

## EFTA COURT

### **Action brought on 11 January 2017 by Konkurrenten.no AS against the EFTA Surveillance Authority**

**(Case E-1/17)**

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 11 January 2017 by Konkurrenten.no AS, represented by Jon Midthjell, advokat, Advokatfirmaet Midthjell AS, Grev Wedels plass 5, N-0151 Oslo, Norway.

The Applicant requests the EFTA Court to:

- 1. Annul ESA decision no. 179/15/COL dated 7 May 2015; and**
- 2. Order the defendant and any intervener to pay the costs.**

*Legal and factual background and pleas in law adduced in support:*

- The applicant, Konkurrenten.no AS, is a privately owned operator in the express bus market between the central and southern regions of Norway.
- On 23 March 2011, Konkurrenten filed a combined State aid and public procurement complaint against Norway, which led to the EFTA Surveillance Authority opening two separate investigations: one on public procurement issues (ESA cases no. 69548 and 69656) and one on State aid issues (ESA cases no. 69694 and 73321).
- The public procurement part of the complaint led to the EFTA Surveillance Authority delivering a reasoned opinion against Norway on 27 June 2012.
- The State aid part of the complaint led to the contested decision, no. 179/15/COL of 7 May 2015.
- On 7 July 2015 in accordance with Article 5 of the contested decision, the Norwegian authorities informed the EFTA Surveillance Authority, by letter, that the total amount of unlawful aid granted to Nettbuss, a competitor of the Applicant, was NOK 99 453 890.

- On 7 September 2015, the time limit in Article 4 of the contested decision for Norway to recover the unlawful aid expired without recovery taking place.
- Nettbuss refused to pay the recovery claim, and the conflict over the recovery led to the Norwegian authorities asking ESA for a clarification of the contested decision in a letter dated 6 October 2015. In its response of 26 October 2015, the EFTA Surveillance Authority explained that it did not agree with the interpretation of the Norwegian authorities and sided with Nettbuss.
- In a subsequent letter to the EFTA Surveillance Authority, dated 12 November 2015, the Norwegian authorities noted that, as a result of the EFTA Surveillance Authority's interpretation of the contested decision, the recovery claim would have to be significantly reduced.
- On 8 September 2016, the County of Aust-Agder and Nettbuss entered into a settlement agreement whereby Nettbuss agreed to pay back NOK 5 000 000.
- The Applicant disagrees with the interpretation of the EFTA Surveillance Authority and submits that the contested decision has left intact virtually all State aid received by Nettbuss from the County of Aust-Agder, during a 10-year period from 2004-2014.