



JUDGMENT OF THE COURT

5 March 2026

(Action for annulment of a decision of the EFTA Surveillance Authority – Competition law – Inspection decision – Obligation to state reasons – Sufficiently serious indicia – Effect on trade – Ne bis in idem)

In Joined Cases E-31/24 and E-32/24,

Toska ehf. and Lyf og heilsa hf. (Case E-31/24), both established in Reykjavík, Iceland, represented by Halldór Brynjar Halldórsson, attorney,

and

SKEL fjárfestingafélag hf. (Case E-32/24), established in Reykjavík, Iceland, represented by Gjermund Mathisen, counsel,

applicants,

v

EFTA Surveillance Authority, represented by Claire Simpson, Daniel Vasbeck, Sigrún Ingibjörg Gísladóttir and Melpo-Menie Joséphidès, acting as Agents,

defendant,

APPLICATIONS seeking the annulment of EFTA Surveillance Authority Decisions No 158/24/COL and No 159/24/COL requiring the applicants to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having regard to the written pleadings of the applicants and the defendant and the written observations submitted on behalf of:

- the European Commission (“the Commission”), represented by Ekaterina Rousseva and Brian Cullen, acting as Agents; and,
- the Icelandic Government, represented by Hendrik Daði Jónsson, Steindór Dan Jensen and Guðmundur Haukur Guðmundsson, acting as Agents,

having regard to the Report for the Hearing,

having heard the oral arguments of Toska ehf. and Lyf og heilsa hf. (together “Toska”), represented by Halldór Brynjar Halldórsson; SKEL fjárfestingafélag hf. (“SKEL”), represented by Gjermund Mathisen; the EFTA Surveillance Authority (“ESA”), represented by Claire Simpson and Daniel Vasbeck; and the Commission, represented by Ekaterina Rousseva and Brian Cullen, at the hearing on 2 July 2025,

gives the following

JUDGMENT

I INTRODUCTION

- 1 Toska and SKEL seek the annulment of two decisions adopted by ESA requiring Toska and SKEL to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”). These decisions concern ESA’s investigations into potential anti-competitive agreements and/or concerted practices on the Icelandic retail pharmacy market upon which Toska and SKEL are active.
- 2 Toska and SKEL contend that: (1) the decisions were insufficiently reasoned; (2) there are no sufficiently serious indicia of an infringement of Article 53 of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”); (3) there is no effect on trade between the EEA States; and (4) ESA did not have competence to investigate the suspected anti-competitive conduct, as the conduct was already cleared by way of approved mergers under national law. Toska submits, *inter alia*, that the investigation breaches the fundamental rights of legal certainty and *ne bis in idem*.

II LEGAL BACKGROUND

EEA law

3 Article 53(1) EEA reads:

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

4 Article 16 SCA reads:

Decisions of the EFTA Surveillance Authority shall state the reasons on which they are based.

5 Article 4 of Chapter II of Protocol 4 to the SCA entitled “Powers of the EFTA Surveillance Authority” reads:

For the purpose of applying Articles 53 and 54 of the EEA Agreement, the EFTA Surveillance Authority shall have the powers provided for by this Chapter.

6 Article 20 of Chapter II of Protocol 4 to the SCA entitled “The EFTA Surveillance Authority’s powers of inspection” reads:

1. In order to carry out the duties assigned to it by this Chapter, the EFTA Surveillance Authority may conduct all necessary inspections of undertakings and associations of undertakings.

1. The officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct an inspection are empowered:

(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;

(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;

(c) to take or obtain in any form copies of or extracts from such books or records;

(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;

(e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

3. The officials and other accompanying persons authorised by the EFTA Surveillance Authority to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 23 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraph 2 of the present Article are incorrect or misleading. In good time before the inspection, the EFTA Surveillance Authority shall give notice of the inspection to the competition authority of the EFTA State in whose territory it is to be conducted.

The EFTA Surveillance Authority shall provide an authorisation as referred to in the first subparagraph to representatives of the EC Commission who shall take part in the investigation in accordance with Article 8(3) of Protocol 23 to the EEA Agreement.

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the EFTA Surveillance Authority. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the EFTA Court. The EFTA Surveillance Authority shall take such decisions after consulting the competition authority of the EFTA State in whose territory the inspection is to be conducted.

