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## **PRESS RELEASE 4/2010**

### **Judgment in Case E-1/10 *Periscopus AS v Oslo Børs ASA and Erik Must AS***

#### **ADJUSTMENT OF THE BID PRICE FOR A MANDATORY TAKEOVER BID**

In a judgment delivered today, the EFTA Court gave a preliminary ruling on a question referred to it by the Oslo District Court in Norway concerning the interpretation of the bid price rules contained in Article 5(4) of the Takeover Directive (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids).

Under the Norwegian Securities Trading Act, the bid price for mandatory bids shall be at least as high as the highest price paid by the offeror during the six-month period preceding the time at which the obligation to make a bid arose; however, if it is clear that the market price at the time when the obligation to make the bid arose was higher, the bid price shall be at least as high as the market price. The plaintiff in the national proceedings, Periscopus AS, argues that the latter was the case when Erik Must AS issued a mandatory bid for the shares of Gyldendal ASA. At the time, Periscopus AS was the second-largest shareholder of Gyldendal ASA, controlling 30.2% of the shares.

Oslo Børs ASA (the Oslo Stock Exchange), acting in its capacity as takeover supervisory authority, approved the bid price based on the highest price paid by Erik Must AS. It took the view that the market price alternative should be used only in circumvention cases, and that due to the low number of trades in the Gyldendal share, it was not possible to determine a sufficiently clear market price. Moreover, Periscopus AS had been the buyer in virtually all of the trades in question. Claiming that the decision approving the bid is null and void, Periscopus AS is suing the two defendants for up to NOK 37 182 052.62 in damages plus interest.

The first subparagraph of Article 5(4) of the Takeover Directive provides the “highest price paid rule” as the main rule to establish the bid price for mandatory takeover bids. The second subparagraph of Article 5(4) allows the EEA Contracting Parties to adopt derogations from that principle in certain cases under the condition that any adjustment must be based on circumstances which are clearly determined and that the adjusted price must be calculated in accordance with criteria which are also clearly determined.

The Court found that a rule that adjusts the bid price with reference to the term “market price” without further clarification of that term does not satisfy these conditions. It held that, in particular, further clarification is needed of the time interval relevant for determining the “market price”, whether or not the “market price” must be calculated on the basis of a volume-weighted average, and whether actual trades are necessary or standing buy or sell orders suffice in order to establish a “market price”.

The full text of the judgment may be found on the Internet at: [www.eftacourt.int](http://www.eftacourt.int).

This press release is not an official document. Please note that the Court may not comment on the case.