

EFTA COURT

Action brought on 26 November 2019 by Abelia and WTW AS against the EFTA Surveillance Authority

(Case E-9/19)

An action against the EFTA Surveillance Authority was brought before the EFTA Court on 26 November 2019 by Abelia and WTW AS, represented by Espen Bakken, advocate, Arntzen de Besche Advokatfirma AS, P.O. Box 2734, Solli, 0204 Oslo, Norway.

The Applicant requests the EFTA Court to:

- 1. Annul Decision No. 57/19/7COL, of 10 July 2019, of the EFTA Surveillance Authority.**
- 2. Order the EFTA Surveillance Authority to pay the costs of the proceedings.**

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

- Abelia is a trade and employers association within Norway's largest employers' organisation; the NHO (Confederation of Norwegian Business and Industry).
- WTW AS is a software developer, and a member company of the trade organisation Abelia, offering innovative technical solutions to customers within a range of business segments. WTW is also present within the e-health sector and operates in direct competition with the public e-health solutions considered by the Authority in the Contested Decision.
- The Contested Decision concerns the notified financing of a public corporation tasked with the provision of a national eHealth solution.
- The Norwegian Government did not view the publicly financed interconnected eHealth activities as State aid because it did not amount to "economic activities" within the meaning of Article 61(1) of the EEA Agreement, but provided a Notification for Legal Certainty dated 3 May 2019.

- The EFTA Surveillance Authority (hereinafter “the Authority”) adopted the Contested Decision on 10 July 2019, concluding that Norsk Helsenett SF and the Norwegian Directorate of eHealth do not constitute “undertakings” in the provision of the eHealth solutions in accordance with the current organisation of the Norwegian health sector.
- The Contested Decision is based on Article 4(2) of the SCA Agreement, where the Authority found that the notified measures did not confer an economic advantage to Norsk Helsenett SF within the meaning of Article 61(1) of the EEA Agreement.
- The Applicants challenge the fact that the Authority adopted the Contested Decision in relation to the aid without initiation the formal investigation procedure, thereby infringing the Applicants’ procedural rights.
- Thus, the Applicants submit that the EFTA Court should annul the Contested Decision.