attached proposal for a Council decision is to conclude an agreement on telecommunications procurement and an agreement in the form of a memorandum between the European Community and the Republic of Korea.

Background:

As an important part of the Community's Internal Market program, the Utilities directive 93/38/EC, which entered into force on 1 January 1993, liberalised the procurement markets in the electricity, water, transport and telecommunications sectors. The Directive ensures that utilities covered procure in an open, transparent and non-discriminatory way through detailed rules governing tendering and contract awarding. The directive applies to enterprises which operate under special or exclusive rights. It covers all major Community telecommunications network operators. Article 36 of this directive contains a limited local content provision. It applies to tenders comprising products which originate in third countries with which the Community has not concluded an agreement, which ensures comparable and effective access for Community undertakings to the markets of those third countries.

While until the mid 1980s Community suppliers had a substantial share in the Korean telecommunications network equipment market, their position deteriorated rapidly in the 1990s. This is partly due to the rapid government-led build-up of domestic equipment manufacturers in Korea and partly to the legislation in Korea on procurement. Korean procurement legislation distinguishes between "foreign-currency" and "domestic currency" procurement. The former applies to procurement of goods and services which are not available on the Korean market. Specific regulation applies to state agencies and companies, so called government-invested corporations, which are more than 50 per cent state owned. In the telecommunications sector, only Korea Telecom (KT), which accounts for roughly 80 per cent of Korea's network equipment market, is regulated as a government-invested corporation. KT is therefore subject to Korean procurement legislation unless it receives a special exemption. Subsequent to the conclusion of a bilateral Korea-US telecommunications agreement, in 1993 a partial exemption was granted to KT with regard to the domestic currency procurement of products from US companies. Today, "domestic-currency" procurement applies to more than 90 per cent of KT equipment purchases. As a result, since 1992 European suppliers have been de facto excluded from KT's purchasing. As Community suppliers were not permitted to qualify for KT procurement, they could not participate in KT tendering. A second Korean operator, the fully privately-owned Dacom, started providing international telephone services in 1992. Since 1 January 1996, Dacom also operates in Korea's national long-distance market. While Dacom is not covered by the above-mentioned procurement regulations, its internal procurement rules stipulated that foreign purchasing should only be undertaken if the equipment cannot be bought domestically. Thus, European suppliers also faced a severe handicap when selling to the second Korean operator.

The EC and Korea are both members to the plurilateral Government Procurement Agreement (GPA). However, the procurement of telecommunications network equipment is not covered under the GPA. The Community did not include

telecommunications operators under its GPA offer for any of its purchasing. In contrast, Korea chose to cover KT under its GPA offer for general procurement, as commodities and construction services. However KT is not covered under the GPA with regard to telecommunications equipment.

Based on a negotiating directive from the Council (adopted on 28th November 1994), in consultation with the Committee set up under Article 113 of the Treaty, the Commission entered into formal negotiations with Korea on a mutual opening of telecommunications procurement markets in May 1995. Since the Commission felt that insufficient progress was made, in May 1996 it initiated a dispute settlement procedure under the WTO on discrimination in the Korean telecommunications procurement market. Negotiations were finally concluded on 22 November 1996, resulting in a draft agreement and a memorandum. As a result of reaching these agreements, KT opened qualification procedures to Community suppliers immediately. The Commission undertook to suspend any action under the pending dispute settlement case. Prior to signing the bilateral agreement, the Community will formally end the dispute settlement procedure.

The telecommunications procurement agreement

The telecommunications procurement agreement is purely bilateral. It is, therefore, a stand-alone agreement with no impact on coverage under the GPA. It provides for a mutual opening of procurement by telecommunications operators by granting an exchange of national treatment above certain thresholds. In the main segment of telecommunications procurement, provision is made to enhance transparency and guarantee suppliers' rights by setting out minimum procurement and national challenge procedures. While this does not imply any procedural change for European operators, KT will be obliged to follow procedures based on those set out in the GPA. The agreement is enforced through a binding bilateral dispute settlement procedure.

It is a liberal and broad agreement with no product exceptions apart from a transition period of five years for the procurement of satellites by Korea Telecom. Korea also excluded single tendering involving set asides for small and medium sized enterprises which, however, mainly covers contracts below the threshold specified in the agreement. The agreement only applies to the procurement of telecommunications equipment and incidental services. This reflects the Community's interest since, as mentioned above, with regard to general procurement KT is already covered under the GPA. With regard to other government-invested corporations, the EC's interests are protected should such companies obtain licenses to operate telecommunications networks in the future, as these would automatically be covered under the agreement. For its part, the EC will not apply the provisions of Article 36 of the Utilities directive for tenders comprising products of Korean origin.

Since the EC side was concerned that a long ratification process could further delay European suppliers' entry into the Korean market, negotiators agreed to do the utmost to conclude the agreement by May 1997.

