Luxembourg, 30 May 2018

PRESS RELEASE 04/2018

Judgment in Case E-6/17 *Fjarskipti hf.* v *Síminn hf.*

PRIVATE ENFORCEMENT OF ARTICLE 54 EEA – ABUSE IN THE FORM OF MARGIN SQUEEZE IN THE TELECOM SECTOR

In a judgment delivered today, the Court answered questions referred to it by the District Court of Reykjavik (*Héraðsdómur Reykjavíkur*) concerning the interpretation of Article 54 EEA.

Fjarskipti hf. ("Fjarskipti") and Síminn hf. ("Síminn") provide general telecom services in Iceland. In 2012, the Icelandic Competition Authority found that Síminn had violated, inter alia, Article 54 EEA by having applied an unlawful margin squeeze against its competitors, including Fjarskipti, in the setting of termination rates. A termination rate is the price paid for terminating a call that originates in one mobile network and ends in another. Upon appeal, the ruling against Síminn was upheld and became final in 2013.

Fjarskipti maintained that it had paid excessively high termination rates and, relying on the final ruling against Síminn, claimed compensation. Síminn rejected the claim and Fjarskipti brought the matter before the referring court. The action was based on the view that anyone who incurs loss or damage as a result of a violation of Article 54 EEA must be guaranteed compensation, and that Fjarskipti could rely on the final ruling against Síminn when making its claim. Síminn instituted a counter-action, arguing that Fjarskipti had also charged excessive termination rates from Síminn, amounting to a sum greater than Fjarskipti's claim. In the main action, Síminn argued that the final ruling had no binding effect in the assessment of the damages claim and that its conduct did not amount to an unlawful margin squeeze in violation of Article 54 EEA, inter alia because Fjarskipti had charged even higher termination rates than Síminn.

The Court held that a natural or legal person must be able to rely on Article 54 EEA, as it is, or has been made, part of domestic law, in order to claim compensation before a national court for a violation of that provision. In such actions for damages, it is not a prerequisite for a court's assessment that a national competition authority has handed down a final ruling finding a violation. Where a final ruling has been handed down, EEA law does not require that the ruling is binding on the national courts in a follow-on action. In the absence of EEA law governing the procedure and remedies for violations of competition law, it falls under the procedural autonomy of each EEA State to lay down the detailed rules on the degree of significance to be attached to a final ruling, subject to the principles of equivalence and effectiveness.

The Court also held that the fact that a dominant undertaking is obliged to purchase termination services from other operators at a rate higher than its own does not preclude a finding that the dominant undertaking's own pricing practice in the form of a margin squeeze constitutes an abuse of a dominant position within the meaning of Article 54 EEA. Furthermore, it is sufficient for the finding of an unlawful margin squeeze that the undertaking in question is in a dominant position on the relevant wholesale market. It is not required that it holds a dominant position also on the relevant retail market.

The full text of the judgment may be found on the internet at: www.eftacourt.int.