5. *Officials of as well as those authorised or appointed by the competition authority of the EFTA State in whose territory the inspection is to be conducted shall, at the request of that authority or of the EFTA Surveillance Authority, actively assist the officials and other accompanying persons authorised by the EFTA Surveillance Authority. To this end, they shall enjoy the powers specified in paragraph 2.*

6. *Where the officials and other accompanying persons authorised by the EFTA Surveillance Authority find that an undertaking opposes an inspection ordered pursuant to this Article, the EFTA State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.*

7. *If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.*

8. *Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority 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 its control of the proportionality of the coercive measures, the national judicial authority may ask the EFTA Surveillance Authority, directly or through the EFTA State competition authority, for detailed explanations in particular on the grounds the EFTA Surveillance Authority has for suspecting infringement of Articles 53 and 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. However, the national judicial authority 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.*

III FACTS AND PRE-LITIGATION PROCEDURE

Background

- 7 Toska ehf. is an undertaking active in different sectors of the Icelandic economy including horse breeding, real estate activities, the operation of music stores and pharmacies. Lyf og heilsa hf. (“Lyf og heilsa”), at the time of the application, a subsidiary of Toska ehf., operates a pharmacy chain active in the Icelandic retail pharmacy market under the brands

Lyf og heilsa, Apótekarinn and Garðs Apótek. At the time of the application, Lyf og heilsa operated 18 pharmacies in the greater capital area and six elsewhere in Iceland.

- 8 Toska ehf. wholly owns the shares of Faxi ehf., which in turn wholly owns the shares of Faxar ehf. (“Faxar”), an undertaking whose main activity is holding the real estate properties used by Lyf og heilsa for its daily operations as a pharmacy chain.
- 9 SKEL operates as an investment undertaking which has an asset portfolio of multiple undertakings active in the Icelandic retail sector. Lyfjaval ehf. (“Lyfjaval”), a subsidiary of SKEL, is active in the Icelandic retail pharmacy market under the Lyfjaval brand. At the time of the application, Lyfjaval operated six retail pharmacies in the capital area and one elsewhere in Iceland. All these pharmacies take walk-in customers, but a number of them have an additional drive-through option.
- 10 On 26 April 2022, Lyfjaval and Faxar entered into an asset swap agreement (“the Asset Swap Agreement”). In that agreement, Lyfjaval sold its retail property in the Mjódd shopping centre in Reykjavík to Faxar. The sales object included all appurtenances and associated rights, including any goodwill connected to the property, where Lyfjaval had operated a pharmacy. As consideration, Faxar transferred its retail property with all associated rights in the Glæsibær shopping centre in Reykjavík, where Lyf og heilsa operated an Apótekarinn pharmacy, as well as a cash payment.

Merger control proceedings before the Icelandic Competition Authority

- 11 On 5 August 2022, Lyf og heilsa and Lyfjaval separately notified the Icelandic competition authority (“the ICA”) of the planned acquisitions as two mergers. On 26 October 2022, the ICA confirmed that satisfactory merger notifications had been received, and that the time-limits for examining the mergers would start to run.
- 12 The ICA investigated the notified mergers in connection with each other and issued a Statement of Objections (“SO”) on 13 February 2023, covering both mergers. The ICA’s preliminary assessment in its SO was that (i) both mergers impeded effective competition, within the meaning of Article 17(c) of the Icelandic Competition Act No 44/2005 (*samkeppnislög nr. 44/2005*) (“the Icelandic Competition Act”), on the retail pharmacy market in the capital area, giving grounds for intervention in connection with the transaction; and (ii) the Asset Swap Agreement may entail unlawful market sharing in violation of the prohibition in Article 10 of the Icelandic Competition Act and, where applicable, Article 53 EEA.
- 13 Following Lyf og heilsa’s and Lyfjaval’s comments of 27 February 2023 on the SO, the ICA adopted a decision on 2 March 2023 to discontinue the examination of the mergers on the grounds that there had been inconsistencies in the merging parties’ descriptions of the content of the transaction. The ICA held that the parties in the merger notifications

described the transaction as the acquisition and change of control of two operating pharmacies and their locations, whereas in the comments on the SO, the transaction was described as an acquisition of real estate. As a result, the merger notifications were deemed incomplete, and the ICA considered that the relevant time-limits applicable to investigating the mergers had not started to run.

- 14 On 30 March 2023, both merging parties submitted an appeal to the Competition Appeals Committee (“the CAC”) against the ICA’s decision to discontinue the examination of the mergers. On 8 August 2023, the CAC held that the ICA did not have the power to discontinue the examination of the mergers under the Icelandic Competition Act. Consequently, the CAC ruled that the ICA should conclude the cases concerning the mergers notified by Lyf og heilsa and Lyfjaval in accordance with the Icelandic Competition Act, taking into account the statutory time-limits that started to run on 26 October 2022.
- 15 In a letter dated 14 November 2023, the ICA informed the parties of its conclusion of the investigation. The ICA’s conclusion was that the transactions did not constitute a notifiable merger within the meaning of the Icelandic Competition Act and, consequently, that the ICA had no jurisdiction over the transactions as a merger. This conclusion followed an exchange of letters between the parties and the ICA, in which, inter alia, Lyf og heilsa pointed out that the transaction could no longer be considered a notifiable merger in light of its decision on 23 June 2023 to close its pharmacy in Glæsibær, which subsequently ceased operations on 31 August 2023.

