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**EEA Joint Parliamentary Committee  
Strasbourg, 14 December 2016**

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President of the EFTA Surveillance Authority**



EFTA SURVEILLANCE  
AUTHORITY

Mr President,  
Members of Parliament,  
Ladies and Gentlemen,

Thank you for inviting me to address the EEA Joint Parliamentary Committee, and for giving me this opportunity to update you on the work we do at the EFTA Surveillance Authority ESA.

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Europe is changing.

Populism is on the rise. The political establishment is taking a beating in vote after vote. Free trade and free movement are suddenly met with deep scepticism. The fundamental principles underlying the very foundations of the EEA Agreement are being questioned.

These are currents in society which we need to take seriously. After more than 20 years of access for the EEA EFTA states to a well-functioning internal market, the rights and freedoms it has provided are being taken for granted. The internal market is functioning well, and the very fact that the hard day-to-day work that makes it possible is going practically unnoticed is of course a mark of success.

But changing times require at least a change of emphasis. The EEA Agreement ensures the constant improvement of the living and working conditions of everyone living within the EEA. This is the time to protect what has been achieved through European co-operation. It is the time to address the fears many of our citizens have in the face of globalisation. In these times of uncertainty, we are lucky to be part of the world's single largest trading block, endowed with well-functioning and trusted institutions. These structures provide a measure of security; they allow us to channel the forces of globalisation – to harness their potential while protecting the welfare gains and prosperity achieved.

We at ESA are working hard to address the new challenges that arise. This way we hope to ensure that the EEA Agreement can reach its full potential also in changing times. I would like to single out two aspects today.

- Firstly, we seek to ensure that competitive forces work for the good of all rather than being manipulated by powerful corporations.
- Secondly, we are scrutinising the new disruptive business models based on new communication and data technologies, variously referred to as the collaborative or sharing economy. The challenge here is to on the one hand ensure that existing regulation does not stand unnecessarily in the way of economic growth, jobs and opportunities, while on the other hand safeguarding the legitimate interests of consumers, workers and other stakeholders. I know that this is an area which you have yourselves been working on, and your Resolution on the Collaborative Economy<sup>1</sup> elegantly summarises the central issues at stake.

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<sup>1</sup> Approved at the 46<sup>th</sup> meeting of the JPC in Liechtenstein on 19 May 2016.

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But let me start with some examples of how we are using the tools of traditional competition enforcement to ensure that the EEA EFTA States and their citizens can continue to reap the benefits of the European market. As you know, everyone is affected by failures in competition. The individual consumer stands to lose as a result of the unlawful actions of the big players. Workers, in particular in small and medium-sized companies, stand to lose their jobs if competition is distorted by dominant undertakings. And it is the duty of the competition authorities, including ESA, to prevent or punish such unlawful actions: to safeguard the consumer, the individual, and the market. To look in more depth at ESA's role in competition enforcement, to the benefit of consumers:

ESA has two open investigations in the transport sector. Access to cost effective travel services is, as we know, a matter of considerable practical relevance to daily life in the EFTA States.

In the Color Line / Sandefjord Municipality case, ESA is investigating a popular ferry route for tax-free sales between Norway and Sweden, namely the Sandefjord – Strömstad route. We are looking carefully into Color Line's long-term access to Sandefjord harbour. Following the opening of our investigation last year, changes took place in the allocation of sailing times at that harbour to a new competitor, Fjord Line. ESA is now considering the impact of those recent changes for competition on this busy crossing.

In June of this year, ESA also opened proceedings to investigate whether the Norwegian airline company Widerøe abused a dominant position by refusing to supply an essential part of a navigation system required for landing at several regional airports in Norway. Due to challenging conditions, public

service contracts for operating routes into these airports have been linked to having access to a particular satellite-based approach system, called SCAT-1. ESA is assessing whether Widerøe impeded other airlines in accessing a key component of this system, thereby hampering their ability to bid for these regional routes. Reduced competition in this field would be to the detriment of the consumer – and also the taxpayer, as the public service is paid for from the public purse.

Another area of focus where consumers and businesses are directly affected by any distortions of competition concerns the utility sector. The liberalisation of energy and telecoms sectors was one of the long overdue achievements of the single market, unlocking efficiencies and lowering prices. An ongoing challenge is to ensure that those gains are shared fairly with consumers and preventing powerful operators from distorting competition to their advantage.

In the field of communications, we sent a Statement of Objections to Telenor early this year expressing our concerns that Telenor may have abused a dominant market position in mobile communications services in Norway. ESA is looking at whether Telenor squeezed its competitors through charging them higher wholesale prices than the retail prices Telenor offered to its own mobile broadband customers. Ultimately, such practices by a dominant company, if proven, would dampen competition and harm consumers. ESA is also assessing whether certain clauses in Telenor's retail contracts may have made it too costly for competitors to capture business customers from Telenor. Again, reduced competition, if established, would harm consumers.

