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Judgment in Case E-1/19 *Andreas Gyrré v The Norwegian Government, represented by the Ministry of Children and Equality*

TO GIVE THE IMPRESSION THAT TICKETS MAY LEGALLY BE SOLD WHERE THERE IS A NATIONAL LEGISLATIVE PROHIBITION IN EITHER THE EEA STATE OF SALE, THE EEA STATE OF PERFORMANCE OR BOTH IS CONSIDERED AN UNFAIR COMMERCIAL PRACTICE

In its judgment, the Court answered a question referred by Borgarting Court of Appeal (*Borgarting lagmannsrett*) regarding the interpretation of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“the Directive”), and in particular its point 9 of Annex I.

The case concerned an action brought by Mr Andreas Gyrré, who was the chairman and sole owner of Euroteam AS for a partial review of a decision taken by the Norwegian Market Council to impose a fine of NOK 200,000 on Mr. Gyrré. Euroteam had engaged in the marketing and resale of tickets to the London 2012 Olympic and Paralympic Games. The unauthorised resale of tickets for the London 2012 Games was prohibited under criminal law in the UK. Any tickets sold by unauthorised dealers were void and subject to seizure or cancellation without refund or entry to a session.

The fine imposed on Mr. Gyrré was based on an alleged violation of the Norwegian legislative provisions implementing Article 5 and point 9 of Annex I to the Directive. Article 5(1) of the Directive states that unfair commercial practices shall be prohibited. Annex I to the Directive contains a list of commercial practices that in all circumstances shall be regarded as unfair and thus prohibited under the Directive. Point 9 of Annex I to the Directive prohibits a trader from ‘[s]tating or otherwise creating the impression that a product can legally be sold when it cannot’.

The Court held that point 9 of Annex I to the Directive is to be interpreted as encompassing situations in which a trader states or otherwise creates an impression that a product can legally be sold when it cannot, by omitting to inform the consumer of any legal restriction affecting the sale, possession or use of a particular product in a way that might deceive the consumer. The Court further held that it does not have a bearing on that assessment whether such a national legislative prohibition applies in either the EEA State of sale, the EEA State of performance, or both.

The Court considered that the term ‘legally’ in point 9 of Annex I, read in conjunction with Article 2(k) of the Directive, must be interpreted as referring to the law in force at the point in time that a consumer makes a transactional decision. It is immaterial that a trader may consider certain legislative provisions to be contrary to EEA law. It is also immaterial if the national legislative prohibition in question is subsequently found to be contrary to EEA law.

The full text of the judgment may be found on the Court’s website: www.eftacourt.int.

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