The contested decisions

- 16 On 3 October 2024, ESA adopted Decision No 158/24/COL (“Decision 158/24”)“ requiring Toska ehf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyf og heilsa hf., to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (Case No 91392)”.

17 Recitals 1 to 10 of Decision 158/24 read:

(1) Toska ehf. and all undertakings directly or indirectly, solely or jointly, controlled by it (together, “Toska”), is an undertaking active in different sectors of the Icelandic economy such as horse breeding, real estate activities and the operation of music stores and pharmacies. Toska ehf. is a holding company that wholly owns the shares of Faxi ehf., which in turn wholly owns the shares of Faxar ehf., an undertaking whose main activity is holding the real estate properties used by Lyf og heilsa hf. (“Lyf og heilsa”) for Lyf og heilsa’s daily operations as a pharmacy chain. Lyf og heilsa, a subsidiary of Toska ehf.,

operates a pharmacy chain active in the Icelandic retail pharmacy market under the Lyf og heilsa, Apótekarinn and Garðs Apótek brands.

(2) The EFTA Surveillance Authority (“the Authority”) has information in its possession indicating that Toska, and in particular Lyf og heilsa, may have been and may still be participating in anti-competitive agreements and/or concerted practices related to coordination of their conduct with SKEL fjárfestingafélag hf. (together with all undertakings directly or indirectly, solely or jointly, controlled by SKEL fjárfestingafélag hf., “SKEL”), in particular its indirectly controlled subsidiary Lyfjaval ehf. (“Lyfjaval”), on the Icelandic retail pharmacy market.

(3) More specifically, according to information in the Authority’s possession, Toska and SKEL eliminated direct competition between each other that took place using traditional walk-in pharmacies. According to that information, Lyf og heilsa benefits from Lyfjaval’s closure of certain of its traditional walk-in pharmacies, which previously directly competed with Lyf og heilsa’s traditional walk-in pharmacies. Lyfjaval concentrates on drive-through pharmacies, while Lyf og heilsa does not enter the drive-through pharmacy segment. The implementation of the above suspected practices may have involved inter alia:

a. an asset swap agreement of 26 April 2022 between Lyf og heilsa and Lyfjaval related to certain of the parties’ walk-in pharmacies operated and subsequently closed in Mjóddin and Glæsibær;

b. coordination on the realisation of Lyfjaval/SKEL’s new drive-through pharmacy strategy; and

c. a restriction on Lyf og heilsa’s ability to open drive-through pharmacies and a restriction on Lyfjaval’s ability to open traditional walk-in pharmacies.

(4) According to the information available to the Authority, the involved undertakings operate pharmacies as pharmacy chains both within and outside the Reykjavík capital area. The Reykjavík capital area represents almost 70% of all retail sales of pharmaceuticals in Iceland. The alleged anti-competitive conduct therefore covers a significant part of the Icelandic market.

(5) According to the information available to the Authority, the alleged anticompetitive conduct may have started at least in May 2021 and could still be ongoing.

(6) If proven to exist, agreements and/or concerted practices of the type described above would constitute an infringement of Article 53 of the EEA Agreement.

(7) For the Authority to be in a position to ascertain all the relevant facts concerning the possible agreements and/or concerted practices and the context in which they operate, an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement should be carried out.

(8) If the suspected agreements and/or concerted practices exist, their purpose, design and operation can be best determined by examining documents, phone records and other information recorded by, or accessible through, electronic means of communication, and, if appropriate, by asking explanations on the spot from representatives and staff members of the undertakings concerned. Senior executives and a limited number of trusted staff in the undertakings concerned, including staff members who were involved in the preparation, negotiation and implementation of the asset swap agreement of 26 April 2022 concerning the pharmacies in Mjóddin and Glæsibær, are likely to have explicit knowledge of the existence of the suspected coordination and its exact scope, purpose, design and operation.

(9) Any evidence related to the suspected agreement and/or concerted practice is very likely restricted to the minimum, as well as kept in places and maintained in a form which would facilitate its concealment, withholding or destruction in the event of an investigation. As restrictive agreements and concerted practices constitute an infringement of the EEA competition rules, possibly giving rise to serious financial penalties, there is a risk that if the information were collected by request for information or if the inspection were announced beforehand, relevant information might be compromised or destroyed. That would apply to all information relating to the suspected coordination of Toska's and SKEL's behaviour on the Icelandic retail pharmacy market.

(10) To ensure the effectiveness of the inspection, it is essential that it is carried out without prior warning to the undertaking suspected of participation in the infringement and that several inspections take place simultaneously.

