ORDER OF THE PRESIDENT
15 February 2011

(Intervention – Interest in the result of the case)

In Case E-15/10,

Posten Norge AS, represented by Siri Teigum and Frodo Elgesem, Advokats, Oslo, Norway,

applicant,

v

EFTA Surveillance Authority, represented by Xavier Lewis, Director, and Markus Schneider, Officer, Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

defendant,

APPLICATION for annulment of EFTA Surveillance Authority Decision No. 322/10/COL of 14 July 2010 relating to a proceeding under Article 54 of the EEA Agreement (Case No. 34250 Norway Post / Privpak),

THE PRESIDENT

makes the following

Order

I Facts and Procedure

1 Following a complaint by Schenker Privpak AB lodged on 24 June 2002, the EFTA Surveillance Authority (hereinafter "ESA") adopted its decision 322/10/COL of 14 July 2010 relating to a proceeding under Article 54 of the EEA Agreement, by which it found that Posten Norge AS (hereinafter "Posten Norge") had committed a single and continuous infringement of Article 54 of the EEA Agreement from 20 September 2000 until 31 March 2006 in the market for B-to-C parcel services with over-the-counter delivery in Norway by pursuing an exclusivity strategy with preferential treatment when establishing and maintaining its Post-in-Shop network. The decision imposed a fine of EUR 12.89 million on Posten Norge and required it, insofar as it had not already done so, to bring the infringement to an end, and to refrain from any conduct which might have the same or equivalent object or effect, as long as it holds a dominant position in the relevant market.

2 By application lodged at the Court on 14 September 2010, Posten Norge brought an action under the second paragraph of Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter the "SCA"), seeking the annulment of the decision. The defendant asked the Court to dismiss the application and to order Posten Norge to bear the costs of the proceedings.

3 By document lodged at the Registry of the Court on 31 December 2010, Schenker North AB, Schenker Privpak AB and Schenker Privpak AS (hereinafter jointly referred to as "Schenker Privpak") sought leave to intervene in support of the form of order sought by the defendant. The applicant interveners are part of the DB Schenker group, an international freight forwarding and logistics company owned by Deutsche Bahn AG.

4 The application to intervene was served on the parties in accordance with Article 89(2) of the Court's Rules of Procedure.

5 In its written observations on the application to intervene, lodged at the Registry of the Court on 18 January 2011, the applicant raised doubts as to whether Schenker Privpak has an existing interest in the outcome of the case, arguing that the alleged infringement ceased to exist already in 2006. Moreover, the applicant reserved its right to indicate specific documents that could be regarded as confidential and not to be disclosed to the interveners.

6 In its written observations on the application to intervene, lodged at the Registry of the Court on 14 January 2011, the defendant expressed support for the application to intervene.

II Law

7 Under Article 36(2) of the Statute, any person establishing an interest in the result of any case submitted to the Court, save in cases between EFTA States or between EFTA States and the EFTA Surveillance Authority may intervene in that case. Article 36(3) provides that an application to intervene shall be limited to supporting the form of order sought by one of the parties.

8 The Court has repeatedly held, for the sake of procedural homogeneity, that although it is not required by Article 3(1) SCA to follow the reasoning of the ECJ when interpreting the main part of that Agreement, the reasoning which led that Court to its interpretations of expressions in Union law is relevant when those expressions are identical in substance to those which fall to be interpreted by the Court (see, *inter alia*, Case E-2/02 *Bellona* [2003] EFTA Ct. Rep. 52, paragraph 39, and order of the Court of 31 January 2011 in Case E-13/10 *Aleris Ungplan*, paragraph 24). Article 36 of the Statute is essentially identical in substance to Article 40 of the Statute of the Court of Justice of the European Union. Accordingly, this principle must also apply to the assessment of whether an applicant for intervention has established an interest in the result of the case.

9 An interest in the result of a case within the meaning of the Statute is to be understood as meaning that a person must establish a direct and existing interest in the grant of the form of order sought by the party whom it intends to support and thus, in the ruling on the specific act whose annulment is sought (compare order of the President of the Seventh Chamber of the Court of First Instance [now: General Court] of 20 November 2008 in Case T-167/08 *Microsoft* v *Commission*, paragraph 66, and order of the President of the Sixth Chamber of the Court of First Instance of 11 May 2009 in Case T-354/08 *Diamanthandel A. Spira* v *Commission*, paragraph 7).

10 The persons who compete, on the relevant product market, with the author of a practice that was deemed to violate Article 53 EEA or Article 54 EEA by a decision of ESA establish, as such, a direct and existing interest in the result of the case brought against that decision (compare order of the President of the Seventh Chamber of the Court of First Instance of 20 November 2008 in Case T-167/08, *Microsoft* v *Commission*, paragraph 70, orders of the President of the Second Chamber of the Court of First Instance of 23 July 1993 in Case T-24/93 *Compagnie maritime belge transports and Compagnie maritime belge* v *Commission*, paragraph 5, and of 13 June 1994 in Case T-542/93 *Reti Televisive Italiane* v

Commission, paragraph 9, and order of the President of the First Chamber of the Court of First Instance of 6 May 2004 in Case T-271/03 *Deutsche Telekom* v *Commission*, paragraph 2).

11 In the present case, it is undisputed that Schenker Privpak AB is one of only two competitors of the applicant on the relevant market. Furthermore, it is significant that the contested decision terminates the administrative procedure initiated by ESA following the complaint lodged by Schenker Privpak AB on 24 June 2002. Finally, the applicant interveners are claimants in an action for damages against Posten Norge pending before Oslo District Court which is based on the contested decision. These proceedings have been stayed by Oslo District Court, referring to the need for a decision by the Court on the present action (compare in that regard also order of the President of the Court of First Instance of 7 July 1998 in Case T-65/98 R *Van den Bergh Foods* v *Commission*, paragraph 26).

12 It follows that Schenker Privpak AB has established its interest in the result of the case.

13 Where one and the same application for intervention is brought by several applicants, one of which is admissible, there is no need to consider whether the other applicants are entitled to bring proceedings (see, for comparison, order of the President of the Seventh Chamber of the Court of First Instance of 20 November 2008 in Case T-167/08 *Microsoft* v *Commission*, paragraph 75).

14 In light of the above, Schenker North AB, Schenker Privpak AB and Schenker Privpak AS must be granted leave to intervene in the case in support of the form of order sought by the defendant.

On those grounds,

THE PRESIDENT

hereby orders:

1. **Schenker North AB, Schenker Privpak AB and Schenker Privpak AS are granted leave to intervene in Case E-15/10 in support of the form of order sought by the defendant.**

2. **Costs are reserved.**

Luxembourg, 15 February 2011.

Skúli Magnússon
Registrar

Carl Baudenbacher
President