

EFTA COURT

Action brought on 13 December 2024 by Toska ehf. and Lyf og heilsa hf. against the EFTA Surveillance Authority

(Case E-31/24)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 13 December 2024 by Toska ehf. Síðumúla 20, 108 Reykjavík, and Lyf og heilsa hf., Síðumúla 20, 108 Reykjavík represented by advocate Halldór Brynjar Halldórsson, LOGOS legal services.

Toska ehf. and Lyf og heilsa hf., request the EFTA Court to:

- 1. Annul ESA Decision no. 158/24/COL, dated 3 October 2024, requiring Toska ehf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyf og heilsa hf., to submit to an inspection in accordance with Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement;**
- 2. Adopt a measure of organisation of procedure ordering ESA to produce all of the documents and other information on the basis of which it considered on the date of the contested decision that it had sufficient justification to carry out an inspection at the applicants' premises, and requesting the applicants to express their views on the documents and information produced;**
- 3. Order ESA to pay the costs of the proceedings.**

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

- Toska ehf. (Toska) is a holding company with no independent operations. It is the ultimate owner of Lyf og heilsa hf. (L&H) which operates pharmacies located in Iceland. Toska is also the ultimate owner of Faxar ehf. which owns all real estate in which L&H operate the pharmacies.
- Decision No 158/24/COL of 3 October 2024 (“the contested decision”) required Toska, together with all undertakings directly or indirectly, solely or jointly controlled by it, including L&H, to submit to an inspection, in accordance with Article 20(4) of Protocol 4 to the

Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

- The contested measures relate to an inspection carried out by representatives of the EFTA Surveillance Authority (ESA) at the premises of L&H on 14 October 2024, and concluded on 18 October 2024, where 687 items, all property of L&H, were seized.
- The applicants seek the annulment of the contested decision and bases its application on the following pleas:
 - ESA lacked competence to take the contested decision, as the alleged infringements are not capable of affecting trade between the Contracting Parties, within the meaning of Article 53 of the EEA Agreement;
 - The contested decision contains insufficient reasoning, in particular due to, but not limited to, the fact that the alleged infringement outlined in the decision, had already been notified as mergers under Icelandic Competition Act and approved as such; and
 - ESA did not objectively fact check the information the contested decision is said to be based on, leading it to conduct the inspection on the basis of factually false premise. Thus ESA did not have sufficient grounds in the form of valid evidence (indica) to justify an inspection, rendering it illegal.