ESA is also active in competition enforcement in Iceland. We have intervened in the pending case before the Reykjavík District Court known as the Byko / Norvík case. The case concerns cartel activities in the hardware

sector in Iceland. It seems major players on this market in Iceland cooperated on prices, which is clearly and directly to the detriment of consumers. We have provided guidance on the circumstances in which the EEA competition rules apply, and the importance of a deterrent effect when setting fines in competition cases. Fines in competition cases must be so high as to effectively deter undertakings from infringing the rules and harming consumer interests.

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Moving to the new business models made possible by the internet, competition law also has an important role to play to ensure that incumbents do not stifle progress and opportunities. An important ongoing case in the tech space concerns the evolving area of e-commerce. In October we opened a formal investigation into whether DNB, Nordea, Finance Norway and BankID Norway colluded to prevent a new market entrant from providing its new e-payments service in Norway. The case follows a complaint from a Swedish e-payments provider. ESA is now looking deeper into why Norwegian consumers are unable to benefit from this new service that is available in most other EEA countries.

[Of course opening competition investigations does not prejudge the outcome of those investigations in any way. It does mean, however, that we think those cases deserve to be placed on a more formal footing to dig deeper as a matter of priority and for the parties to make their views known.]

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Our case on e-payments is illustrative of the profound changes we are seeing which are wrought by the advent of the internet-based market economy. Uber and Airbnb are, as you know, some of the other visible examples of a new type of market players.

We have seen a number of court cases connected to the new market model. From a legal point of view, the new model is currently not subject to any specific EEA legislation, and the innovative services do not always neatly fit within the traditional classification of activities in existing national or European legislation. When existing rules and regulations are applied, it may be a challenge to determine exactly which rules apply to some of them.

Fostering this type of development is an important part of the aim of ensuring that the European Economic Area remains one of the most competitive in the world, creating interesting and rewarding jobs as well as increasing consumer welfare. ESA has therefore supported Uber's business model in the ECJ as a representative of companies active in the sharing or collaborative economy. We notably want to ensure that laws drafted in and for a different era do not hobble important opportunities for the 21<sup>st</sup> century. A new online economy favours innovation, creates new business opportunities and provide higher quality of services for the benefit of consumers. It is also essential in safeguarding high quality, high value-added jobs and prosperity.

However, let me stress that ESA's position is that the fostering of the sharing, online economy cannot be done at the expense of the protection of legitimate interests such as consumer protection and protection of workers. It is therefore crucial that the EEA rules are applied to the new sharing economy in respect of such public interest objectives and in a proportional way.

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An important corollary of the spread of the internet is the need to ensure data protection. ESA places great importance on how data are handled and protected. It is of ever-growing importance for individuals, businesses and governments alike.

We as an Authority are currently in the process of adopting new data protection rules to ensure a high level of protection for personal data within ESA.

Due to our role in enforcing EEA law, considerable amounts of personal data is transferred to ESA by businesses, public authorities and individuals. Our data protection rules ensure that anyone can be certain that their personal data will be protected and that their rights will be respected.

And outside ESA's walls, we are examining the independence of data protection supervisory authorities in the EFTA States. The data protection directive requires these authorities to act completely independent.

ESA sent a letter of formal notice to Norway in April, and Norway changed several aspects of the setup. We are still looking into some of the details relating to the Norwegian setup, and have not yet reached a conclusion on the situation in Iceland and Liechtenstein. One important issue which we have looked into with these two countries is whether these supervisory authorities have also been underfunded.

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On a more economic note, ESA recently closed two complaint cases concerning Icelandic laws on treatment of offshore króna assets. The laws are part of measures for removing capital controls in Iceland. The EEA Agreement permits States to take protective measures when it is in

difficulties as regards its balance of payments. In such situations, the states are allowed to implement a national economic and monetary policy aimed at overcoming economic difficulties, as long as the criteria for these protective measures are met. In its closure decision, ESA took the view that although the Icelandic economy is now stronger, there is still a possibility that the lifting of capital controls would destabilise capital flows, causing renewed difficulties with the balance of payments.

Finally, we are living in a time where EEA law helps us to protect the environment. After our successful air quality cases last year, ESA's focus of activity has recently been on state aid for environmental protection. This is an area where public support can help addressing market failures and encourage the shift to more environmentally friendly technologies.

In this context, let me briefly mention two recent decisions concerning Norwegian measures to address pollution. In November, we approved a scheme to encourage the modal shift of freight from road to water. Support will be granted to coastal or short sea services provided that they avoid lorry journeys, thereby reducing pollution.

In December, we authorised a tax reduction for electricity provided in ports to ships so that they can burn less fuel. This will further encourage ships to be fitted with equipment to receive shore-side electric supply as well as hybrid technology, alleviating air pollution in ports, fjords and along the Norwegian coast in general.

Thank you very much for your attention.