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Judgment in Case E-10/17 *Nye Kystlink AS v Color Group AS and Color Line AS*

LIMITATION PERIOD FOR DAMAGES CLAIMS DUE TO INFRINGEMENT OF ARTICLES 53 AND 54 EEA

In a judgment delivered today, the Court answered questions referred to it by Borgarting Court of Appeal (*Borgarting lagmannsrett*) in a case which concerned the limitation period for bringing follow-on damages claims in competition law where fines have been previously imposed pursuant to Articles 53 and 54 EEA.

Under Section 9(1) of the Norwegian Limitation Act, a claim for damages is time-barred three years after the date on which the injured party obtained or should have procured necessary knowledge about the damage and the responsible party. However, under Section 11 of that act, a claim for damages arising from a criminal offence may in any event be filed within one year after the criminal conviction became final.

The EFTA Surveillance Authority (“ESA”) adopted a decision on 14 December 2011 (387/11/COL) which found that Color Group AS and Color Line AS (together “Color Line”) had infringed Articles 53 and 54 EEA by their exclusivity agreement with the Municipality of Strömstad between 1994 and 2005, which had made it possible to prevent potential competitors from gaining access to the relevant market for ferry services. On 14 December 2012, Nye Kystlink AS brought an action before Norwegian courts against Color Line claiming damages for financial losses for infringement of Articles 53 and 54 EEA. However, Oslo District Court (*Oslo tingrett*) found that Nye Kystlink AS should have procured necessary knowledge about the damage and the responsible party before 14 December 2009, and that the claim was therefore time-barred when the action was initiated. Nye Kystlink AS has appealed that judgment to Borgarting Court of Appeal.

Borgarting Court of Appeal referred three questions to the Court. They concerned essentially two distinct matters. First, the national court asked whether it follows from the principle of equivalence that a national limitation rule, such as Section 11 of the Limitation Act, that lays down a separate limitation period of one year for bringing an action for damages arising from a criminal offence that has been established by a final criminal conviction must also be applied in connection with an action for damages for infringement of Articles 53 and 54 EEA that has been established by a final decision by ESA imposing a fine. Second, the national court asked whether the principle of effectiveness restricts the ability to apply a limitation period of three years for bringing a follow-on damages action, such as laid down in Section 9(1) of the Limitation Act, if the limitation period is combined with a duty of investigation on the part of the injured party that could lead to the limitation period expiring before ESA has reached its decision on a potential breach of Articles 53 and 54 EEA.

The Court held that the principle of equivalence requires that a national limitation rule that lays down a separate limitation period of one year for bringing an action for damages arising from a criminal offence that has been established by a final criminal conviction must also be applied to an action for damages for infringement of Articles 53 and 54 EEA that has been established by a final ESA decision, in so far as those actions have similar purpose, cause of action and essential characteristics. That assessment will largely depend on whether a similar infringement

pursued by national authorities would have been subject to a criminal sanction or an administrative fine.

The Court further held that the principle of effectiveness does not restrict the EEA States' right to apply a limitation period of three years for bringing an action for damages for infringement of Articles 53 and 54 EEA, when this limitation period is combined with a duty of investigation on the part of the injured party that could lead to the limitation period expiring before ESA has reached a decision on a potential breach of Articles 53 and 54 EEA based on a complaint from the injured party, so long as the application of such a limitation period does not make it impossible or excessively difficult to bring an action for damages for infringement of EEA competition rules. That assessment must take into account the special characteristics of competition cases.

The full text of the judgment may be found on the internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.