Memorandum regarding private operators

The Utilities directive covers private network operators if they operate under special or exclusive rights. In Korea, procurement legislation only applies to government-invested corporations. As the procurement of private operators is not subject to any government regulation, Korea stated that it was not in a position to cover private operators under the agreement. However, because of complaints from European industry about discrimination by private operators in Korea, the EC requested a government commitment not to interfere in the procurement by private operators. Both sides therefore agreed to a memorandum in which they confirm that such companies shall carry out their purchasing in an independent way and that they should not discriminate against foreign companies or products. In the case of conflict both sides agree to take recourse to the WTO dispute settlement. The EC side wished to protect its interests if, in the future, Korea concludes a more favourable agreement with a third country. As a result, both sides agreed to grant the other party MFN treatment on a reciprocal basis for measures taken with regard to the purchasing of private operators. Formally speaking, the memorandum constitutes a separate agreement.

The Korean government has already initiated the process of revising domestic telecommunications and procurement legislation, abolishing provisions which were criticised by the EC side during the consultations under the WTO dispute settlement. Upon request from the Korean government, Dacom abolished its internal "buy-Korea" provision and Korea Telecom has written to European suppliers, opening to them the qualification procedure. There are also indications that the successful conclusion of negotiations has improved European suppliers' position with other private network operators in Korea.

The draft agreement and the memorandum build on the closer political and economic relationship established between Korea and the EC under the bilateral Framework agreement which was signed in October 1996. It offers the EC more favourable treatment than Korea has been prepared to offer any other third country with regard to the purchasing of telecommunications network equipment. Moreover, the draft agreement and the memorandum protect EC suppliers from further discrimination should access to the Korean market improve as a result of negotiations with other third countries. Its conclusion will send a positive message to the ongoing negotiations for an Information Technology Agreement (ITA) and GATS negotiations, in particular in the field of telecommunication services and government procurement.

The main elements of the agreement:

The main elements of the agreement reached on 22 November 1996 are as follows:

- Exchange of national treatment above a threshold of 130,000 SDR for the main telecommunications operators on both sides;
- Above this threshold, Korea abolishes all discriminatory regulations and practices for the purchasing of telecommunications equipment with an exception of satellites and the procurement from small and medium sized enterprises;
- Above a threshold of 450,000 SDR, KT is subject to GPA like procurement and challenge procedures, while EC TOs are subject to the Utilities directive for contracts above 600,000 ECU;
- Upon entry into force of the agreement, EC will extend the benefits of the Utilities directive with regard to tenders containing goods of Korean origin;
- binding bilateral dispute settlement;
- Upon reaching agreement KT qualification procedures were open to European suppliers.
- with regard to the purchasing by private operators, in a memorandum both sides confirm the independence of such companies and offer MFN treatment on a reciprocal basis;
- Upon request from the Korean government, the second (private) operator, Dacom, has abolished a "buy-Korea" provision in its internal procurement rules.

The Council is invited to approve the Agreement on telecommunications procurement and the Agreement in the form of a memorandum and adopt the proposal for a Decision concerning the conclusion of these Agreements between Korea and the EC.

Proposal for a Council Decision

concerning the conclusion of the Agreement on telecommunications procurement and an Agreement in the form of a memorandum concerning the procurement of private operators between the European Community and the Republic of Korea.

THE COUNCIL OF THE EUROPEAN UNION;

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof;

Having regard to the proposal from the Commission,

Whereas the Agreements between the European Community and the Republic of Korea on telecommunications procurement should be approved,

Whereas the conclusion of the Agreement on telecommunications procurement and the Agreement in the form of a memorandum should be based on Article 113 of the Treaty because the Agreements apply only to products and services which are incidental to the procurement of these products;

Whereas it is appropriate that the Council authorises the Commission, in consultation with a special committee to be appointed by the Council, to approve modifications on behalf of the Community of Annex I of the telecommunications agreement; however, such authorisation will be limited to the modifications resulting from the application of the procedure of article 8 of the Council Directive 93/38/EEC of 14 June 1993,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement on telecommunications procurement and the Agreement in the form of a memorandum concerning the procurement of private telecommunication operators between the European Community and the Republic of Korea are hereby approved on behalf of the Community.

The text of the Agreement and the memorandum is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement and the memorandum in order to bind the Community.

Article 3

The Commission is authorised to approve, on behalf of the Community, modifications to Annex I of the Agreement on telecommunications procurement.

The Commission is assisted in this task by a special committee appointed by the Council.

The authorisation referred to in paragraph 1 of this Article shall be limited to the modifications that will be necessary if the procedures laid down in article 8 of Council Directive 93/38/EEC were to be applied.