18 Article 1 of Decision 158/24 reads:

1. Toska ehf., together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyf og heilsa hf., is hereby required to submit to an inspection concerning its possible participation in anti-competitive conduct contrary to Article 53 of the EEA Agreement, in relation to the retail pharmacy market in Iceland. The suspected agreements and/or concerted

practices include the elimination of direct competition with SKEL (in particular through SKEL fjárfestingafélag hf.'s subsidiary Lyfjaval ehf.) that took place using traditional walk-in pharmacies, where Lyf og heilsa hf. benefits from Lyfjaval ehf.'s closure of certain of its traditional walk-in pharmacies which previously directly competed with Lyf og heilsa hf.'s traditional walk-in pharmacies, and where Lyfjaval ehf. concentrates on drive-through pharmacies, while Lyf og heilsa hf. does not enter the drive-through pharmacy segment.

2. The inspection may take place at any premises of Toska ehf., together with all undertakings directly or indirectly, solely or jointly, controlled by it, and in particular at the premises of:

Lyf og heilsa hf., situated at Síðumúli 20, 108 Reykjavík, Iceland.

19 Article 2 of Decision 158/24 reads:

Toska ehf., together with all undertakings directly or indirectly, solely or jointly controlled by it, shall:

a. permit the officials and other accompanying persons authorised by the EFTA Surveillance Authority, including officials of and those authorised or appointed by the Icelandic competition authority, to carry out the inspection;

b. permit the officials and other persons referred to in paragraph (a) to enter all its premises, land and means of transport during normal office hours;

c. produce books and other records related to the business for inspection, irrespective of the medium on which they are stored, when required by the officials and other persons referred to in paragraph (a) and shall permit officials and other persons referred to in paragraph (a) to examine books and records and take or obtain copies of or extracts from them in any form;

d. permit the officials and other persons referred to in paragraph (a) to seal any business premises and books or records for the period, and to the extent, necessary for the inspection;

e. immediately give oral explanations regarding facts or documents relating to the subject-matter and purpose of the inspection as the officials or other persons referred to in paragraph (a) may require and allow any representative or member of staff to give such explanations, and shall allow the explanations given to be recorded in any form.

20 Article 3 of Decision 158/24 reads:

The inspection shall begin on 14 October 2024 or shortly thereafter.

21 Article 4 of Decision 158/24 reads:

1. This decision is addressed to Toska ehf., Síðumúli 20, 108 Reykjavík, Iceland, together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyf og heilsa hf., Síðumúli 20, 108 Reykjavík, Iceland.

2. This decision shall be notified to the undertaking to which it is addressed in accordance with Article 17 of the Surveillance and Court Agreement, immediately before the inspection.

22 Article 5 of Decision 158/24 reads:

The Director of the Competition and State Aid Directorate of the EFTA Surveillance Authority, Mr Harald Evensen, and in his absence the Deputy Director for Competition, Mr Filip Ragolle, are authorised to sign authorisations empowering officials of the EFTA Surveillance Authority and other accompanying persons to carry out the inspection.

23 Article 6 of Decision 158/24 reads:

This decision shall be authentic in the English and Icelandic languages.

24 The final paragraph of Decision 158/24 reads:

An action challenging this decision may be brought before the EFTA Court in Luxembourg in accordance with Article 108(2)(b) of the EEA Agreement and Article 36 of the Surveillance and Court Agreement. The bringing of such an action shall, pursuant to Article 40 of the Surveillance and Court Agreement, not have suspensory effect.

25 Also on 3 October 2024, ESA adopted Decision No 159/24/COL (“Decision 159/24”) “requiring SKEL fjárfestingafélag hf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf., to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (Case No 91392).”

26 Recitals 1 to 11 of Decision 159/24 read:

(1) SKEL fjárfestingafélag hf. (previously known as Skeljungur hf.), is operating as an investment undertaking with an asset portfolio of multiple undertakings active in the Icelandic retail sector, among others. SKEL fjárfestingafélag hf.

and all undertakings directly or indirectly, solely or jointly, controlled by it are together “SKEL”. SKEL was initially established as an oil distribution undertaking, and the oil industry has been the primary focus of its activities for over 90 years. In 2020 a new strategy was launched with the aim of decreasing the importance of fuel and diversifying its portfolio to include a range of investments across industries such as energy, retail and real estate.

(2) Lyfjaval ehf. (“Lyfjaval”) is part of SKEL (being a subsidiary controlled indirectly by SKEL fjárfestingafélag hf). Lyfjaval is active in the Icelandic retail pharmacy market. It operates a chain of pharmacies under the Lyfjaval brand, composed of drive-through pharmacies and traditional walk-in pharmacies.

(3) The EFTA Surveillance Authority (“the Authority”) has information in its possession indicating that SKEL, and in particular SKEL fjárfestingafélag hf. and Lyfjaval, may have been and may still be participating in anti-competitive agreements and/or concerted practices related to coordination of their conduct with Toska ehf. (together with all undertakings directly or indirectly, solely or jointly, controlled by Toska ehf., “Toska”), in particular Toska ehf.’s indirectly controlled subsidiary Lyf og heilsa hf. (“Lyf og heilsa”), on the Icelandic retail pharmacy market.

