

## Opening of proceedings against Color Line and the municipality of Sandefjord

### The EFTA Surveillance Authority

- Ensures that Norway, Iceland and Liechtenstein respect the EEA Agreement.
- Protects the rights of individuals and market participants.
- Ensures timely implementation of EEA law.
- Pursues breaches of EEA law.
- Enforces the rules concerning state aid.
- Takes action against breaches of the EEA competition rules.

### Background

In December 2011, the Authority fined Color Line AS and Color Group AS 18.8 EUR million because they had infringed EEA competition rules by maintaining long-term exclusive rights to access the harbour of Strömstad, Sweden.

The commercial agreements between Color Line and the municipality of Sandefjord that are now being investigated were not addressed in that decision.

The Authority has kept the market for the provision of short-haul passenger ferry services with tax-free sales between Norway and Sweden under surveillance, and has *inter alia* issued requests for information to Color Line AS, the Municipality of Sandefjord in Norway, and the Municipality of Strömstad in Sweden, in April 2014.

An examination of the information in the Authority's possession indicates that Color Line Transport AS, Color Line AS and Color Group AS – as well as the municipality of Sandefjord, in its capacity as the commercial operator of a port – may have infringed Articles 53 and/or 54 of the EEA Agreement. However, determining whether or not there has been an infringement of the EEA competition rules requires further assessment through an in-depth investigation, which the Authority has now formally decided to open.

### The competition rules in the EEA Agreement

The competition rules in Articles 53 and 54 of the EEA Agreement correspond to Articles 101 and 102 TFEU.

**Article 53 EEA** prohibits agreements or concerted practices which restrict competition between undertakings, such as price-fixing and market-sharing arrangements. The provision covers both agreements between actual or potential competitors (horizontal agreements) and agreements between undertakings operating at different levels (vertical agreements), for example between a manufacturer and its distributor.

Also a municipality will come under the scope of Article 53 if it runs a commercial operation. The application of Article 53 is not preconditioned on the commercial activities being carried out through a separate legal entity.

**Article 54 EEA** prohibits dominant undertakings from abusing their market power. That may be the case, for example, for certain practices aimed at eliminating competitors from the market.

Just the same as Article 53, also Article 54 may apply to any commercial operations of a municipality, and the municipality may be the dominant provider of certain services in a geographically defined market.

### **The EFTA Surveillance Authority's role in the field of competition**

The EEA competition rules are enforced across the EEA by the EFTA Surveillance Authority and by the European Commission. Responsibility for handling individual cases is divided between the Authority and the Commission on the basis of rules laid down in the EEA Agreement.

The Authority's main task in the field of competition is to ensure that undertakings active in the EFTA States (Norway, Iceland and Liechtenstein) comply with the EEA competition rules. For this purpose, the Authority enjoys the same investigative and enforcement powers as the European Commission, including the power to impose fines of up to 10% of global turnover on undertakings that act in contravention of the rules.

The purpose of imposing fines is to deter companies from infringing the competition rules. Fines are calculated in accordance with the Authority's [guidelines](#) on the setting of fines.

It is further incumbent upon the Authority to supervise the application of the EEA competition rules by the competition authorities of the EFTA States.

Further information about the EEA competition rules and the role of the Authority can be found on the Authority's website: <http://www.eftasurv.int/competition/>.

### **Significance of a decision to open proceedings**

The decision to open proceedings is essentially a procedural step. It signals the Authority's intention to proceed with an in-depth investigation; it does not mean that the Authority has concluded that the undertakings in question are guilty of anti-competitive conduct. The decision does not prejudice in any way the existence of a competition law infringement.

The main legal consequence of opening proceedings is that it relieves the national competition authorities in the EEA EFTA States of their competence to apply the EEA competition rules to the practices concerned.

Opening proceedings also triggers certain procedural rights for the parties. These are set out in the Authority's [Best Practice Guidelines](#).

## **Next steps**

Following the decision to initiate proceedings, the Authority will continue its investigation in order to assess whether or not there are any competition law concerns.

There is no legal deadline to complete inquiries into potentially anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Authority, and the exercise of the rights of defence.

If, following its investigation, the Authority would come to the preliminary conclusion that one or more infringements of the competition rules have been committed, it would address a “statement of objections” to Color Line and/or Sandefjord municipality setting out its concerns. They would then have the opportunity to respond to the Authority’s preliminary findings in writing and orally, at an oral hearing, if they so wish.

If the Authority’s views remain unchanged following this process, the Authority would proceed to the adoption of a decision addressed to Color Line and/or Sandefjord finding an infringement of the EEA competition rules, and imposing a fine if appropriate.