

## Amendments of the EEA Competition Act of 2004

Act of 5 March 2004 No. 11 concerning implementation and enforcement of the competition rules of the EEA Agreement, etc.

The EEA Competition Act of 2004 was amended by the Act of 17 December 2004 No. 100. An overview of amendments of substance is found below. Amended/new text is in bold letters. The EEA Competition Act of 2004 entered into force on 19 May 2005. The amendments will enter into force on 1 July 2005.

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### Section 3 Inspections by the EFTA Surveillance Authority

Sections 24 and 25 of the Competition Act shall apply to inspections conducted by the EFTA Surveillance Authority, or by the Competition Authority at the request of the EFTA Surveillance Authority in accordance with regulations adopted pursuant to Section 5.

When an application for authorisation to secure evidence is brought before the court under Section 25, second paragraph of the Competition Act, the right of the court to review the application is governed by the rules set out in paragraphs three **through seven**.

**When reviewing an application for authorisation to secure evidence that would require access to premises, land, and means of transport of undertakings or associations of undertakings, the court shall control that the decision by the EFTA Surveillance Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection.**

**In the case of an application for authorisation to secure evidence in relation to a suspicion of infringement of Article 53 or Article 54 of the EEA Agreement, in its control of the proportionality of the coercive measures, the court may ask the EFTA Surveillance Authority, directly or through the Competition Authority, for more detailed explanations, in particular on the grounds the EFTA Surveillance Authority has for suspecting infringement of Article 53 or Article 54 of the EEA Agreement, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned.**

**In relation to a suspicion of infringement of Article 53 or Article 54 of the EEA Agreement, when reviewing an application for authorisation to secure evidence located at premises, land, and means of transport other than those set forth in the third paragraph, including private homes, the court shall control that the decision by the EFTA Surveillance Authority is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The court may ask the EFTA Surveillance Authority, directly or through the Competition Authority, for more detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged.**

**When reviewing an application for authorisation to secure evidence pursuant to the provisions on merger control of the EEA Agreement, in its control of the proportionality of the coercive measures, the court may ask the EFTA Surveillance Authority, directly or through the Competition Authority, for more detailed explanations on the subject matter of the inspection.**

**Pursuant to paragraphs three through seven however, the court may not call into question the necessity for the inspection nor demand that it be provided with the information in the EFTA Surveillance Authority's file. The lawfulness of the decision by the EFTA Surveillance Authority shall be subject to review only by the EFTA Court.**

The EFTA Surveillance Authority and the European Commission have the right to be present at and participate in inspections conducted by the Competition Authority within the framework of the EEA Agreement.

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### Section 7a Transfer of cases concerning concentrations to the European Commission

The Competition Authority may transfer the handling of a case concerning a concentration in accordance with the rules of Protocol 24 of the EEA Agreement.

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