



ORDER OF THE PRESIDENT
26 October 2021

(Intervention – Application by the Icelandic Government)

In Case E-4/21,

Sýn hf., established in Reykjavík (Iceland),

represented by Dóra Sif Tynes, attorney at law,

applicant,

v

EFTA Surveillance Authority,

represented by Michael Sánchez Rydelski, Ewa Gromnicka, Ingibjörg-Ólöf Vilhjálmssdóttir and Melpo-Menie Joséphidès, acting as Agents,

defendant,

APPLICATION pursuant to 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, seeking the annulment of the EFTA Surveillance Authority's Decision No 023/21/COL of 26 March 2021, concerning aid to Farice ehf. for investment in a third submarine cable.

THE PRESIDENT

makes the following

Order

I Background

- 1 Sýn hf. (“the applicant”) is an electronic communications and media company active in all telecommunications and broadcasting markets in Iceland. The applicant provides electronic communications services, including the provision of data centre services, under the brand name Vodafone subject to a partnership agreement with Vodafone Group plc.
- 2 Farice ehf. (“Farice”) is a private limited liability company established in Iceland in accordance with Act No 138/1994 on Private Limited Liability Companies (*lög um einkahlutafélög*). Farice is fully owned by the Icelandic State and all its long-term borrowing comes from the Icelandic treasury. Its purpose, according to its articles of association, is the wholesale of international data transfer between countries through a fibre optic cable, the operations of fibre optic cable systems and the sale of services in relation to such activities. Farice operates two submarine cables running from Iceland to Europe, FARICE-1, running from Seyðisfjörður, on the east coast of Iceland, and landing in Scotland, with a branch unit into the Faroe Islands, and DANICE, running from Landeyjasandur, on the south coast of Iceland, and landing in Denmark.

II Facts and procedure

- 3 On 23 February 2021, the applicant lodged a complaint with the EFTA Surveillance Authority (“ESA” or “the defendant”). The applicant submitted that payments to Farice by the Icelandic State had erroneously been classified as public service compensation from 2013 since the conditions of the services of general economic interest (“SGEI”) decisions had never been met. The applicant argued that the payments amounted to State aid which neither had been notified to nor approved by ESA. The aid measures in question had significantly distorted competition in the market to the detriment of the applicant. Furthermore, the applicant submitted that there was an ongoing breach of the State aid rules related to the roll-out of a new submarine cable which warranted ESA’s immediate attention.

- 4 On 23 March 2021, the Icelandic authorities notified ESA of their intention to provide aid to Farice for investment in a third submarine cable, IRIS.
- 5 On 26 March 2021, ESA adopted Decision No 023/21/COL (“the contested decision”). ESA concluded that the measure, aid to Farice for investment in a third submarine cable, constituted State aid within the meaning of Article 61(1) of the Agreement on the European Economic Area (“EEA” or “the EEA Agreement”). However, ESA considered the measure compatible with the functioning of the EEA Agreement, pursuant to Article 61(3)(c) EEA, and did not raise objections to the measure.
- 6 On 9 July 2021, the applicant lodged an application pursuant to Article 36 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (“SCA”), seeking annulment of the contested decision. The applicant submits that the defendant has breached its obligation to open the formal investigation procedure under Article 1(2) of Part I of Protocol 3 to the SCA on the compatibility of the aid in question with Article 61 EEA. In addition, the applicant submits that the contested decision does not adequately state reasons for granting aid to Farice for the roll out of a third submarine cable, in breach of Article 16 SCA. The applicant requests the Court to:
 1. *Annul ESA Decision No 023/21/COL of 26 March 2021; and*
 2. *Order the defendant to pay the costs.*
- 7 On 14 July 2021, the defendant requested an extension of time to lodge the defence from 13 September 2021 to 13 October 2021.
- 8 On 15 July 2021, the Registrar informed the defendant that the President had granted an extension of the time limit for submitting a defence to 27 September 2021.
- 9 On 24 September 2021, the defendant lodged its statement of defence. The defendant asserts that the applicant does not have the status of a “party concerned” within the meaning of Article 1(2) of Part I of Protocol 3 to the SCA. Furthermore, the defendant submits that the applicant’s plea is not tenable and that it raises no doubts with regard to the compatibility of the State aid in question with the functioning of the EEA Agreement. Therefore, the defendant requests the Court to:
 1. *Dismiss the application as inadmissible, or in the alternative, as unfounded.*
 2. *Order the applicant to bear the costs of the proceedings.*

- 10 On 7 October 2021, the Icelandic Government submitted an application for leave to intervene.
- 11 On 12 October 2021, the present application to intervene was served on the parties in accordance with Article 114(1) of the Rules of Procedure (“RoP”).

III Application to intervene

- 12 On 7 October 2021, the Icelandic Government sought leave to intervene pursuant to Article 36 of the Statute of the EFTA Court (“the Statute”) and Articles 112 and 113 RoP.
- 13 The Icelandic Government wishes to support the following forms of order sought by the defendant, namely, the defendant’s request that the Court should:

1. *Dismiss the application as inadmissible, or in the alternative, as unfounded.*
2. *Order the applicant to bear the costs of the proceedings.*

IV Observations of the parties

- 14 On 12 October 2021, the defendant stated that it would not submit observations on Iceland’s application to intervene.
- 15 The applicant did not submit any comments on Iceland’s application for leave to intervene.

V Law

- 16 Pursuant to the first paragraph of Article 36 of the Statute, any EFTA State, the EFTA Surveillance Authority, the European Union and the European Commission may intervene in cases before the Court.
- 17 Article 113(1) RoP provides that an application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 15(5) RoP. Notice of the action was published on 26 August 2021 in the EEA Section of the Official Journal of the European Union. Accordingly, the time limit for submission of an application to intervene was 7 October 2021.
- 18 The present application to intervene was lodged at the Court’s Registry on 7 October 2021 and is therefore timely.
- 19 In light of the above, Iceland is 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. Iceland is granted leave to intervene in Case E-4/21 in support of the form of order sought by the defendant and shall receive a copy of every document served on the parties.**
- 2. Costs are reserved.**

Luxembourg, 26 October 2021.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President