(4) More specifically, according to information in the Authority’s possession, SKEL and Toska eliminated direct competition between each other that took place using traditional walk-in pharmacies. According to that information, Lyf og heilsa benefits from Lyfjaval’s closure of certain of its traditional walk-in pharmacies, which previously directly competed with Lyf og heilsa’s traditional walk-in pharmacies. Lyfjaval concentrates on drive-through pharmacies, while Lyf og heilsa does not enter the drive-through pharmacy segment. The implementation of the above suspected practices may have involved inter alia:

a. an asset swap agreement of 26 April 2022 between Lyf og heilsa and Lyfjaval related to certain of the parties’ walk-in pharmacies operated and subsequently closed in Mjóddin and Glæsibær;

b. coordination on the realisation of Lyfjaval/SKEL’s new drive-through pharmacy strategy; and

c. a restriction on Lyf og heilsa’s ability to open drive-through pharmacies and a restriction on Lyfjaval’s ability to open traditional walk-in pharmacies.

(5) According to the information available to the Authority, the involved undertakings operate pharmacies as pharmacy chains both within and outside the Reykjavík capital area. The Reykjavík capital area represents almost 70% of

all retail sales of pharmaceuticals in Iceland. The alleged anti-competitive conduct therefore covers a significant part of the Icelandic market.

(6) According to the information available to the Authority, the alleged anticompetitive conduct may have started at least in May 2021 and could still be ongoing.

(7) If proven to exist, agreements and/or concerted practices of the type described above would constitute an infringement of Article 53 of the EEA Agreement.

(8) For the Authority to be in a position to ascertain all the relevant facts concerning the possible agreements and/or concerted practices and the context in which they operate, an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement should be carried out.

(9) If the suspected agreements and/or concerted practices exist, their purpose, design and operation can be best determined by examining documents, phone records and other information recorded by, or accessible through, electronic means of communication, and, if appropriate, by asking explanations on the spot from representatives and staff members of the undertakings concerned. Senior executives and a limited number of trusted staff in the undertakings concerned, including staff members who were involved in the preparation, negotiation and implementation of the asset swap agreement of 26 April 2022 concerning the pharmacies in Mjóddin and Glæsibær, are likely to have explicit knowledge of the existence of the suspected coordination and its exact scope, purpose, design and operation.

(10) Any evidence related to the suspected agreement and/or concerted practice is very likely restricted to the minimum, as well as kept in places and maintained in a form which would facilitate its concealment, withholding or destruction in the event of an investigation. As restrictive agreements and concerted practices constitute an infringement of the EEA competition rules, possibly giving rise to serious financial penalties, there is a risk that if the information were collected by request for information or if the inspection were announced beforehand, relevant information might be compromised or destroyed. That would apply to all information relating to the suspected coordination of SKEL's and Toska's behaviour on the Icelandic retail pharmacy market.

(11) To ensure the effectiveness of the inspection, it is essential that it is carried out without prior warning to the undertaking suspected of participation in the infringement and that several inspections take place simultaneously.

27 Article 1 of Decision 159/24 reads:

1. SKEL fjárfestingafélag hf., together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf., is hereby required to submit to an inspection concerning its possible participation in anti-competitive conduct contrary to Article 53 of the EEA Agreement, in relation to the retail pharmacy market in Iceland. The suspected agreements and/or concerted practices include the elimination of direct competition with Toska (in particular through Toska ehf.'s subsidiary Lyf og heilsa hf.) that took place using traditional walk-in pharmacies, where Lyf og heilsa hf. benefits from Lyfjaval ehf.'s closure of certain of its traditional walk-in pharmacies which previously directly competed with Lyf og heilsa hf.'s traditional walk-in pharmacies, and where Lyfjaval ehf. concentrates on drive-through pharmacies, while Lyf og heilsa hf. does not enter the drive-through pharmacy segment.

2. The inspection may take place at any premises of SKEL fjárfestingafélag hf., together with all undertakings directly or indirectly, solely or jointly, controlled by it, and in particular at the premises of:

a. SKEL fjárfestingafélag hf., situated at Kalkofnsvegur 2, 101 Reykjavík, Iceland; and

b. Lyfjaval ehf., situated at Urðarhvarf 8, 203 Kópavogur, Iceland.

28 Article 2 of Decision 159/24 reads:

SKEL fjárfestingafélag hf., together with all undertakings directly or indirectly, solely or jointly controlled by it, shall:

a. permit the officials and other accompanying persons authorised by the EFTA Surveillance Authority, including officials of and those authorised or appointed by the Icelandic competition authority, to carry out the inspection;

b. permit the officials and other persons referred to in paragraph (a) to enter all its premises, land and means of transport during normal office hours;

c. produce books and other records related to the business for inspection, irrespective of the medium on which they are stored, when required by the officials and other persons referred to in paragraph (a) and shall permit officials and other persons referred to in paragraph (a) to examine books and records and take or obtain copies of or extracts from them in any form;

d. permit the officials and other persons referred to in paragraph (a) to seal any business premises and books or records for the period, and to the extent, necessary for the inspection;

e. immediately give oral explanations regarding facts or documents relating to the subject-matter and purpose of the inspection as the officials or other persons referred to in paragraph (a) may require and allow any representative or member of staff to give such explanations, and shall allow the explanations given to be recorded in any form.

