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### Requirement to deliver goods on EUR pallet under EEA law scrutiny

Judgment in Case E-4/05 *HOB-vín v The Icelandic State and Áfengis- og tóbaksverslun ríkisins (the State Alcohol and Tobacco Company of Iceland)*

In a judgment delivered today, the Court pronounced itself on a particular element of the Icelandic legislation conferring the exclusive right for the retail sale of alcoholic beverages to the State Alcohol and Tobacco Company. In its capacity as a buyer of alcoholic products, the company is subjected to rules requiring products sent to its warehouse to be, in principle, delivered on so-called EUR pallets. The cost of these pallets shall be included in the product price. This amounts to an obligation to sell the pallets to the monopoly at the price originally paid to the supplier of the pallets. HOB-vín, an Icelandic importer of foreign alcoholic beverages and one of the State monopoly's suppliers, challenges those requirements before the Reykjavik District Court. That Court referred two questions to the EFTA Court concerning the compatibility of the monopoly's rule with the EEA provisions on free movement and competition respectively.

By way of preliminary remarks, the Court clarified that Article 16 EEA, the provision on State monopolies of a commercial character, and not Article 11 EEA, the general rule on the free movement of goods, applies to the case at issue. The statutory requirements to deliver beverages on a EUR pallet and to include their cost in the product price are inseparable from the operation of the monopoly, since they only apply to the monopoly and not to other undertakings operating warehouses. As regards potential violation of Article 16 EEA, the Court highlighted that *“the requirement to deliver merchandise on EUR pallets aims at increasing the operating efficiency of modern storage systems by way of standardization. The requirement to include the price of the pallets in the sales price appears to entail that the purchase price can be fully passed on to ÁTVR [the State monopoly].”* Moreover, the law does not differentiate between domestic and foreign operators or products. As to possible factual discrimination, the Court observed that *“one incident of minor importance, even if it had discriminatory effect, will not suffice to establish an infringement of Article 16 EEA on the part of the State monopoly. To be relevant, such incidents would have to be part of the policy of the monopoly or of its outlets or a consequence of failure to enforce the monopoly's rules.”*

With regard to the second question concerning possible violation of the EEA competition rules, the EFTA Court held that the Icelandic State monopoly on retail sale of alcohol holds a dominant position, within the sense of Article 54 EEA, on both the markets for sales and for purchase of alcoholic beverages in Iceland. The notion of abuse of a dominant position under Article 54 EEA is a legal notion that must be

examined in the light of economic considerations. As to the claim that the requirement for suppliers to deliver their products on EUR pallets constitutes tying as prohibited under Article 54(d) EEA, the Court considered that standardization requirements “*typically contribute to improvements in the storing and handling of incoming and outgoing merchandise to the benefit ultimately also of the consumers and therefore create efficiencies that may outweigh restrictions of competition in the upstream market.*” As to the requirement to include the price of the pallets in the price of the goods, the Court noted that “*unfair prices, for the purposes of Article 54(a) EEA, are prices which have no reasonable relation to the economic value of the goods or services supplied and eventually lead to an exploitation of suppliers or consumers.*” As price surcharges in the case at issue consist in a mere reimbursement of costs incurred, they will not normally qualify as imposing unfair purchase prices under Article 54(a) EEA. The ultimate analysis of the concrete circumstances of the case was, however, left to the referring court in Iceland.

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

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