Done at Brussels,

For the Council

The President

**AGREEMENT ON TELECOMMUNICATIONS PROCUREMENT
BETWEEN THE REPUBLIC OF KOREA AND THE EUROPEAN COMMUNITY**

(DATE)

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 Organisation (WTO) on the liberalisation of telecommunications services;

Have agreed as follows:

Article 1

Objective, Definitions and Scope of coverage

- 1.1 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").
- 1.2 For the purpose of this Agreement:
 - 1.2.1 TOs shall be those listed in Annex I. The Parties shall update that list by mutual consent where appropriate.
 - 1.2.2 "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.
 - 1.2.3 "Incidental Services" are the services that TOs procure, incidental to the procurement of a product.
- 1.3 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 contracts for the procurement of products or incidental services by the Parties' TOs.
- 1.4 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 450,000 SDR, unless otherwise agreed between the Parties.

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 600,000 ECU, unless otherwise agreed between the Parties.

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).]

- 1.5 This Agreement does not apply to the following contracts:
 - 1.5.1 Procurement of products and services with a view to commercial resale or use in the production of goods for commercial sale;
 - 1.5.2 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.

- procurement contracts for the procurement of products and incidental services entered into before 1 January 1997 by TOs established in Spain or to 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.

1.5.3 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

- 2.1 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) suppliers¹ of the other Party with treatment no less favourable than that accorded to:
- (1) domestic (i) products and incidental services, and/or (ii) suppliers; and
 - (2) (i) products and incidental services, and/or (ii) suppliers of any third country.
- 2.2 The Parties shall ensure that the TOs established in their respective territories shall not, with respect to the procurement contracts covered by this Agreement,
- (1) 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;
 - (2) discriminate against a locally-established supplier on the basis of the fact that the product or service being supplied originates from the other Party.
- 2.3 The parties shall ensure that the TOs do not, in the qualification and selection of suppliers, products or incidental services, or in the evaluation of tenders and award of contracts, impose or seek offsets².
- 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.
- 2.5 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.

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.

2.6 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

1. 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;
 - (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

- 5.1. 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

- 6.1. The Parties shall consult regularly and, in any case, at least once a year to ensure adequate operation of the Agreement.
- 6.2. 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.
- 6.3. 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 6.2 above.
- 6.4. In the event of such a dispute, the Parties shall endeavour to resolve the dispute by means of consultations within 3 months of the date of the initial request for consultations. The consultation period can be extended subject to mutual agreement by the Parties.
- 6.5. 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

- 7.1. 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.
- 7.2. Paying due attention to issues of interoperability and interconnectivity, and after having agreed that the type of procurement information referred to in Article 7.1 above is comparable, the Parties shall make their best efforts to secure reciprocal access for suppliers and services 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 services 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

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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 6 months after the date on which the notification was received.
- 8.6. The Annexes attached to the Agreement shall form an integral part of this Agreement.

Annex I

European Community

- Belgacom (Belgium)
- Tele Danmark A/S and subsidiaries (Denmark)
- Deutsche Telekom (Germany)
- OTE/Hellenic Telecom Organisation (Greece)
- Telefonica de España S.A. (Spain)
- France Telecom (France)
- Telecom Eireann (Ireland)
- Telecom Italia (Italy)
- Administration des postes et télécommunications (Luxembourg)
- Koninklijke PTT Nederland NV and subsidiaries⁴ (Netherlands)
- Portugal Telecom S.A. and subsidiaries (Portugal)
- British Telecommunications (BT) (United Kingdom)
- City of Kingston upon Hull (United Kingdom)
- Österreichische Post und Telekommunikation (PTT) (Austria)
- Telecom Finland (Finland)
- Telia (Sweden)

Korea³

- Korea Telecom

³ 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

⁴ Except PTT Post BV

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 2 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

Dear ,

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 Republic of Korea and the European Community

The Plenipotentiaries of both Parties this day signed the Agreement on Telecommunications Procurement between the Republic of Korea and the European Community 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 co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 199, 09.08.1993, p.84) fulfil this requirement. The EC confirms that the procurement procedures of EC TOs are subject to this Directive¹.

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 co-ordinating 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, 23.03.1992, 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.

¹ The transitional arrangements for Spain, Portugal and Greece apply, as referred to article 1 (5) of this agreement.

2. On National Treatment

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

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.

The Republic of Korea

The European Community

MEMORANDUM

1. In light of the relevant provisions of the GATT 1994, the Government of the Republic of Korea and the European Community ("EC") confirm that procurement by private telecommunications operators shall be made independently and should be made in accordance with each operator's commercial considerations, regardless of the origin of the goods and suppliers.
2. If a problem arises in this regard, the Republic of Korea and the EC agree to hold consultations at either party's request on a timely basis. Should such a problem not be resolved through consultations, the Republic of Korea and the EC agree to resort to the dispute settlement procedures provided under the WTO.
3. Should the Republic of Korea or the European Community grant additional benefits regarding the procurement by private operators to another third party, those benefits will be extended to the European Community or the Republic of Korea, provided that the European Community or the Republic of Korea grants the same treatment on a reciprocal basis.

The Republic of Korea

The European Community

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