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Judgment in Case E-12/20 *Telenor ASA and Telenor Norge AS v EFTA Surveillance Authority*

ACTION AGAINST ESA'S DECISION IMPOSING FINES OF EUR 111 951 000 FOR ABUSE OF TELENOR'S DOMINANT POSITION DISMISSED

In a judgment delivered today, the Court dismissed an application from Telenor ASA and Telenor Norge AS (“Telenor”) against a decision of the EFTA Surveillance Authority (“ESA”) finding that Telenor had infringed Article 54 of the EEA Agreement. Telenor abused its dominant position in the wholesale market for access to and handling of data on mobile networks (“access and origination services”) by charging wholesale tariffs that entailed negative gross margins for several of Telenor’s competitors in the retail market for the provision of stand-alone mobile broadband services to residential customers in Norway – a so-called margin squeeze.

ESA’s decision found three separate infringements related to instances of margin squeezes imposed by Telenor on Network Norway AS from 1 August 2008 to 31 August 2010; on Ventelo AS, Ventelo Norge AS and Ventelo Bedrift AS from 1 January 2008 to 30 November 2010; and on service providers from 1 January 2008 to 31 December 2012. ESA imposed separate fines for each of these infringements, which in total amounted to EUR 111 951 000.

By its application, Telenor sought to annul ESA’s Decision in whole or in part, or to annul or reduce the fines imposed. In particular, Telenor submitted that ESA erred when defining the relevant downstream market, the retail market for residential stand-alone mobile broadband, that its conduct did not constitute an abuse, that ESA’s power to impose a fine on the basis of the infringements relating to Network Norway and Ventelo was time-barred, that ESA erred in fact and in law when calculating the fines, and that the fines should be reduced due to mitigating circumstances, in particular the length of the proceedings, and for reasons of proportionality.

The Court found that ESA had not erred in law, failed to provide sufficient evidence to substantiate its conclusions, or made any errors with regard to its definition of the relevant market. Neither had ESA erred in its finding that Telenor had abused its dominant position by imposing wholesale tariffs that would entail negative margins for an equally efficient competitor. Since the Court found that ESA had substantiated the finding of infringements relating to Network Norway and Ventelo lasting until 31 August 2010 and 30 November 2010, respectively, ESA’s power to impose fines was not time-barred.

Regarding the fines imposed, the Court found that Telenor was aware of the essential facts that justified the finding of a dominant position in the relevant market, and an abuse of that position. As such, Telenor could not have been unaware of the anti-competitive nature of its conduct. Further, ESA had not erred in its calculation of the fines, or by not reducing the fines due to mitigating circumstances or for reasons of proportionality. In relation to the length of the proceedings, the Court found that there had not been any undue delays or periods of inactivity in the context of the administrative proceedings. Although additional administrative and investigative steps inevitably added to the duration of the procedure, in the Court’s view, the

duration was reasonable in light of the volume and complexity of the case and to ensure respect for Telenor's rights of defence, as well as to establish the basis for a thorough investigation.

Consequently, the Court dismissed Telenor's application in its entirety.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.