29 Article 3 of Decision 159/24 reads:

The inspection shall begin on 14 October 2024 or shortly thereafter.

30 Article 4 of Decision 159/24 reads:

1. This decision is addressed to SKEL fjárfestingafélag hf., Kalkofnsvegur 2, 101 Reykjavík, Iceland, together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf., Urðarhvarf 8, 203 Kópavogur, Iceland.

2. This decision shall be notified to the undertaking to which it is addressed in accordance with Article 17 of the Surveillance and Court Agreement, immediately before the inspection.

31 Article 5 of Decision 159/24 reads:

The Director of the Competition and State Aid Directorate of the EFTA Surveillance Authority, Mr Harald Evensen, and in his absence the Deputy Director for Competition, Mr Filip Ragolle, are authorised to sign authorisations empowering officials of the EFTA Surveillance Authority and other accompanying persons to carry out the inspection.

32 Article 6 of Decision 159/24 reads:

This decision shall be authentic in the English and Icelandic languages.

33 The last paragraph of Decision 159/24 reads:

An action challenging this decision may be brought before the EFTA Court in Luxembourg in accordance with Article 108(2)(b) of the EEA Agreement and Article 36 of the Surveillance and Court Agreement. The bringing of such an action shall, pursuant to Article 40 of the Surveillance and Court Agreement, not have suspensory effect.

34 On 14 October 2024, ESA undertook unannounced inspections at the business premises of the applicants on the basis of Decision 158/24 and Decision 159/24, respectively, (collectively “the contested decisions”).

IV PROCEDURE AND FORMS OF ORDER SOUGHT

35 By an application registered at the Court on 13 December 2024 as Case E-31/24, Toska brought an action under Article 36 SCA, requesting the Court to:

1. *Annul ESA decision no. 158/24/COL, dated 3 October 2024, requiring Toska ehf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyf and heilsa hf., to submit to an inspection in accordance with Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement;*
2. *Adopt a measure of organisation of procedure ordering ESA to produce all of the documents and other information on the basis of which it considered on the date of the contested decision that it had sufficient justification to carry out an inspection at the applicants’ premises, and requesting the applicants to express its views on the documents and information produced;*
3. *Order ESA to pay the costs of the proceedings.*

36 By an application registered at the Court on 16 December 2024 as Case E-32/24, SKEL brought an action under Article 108(2)(b) EEA, Article 36 SCA and Article 19 of the Statute of the Court, requesting the Court to:

1. *adopt a measure of organisation of procedure ordering ESA to produce all of the documents and other information on the basis of which it considered on the date of the contested decision that it had sufficiently serious indicia to justify carrying out an inspection at the Applicant’s premises, and requesting the Applicant to express its views on the documents and information produced;*
2. *annul ESA Decision No 159/24/COL of 3 October 2024 requiring SKEL fjárfestingafélag hf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf., to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the Surveillance and Court Agreement; and*
3. *order ESA to pay the costs of the proceedings.*

37 On 3 March 2025, ESA submitted its defence in Case E-31/24 pursuant to Article 107 of the Rules of Procedure (“RoP”). ESA requests the Court to:

1. *Dismiss the Application in its entirety; and*
2. *Order the Applicants to pay the costs of the present proceedings.*

38 Additionally, on 3 March 2025, ESA submitted its defence in Case E-32/24 pursuant to Article 107 RoP. ESA requests the Court to:

1. *Dismiss the Application in its entirety; and*
2. *Order the Applicant to pay the costs of the present proceedings.*

39 On 3 April 2025, Toska and SKEL submitted their replies pursuant to Article 108 RoP. In its reply, Toska withdrew its request for a measure of organisation of procedure.

40 On 2 May 2025, ESA submitted its rejoinders in both Case E-31/24 and Case E-32/24 pursuant to Article 108 RoP.

41 On 5 May 2025, the Commission submitted written observations pursuant to Article 20 of the Statute of the Court in both Case E-31/24 and Case E-32/24.

42 On 6 May 2025, the Icelandic Government submitted written observations pursuant to Article 20 of the Statute of the Court in both Case E-31/24 and Case E-32/24.

43 On 15 May 2025, the Court informed the parties that it was considering joining Case E-31/24 and Case E-32/24 for the purposes of the oral procedure and the decision which closes the proceedings. In addition, the parties were asked to address whether the case file contains confidential information that should be excluded from the consultation referred to in Article 46(2) RoP or the service provided for in Article 46(3) RoP. On the same date, SKEL was asked, by email, whether it would maintain its request for a measure of organisation of procedure, should the cases be joined.

