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DECISION OF THE EEA JOINT COMMITTEE
No 91/2010

of 2 July 2010

amending Annex XIV (Competition) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

Whereas:

- (1) Annex XIV to the Agreement was amended by Decision of the EEA Joint Committee No 77/2010 of 11 June 2010¹.
- (2) Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector² is to be incorporated into the Agreement.
- (3) Commission Regulation (EC) No 1400/2002³, which has been incorporated into the Agreement, expired on 31 May 2010 and is therefore to be repealed under the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The text of point 4b (Commission Regulation (EC) No 1400/2002) of Annex XIV to the Agreement shall be replaced by the following:

‘**32010 R 0461**: Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 129, 28.5.2010, p. 52).

The provisions of the Regulation shall, for the purpose of the Agreement, be read with the following adaptation:

¹ OJ L 244, 16.9.2010, p. 35.

² OJ L 129, 28.5.2010, p. 52.

³ OJ L 203, 1.8.2002, p. 30.

The following shall be added at the end of Article 6:

“Pursuant to the provisions of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Surveillance Authority may by recommendation declare that, where parallel networks of similar vertical restraints cover more than 50% of a relevant market in the EFTA States, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.

A recommendation pursuant to paragraph 1 shall be addressed to the EFTA State or EFTA States comprising the relevant market in question. The Commission shall be informed of the issuance of such a recommendation.

Within three months from the issuance of a recommendation pursuant to paragraph 1, all EFTA States addressees shall notify the EFTA Surveillance Authority whether they accept the recommendation. If the three months deadline expires without a response, this shall be understood as an acceptance of the EFTA State not responding timely.

If an EFTA State addressee of the recommendation either accepts the recommendation or does not respond in time, a legal obligation under the Agreement to implement the recommendation within three months from its issuance shall be bestowed upon it.

If within the three months deadline, an EFTA State addressee notifies the EFTA Surveillance Authority that it does not accept its recommendation, the EFTA Surveillance Authority shall notify the Commission of this response. Should the Commission disagree with the position of the EFTA State in question, Article 92(2) of the Agreement shall apply.

The EFTA Surveillance Authority and the Commission shall exchange information and consult each other in the application of this provision.

Where parallel networks of similar vertical restraints cover more than 50% of a relevant market within the territory of the EEA Agreement, the two surveillance authorities can initiate cooperation with the aim of adopting separate measures. If the two surveillance authorities agree on a relevant market and the appropriateness of adopting a measure pursuant to this provision, the Commission shall adopt a regulation addressed to the EU Member States and the EFTA Surveillance Authority a recommendation of corresponding substance to the EFTA State or EFTA States comprising of the relevant market in question.”

Article 2

The texts of Regulation (EU) No 461/2010 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on 3 July 2010, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee*. It shall apply from 1 June 2010.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 2 July 2010.

*For the EEA Joint Committee
The President*

Stefán Haukur Jóhannesson

*The Secretaries
to the EEA Joint Committee*

Bergdis Ellertsdóttir Gianluca Grippa

* No constitutional requirements indicated.