

## EFTA COURT

**Action brought on 6 April 2013 by DB Schenker against the EFTA Surveillance Authority**

**(Case E-4/13)**

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 6 April 2013 by Schenker North AB, Schenker Privpak AB and Schenker Privpak AS (collectively DB Schenker), represented by Jon Midthjell, advokat, Advokatfirmaet Midthjell AS, Grev Wedels plass 5, N-0151 Oslo, Norway.

The applicants request the EFTA Court to:

- 1. Annul ESA's decision of 7 February 2013 in Case No. 73038 (DB Schenker – access to documents) in so far as it denies access to the inspection documents in Case No. 34250 (Norway Post/Privpak);**
- 2. Order ESA (and any intervener) to bear the costs.**

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

- The applicants, Schenker North AB, Schenker Privpak AB and Schenker Privpak AS are part of the DB Schenker group, an international freight forwarding and logistic group. Schenker North AB runs the group's business operations in Norway, Sweden and Denmark, including the subsidiaries Schenker Privpak AS and Schenker Privpak AB.
- The applicants submitted a request for access to the documents in Case No. 34250 on 3 August 2010 under the rules on public access to documents established by ESA Decision 407/08/COL on 27 June 2008 (RAD). In a decision dated 16 August 2011, ESA refused access to certain documents in the file ("inspection documents"). The decision was annulled by a judgment of the EFTA Court in Case E-14/11, 21 December 2012, insofar as it denied full or partial access to inspection documents in Case No 34250 Norway Post / Privpak.
- New rules on public access to documents were enacted by way of ESA Decision 300/12/COL on 5 September 2012. On 7 February 2013 ESA adopted a decision denying access to a number of the inspection

documents under the new rules on public access to documents. The applicants seek to annul that decision under Article 36 SCA.

The applicants claim that the EFTA Surveillance Authority has *inter alia*:

- taken an unlawful starting point by considering that RAD 2012 is not part of EEA law and not subject to the principle of homogeneous interpretation, and given the new rules unlawful retroactive effect;
- infringed Article 4(4) RAD 2012 and the duty to state reasons, cf. Article 16 SCA; and
- infringed the right to partial access in Article 4(9) RAD 2012 and the duty to state reasons, cf. Article 16 SCA.