44 On 21 May 2025, the Court received a reply from Toska to its consultation pursuant to Article 46 RoP. On 22 May 2025, the Court received replies from SKEL and ESA to its consultation pursuant to Article 46 RoP. In an email received by the Court on the same date, SKEL informed the Court that, provided the cases are joined, it did not maintain its request for a measure of organisation of procedure.

45 On 5 June 2025, following a report by the judge rapporteur, pursuant to Article 46 RoP, the Court decided to join Case E-31/24 and Case E-32/24 for the purposes of the oral procedure and the decision which closes the proceedings. Further, the Court decided that the confidential information identified by Toska and SKEL in their respective case files was to be excluded from the consultation of the case files under Article 46 RoP.

- 46 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and pleas and arguments of the parties, which are mentioned or discussed in the following only insofar as it is necessary for the reasoning of the Court.

V FINDINGS OF THE COURT

Scope of the actions brought before the Court

Case E-31/24

- 47 Toska makes three pleas in support of its application for the annulment of Decision 158/24.
- 48 By its first plea, Toska submits that ESA lacked competence to adopt the contested decision, because the alleged infringement was not capable of affecting trade between Contracting Parties within the meaning of Article 53 EEA.
- 49 By its second plea, Toska submits that the contested decision was insufficiently reasoned, in particular, due to, but not limited to, the fact that the alleged infringement outlined in the decision had already been notified as mergers under the Icelandic Competition Act and approved as such. First, Toska contends that the investigation itself is a breach of legal principles such as legal certainty and *ne bis in idem* since the conduct was already cleared as a merger under Icelandic law. Second, Toska contends that there are deficiencies in ESA’s reasoning. Toska submits that the contested decision does not sufficiently reason (i) how transactions which the relevant national competent authority had deemed to be mergers, and approved as such, can also constitute an infringement of Article 53 EEA; (ii) how Toska could restrict Lyfjaval’s capacity to open “traditional pharmacies”; (iii) how it could possibly make sense for Toska to let a small competitor, Lyfjaval, restrict its capacity to open “car pharmacies”; (iv) how alleged concerted practices can have begun “at least” at a point in time where only one of the parties was active on the market.
- 50 By its third plea, Toska submits that ESA did not have in its possession sufficiently serious indicia of the existence of an alleged infringement to justify an inspection decision, as required by case law.

Case E-32/24

- 51 SKEL makes four pleas in support of its application for the annulment of Decision 159/24.
- 52 By its first plea, SKEL submits that ESA has infringed its obligation to state reasons in the inspection decision as required under Article 16 SCA. SKEL submits that key parts of the inspection decision were, and remain, difficult for SKEL to understand. SKEL submits that the factual basis set out in recital 4 of Decision 159/24 is erroneous. Further, according to recital 6 of Decision 159/24, the alleged anti-competitive conduct may have started as early

as in May 2021. However, no indication is given as to what might have happened in May 2021, or at any other time that year, so as to initiate an infringement of Article 53 EEA.

- 53 By its second plea, SKEL submits that there is no effect on trade between Contracting Parties within the meaning of Article 53 EEA. SKEL submits that given the particularly local nature of retail pharmacy markets they are not capable of appreciably affecting trade between EEA States. Therefore, the use of a single recital on the matter, recital 5, should not be considered to establish sufficiently the potential application of Article 53 EEA, and thereby ESA's competence.
- 54 By its third plea, SKEL submits that sufficiently serious indicia were not present for ESA to suspect an infringement of Article 53 EEA. In particular, SKEL highlights that ESA cannot have had sufficiently serious indicia that the asset swap agreement referred to in recital 4 of Decision 159/24 could constitute an infringement of Article 53 EEA, given that the asset swap agreement consists of two previously notified and approved mergers under the Icelandic Competition Act. SKEL asserts that ESA may have cherry-picked information when referring to indicia which would entail arbitrary interference with the sphere of private activities and SKEL's rights in this respect. Further, by searching for information during the investigation predating May 2021, by going back to 2019, and by seizing a significant number of documents from 2020 and the first months of 2021, Decision 159/24 further entails an arbitrary interference with the sphere of private activities and SKEL's rights in this respect.
- 55 By its fourth plea, SKEL submits that the conduct was already cleared and approved under the Icelandic merger regime, and that the system of a harmonised and one-stop shop regime implies that ESA lacks competence to assess the same conduct again under Article 53 EEA.

