

EEA Competition Law and the EEA Agreement's Impact *

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The EEA Agreement, often described as the 'Norwegian model' extends the Single Market to Norway, Liechtenstein and Iceland. The EEA Agreement naturally includes competition, State aid and public procurement provisions. This Monckton Brexit Blog post introduces EEA competition law and considers what the EEA Agreement has achieved since its signature in 1992.

Competition law

Articles 53 and 54 EEA correspond to Article 101 and 102 TFEU. In practice the three EEA/EFTA States have adopted measures corresponding substantially to the principal competition Regulations and Notices adopted by the EU and by the Commission.¹

The EEA competition rules correspond to the EU's including the Merger Regulation. They include, or have led to adoption of EEA measures corresponding to, most of the group exemptions, and most of the Commission's Notices on competition law and procedure. Articles 59 to 64 EEA set out rules on publicly owned undertakings and undertakings with special or exclusive rights, and on State aid. ESA and the Commission cooperate closely, and they normally arrange for any given case to be dealt with by only one of them.

The EFTA Court has rendered a number of landmark rulings in the field of competition law, including: *Posten Norge*;² *LO*;³ *Wow Air*;⁴ and *Holship*.⁵

Directive 2014/104/EU on antitrust damages actions is currently under scrutiny for incorporation into the EEA Agreement.

Conclusion

The EEA Agreement has proved itself to be a robust, durable and pragmatic method in extending the Single Market for more than 20 years. The EFTA Court has made use of its "first-mover advantage" and is often cited by the ECJ in its own jurisprudence. Indeed, then President of the Court of Justice Vassilios Skouris wrote in 2014:

*'It is safe to say, with confidence, that expectations of reciprocity have largely been fulfilled. The courts in both EEA pillars have made momentous determinations to safeguard a homogenous development of case-law. From its very beginning, the EFTA Court highlighted the importance of the objective of the Contracting Parties to create a dynamic and homogeneously regulated EEA. The long lasting dialogue between the EFTA Court and the CJEU has allowed the flow of information in both directions. Ignoring EFTA Court precedents would simply be incompatible with the overriding objective of the EEA Agreement which is homogeneity.'*⁶

This series of Monckton Brexit Blog posts has set out a number of areas in which EEA law is the same but different from EU law. The EEA Agreement is designed to achieve the result of a fully competitive Single Market but uses a slightly different approach to achieve its purpose. While sovereignty is not pooled, the EEA Single Market can only function in an undistorted manner if there is a level playing field for the market operators, producers, workers, consumers, dealers, and investors. Competition must, as a matter of principle, be led by economic and not regulatory advantage.⁷

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¹ See generally, *John Temple Lang*, Competition Law: the Brussels Perspective, in: *The Handbook of EEA Law* (Baudenbacher Ed.), Springer (2016).

² Case E-15/10 *Posten Norge AS v EFTA Surveillance Authority* [2012] EFTA Ct. Rep. 246.

³ Case E-8/00 *Norwegian Federation of Trade Unions and Others v Norwegian Association of Local and Regional Authorities and Others ("LO")* [2002] EFTA Ct. Rep. 114.

⁴ Case E-18/14 *Wow air* [2014] EFTA Ct. Rep. 1304.

⁵ Case E-14/15 *Holship Norge AS v Norsk Transportarbeiderforbund*, judgment of 19 April 2016, not yet reported.

⁶ *Vassilios Skouris*, The Role of the Court of Justice of the European Union (CJEU) in the Development of the EEA Single Market: Advancement through Collaboration between the EFTA Court and the CJEU. In: *The EEA and the EFTA Court. Decentred Integration.* (EFTA Court (ed)) (2014) Hart Publishing, Oxford and Portland, p 3–12

⁷ See generally, *Carl Baudenbacher*, The EFTA Court: Structures and Tasks, in: *The Handbook of EEA Law* (Baudenbacher Ed.), Springer (2016) p.145. See also *Páll Hreinsson*, General Principles, in the same publication.