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## **PRESS RELEASE 10/2024**

### **Judgment in Case E-11/23 *Låssenteret AS v Assa Abloy Opening Solutions Norway AS***

#### **RULES ON EVIDENCE AND DISCLOSURE OF CONFIDENTIAL INFORMATION IN COMPETITION PROCEEDINGS**

In a judgment delivered today, the Court answered six questions referred to it by Eidsivating Court of Appeal (*Eidsivating lagmannsrett*) concerning the interpretation of the Agreement on the European Economic Area, in particular Article 54 thereof, and Article 9 of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (“the Directive”).

In the main proceedings, *Låssenteret AS* (“*Låssenteret*”) seeks evidence from *Assa Abloy Opening Solutions Norway AS* (“*Assa Abloy*”) in its proceedings claiming that *Assa Abloy* has a dominant position in the market for mechanical and electromechanical locks/lock systems and in the after-sales service markets for the sale of spare parts for such systems, and that *Assa Abloy*’s alleged abuse may also affect the installation market. *Låssenteret* claims inter alia that *Assa Abloy* has abused its dominant position by terminating certain agreements with *Låssenteret* on insufficient grounds, and that *Assa Abloy* has subsequently actively assisted in attempting to force *Låssenteret* out of the market. *Assa Abloy* contends that it does not have a dominant position in any market or, in the alternative disputes that there has been abuse of a dominant position.

According to the request, the EEA law-related doubts concerning access to evidence relate, firstly, to the material scope of the national legislation, which implements the Directive. There is also disagreement on the significance EEA law principles generally have for access to evidence in cases involving private enforcement of the competition rules under EEA law. Against this background, Eidsivating Court referred six questions to the Court for an advisory opinion.

The Court found that the scope of the Directive concerns only the unlawful acquisition, use or disclosure of trade secrets and does not provide for measures to protect the confidentiality of trade secrets in other types of court proceedings. The Court further held that the Directive does not prevent a national court in a case such as that in the main proceedings from establishing a confidentiality ring which does not include at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case.

In its answer to the third question of the referring court, the Court found that Article 9(2) of the Directive does not give expression to a general principle of EEA law to the effect that a national court may not establish a confidentiality ring which does not include at least one natural person from each of the parties to the case to be granted access to evidence constituting trade secrets which is submitted as evidence in the case. In accordance with the principle of national procedural autonomy, it is for the national legal system to provide methods and limitations for the disclosure of information and evidence necessary to pursue the private enforcement of EEA competition law. However, the principle of effectiveness requires that the method and the

extent of disclosure depends on a weighing-up of the protected interests on a case-by-case basis by the national court or tribunal.

The Court also found that it is not of significance to the answer to questions 1 to 3 that the confidential information including trade secrets for which disclosure is sought is competitively sensitive in relation to the party seeking access to the information. The Court further concluded that also in a case involving abuse of a dominant position under Article 54 of the EEA Agreement, EEA law requires a national court to weigh up the parties' interests prior to ordering a party alleged to have abused its dominant position to disclose evidence constituting trade secrets while ensuring the effectiveness of EEA law.

In the answer to the last question of the referring court, the Court found that in the absence of the incorporation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union into the EEA Agreement, there is no obligation under EEA law to interpret national law in light of Article 5 of Directive 2014/104/EU.

The full text of the judgment may be found on the Court's website: [www.eftacourt.int](http://www.eftacourt.int).

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