Joint examination of pleas put forward by the applicants

- 56 The Court finds it appropriate to jointly examine the pleas put forward by the applicants.
- 57 The Court will first address the second part of Toska's second plea and SKEL's first plea, namely, whether Decision 158/24 and Decision 159/24 were sufficiently reasoned.
- 58 The Court will then address Toska's and SKEL's third pleas, namely, whether ESA was in possession of sufficiently serious indicia to suspect an infringement of Article 53 EEA.
- 59 Subsequently, the Court will specifically address Toska's first plea and SKEL's second plea, namely, whether ESA had reasonable grounds to suspect that the effect on trade criterion within the meaning of Article 53 EEA was fulfilled.
- 60 Lastly, the Court will address the first part of Toska's second plea and SKEL's fourth plea, namely, whether ESA was competent to adopt the contested decisions.

The obligation to state reasons

- 61 The Court will first assess the second part of Toska’s second plea and SKEL’s first plea by which it is claimed that the contested decisions were not sufficiently reasoned in accordance with the requirements of Article 16 SCA.
- 62 ESA contends that the applicants’ pleas are unfounded.
- 63 Article 16 SCA imposes an obligation on ESA to state the reasons on which its decisions are based. The Court recalls that the statement of reasons required under Article 16 SCA must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to carry out its review (see the judgment of 24 January 2023 in *G. Modiano and Standard Wool v ESA*, E-1/22, paragraph 84 and case law cited).
- 64 The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question of whether the statement of reasons meets the requirements of Article 16 SCA must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see the judgment in *G. Modiano and Standard Wool v ESA*, E-1/22, cited above, paragraph 85 and case law cited).
- 65 With regard to inspection decisions, Article 20(4) of Chapter II of Protocol 4 to the SCA, provides that such a decision must specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the EFTA Court.
- 66 In the present case it is necessary to take into account the legal context in which inspections carried out by ESA take place. Articles 4 and 20 of Chapter II of Protocol 4 to the SCA confer inspection powers on ESA which are designed to enable it to perform its task of protecting the internal market within the EEA from distortions of competition and to penalise any infringements of the competition rules on that market (compare the judgment of 25 June 2014 in *Nexans and Nexans France v Commission*, C-37/13 P, EU:C:2014:2030, paragraph 33 and case law cited).
- 67 It follows from Article 20(4) of Chapter II of Protocol 4 to the SCA that an inspection decision must indicate, inter alia, the subject matter and the objective of the inspection. That obligation to state specific reasons, under Article 20(4), constitutes a fundamental

requirement not only to show that the intervention envisaged within the undertakings concerned was proportional, but also to put those undertakings in a position to understand the scope of their duty to cooperate, while preserving their rights of defence (compare the judgment in *Nexans and Nexans France v Commission*, C-37/13 P, cited above, paragraph 34 and case law cited).

- 68 In order to fulfil Article 20(4) of Chapter II of Protocol 4 to the SCA, ESA must state, as precisely as possible, the presumed facts that it wishes to investigate, namely, what it is looking for and the matters to which the inspection must relate. In doing so, ESA is required to state, in a decision ordering an inspection, the essential features of the suspected infringement by indicating the market thought to be affected, the nature of the suspected restrictions of competition and the supposed degree of involvement in the infringement of the undertaking concerned, as well as the powers conferred on ESA's inspectors (compare the judgment of 30 April 2025 in *Symrise v Commission*, T-263/23, EU:T:2025:417, paragraph 29 and case law cited).
- 69 In this regard, it must be borne in mind that ESA is not required to communicate to the addressee of an inspection decision all the information at its disposal concerning the presumed infringements, or to make a precise legal analysis of those infringements, provided it clearly indicates the presumed facts it wishes to investigate. Thus, it is not essential in a decision ordering an inspection to define precisely the relevant market, to set out the exact legal nature of the presumed infringements or to indicate the period during which those infringements were committed, provided that that inspection decision contains the essential elements of the subject matter and purpose of the inspection (compare the judgment in *Nexans and Nexans France v Commission*, C-37/13 P, cited above, paragraphs 35 and 36 and case law cited).
- 70 Furthermore, the Court observes that given that the inspections take place at the beginning of an investigation, ESA still lacks precise information to make a specific legal assessment and must first verify the accuracy of its suspicions as well as the scope of the incidents which have taken place, the aim of the inspection being specifically to gather evidence relating to a suspected infringement (compare the judgment of 30 January 2020 in *České dráhy v Commission*, Joined Cases C-538/18 P and C-539/18 P, EU:C:2020:53, paragraph 43 and case law cited).
- 71 The Court observes that, both in Decision 158/24 and Decision 159/24, ESA has specified the subject matter and purpose of the inspection in sufficient detail in compliance with the case law cited above.

- 72 Firstly, regarding the market thought to be affected, it is apparent from Article 1(1) of the contested decisions that the affected market is indicated as “the retail pharmacy market in Iceland”.
- 73 Secondly, regarding the nature of the suspected restrictions of competition, Article 1(1) of the contested decisions provides that the undertakings under investigation are suspected of eliminating direct competition between them. More specifically, ESA suspects that “Lyf og heilsa hf. benefits from Lyfjaval ehf.’s closure of certain of its traditional walk-in pharmacies which previously directly competed with Lyf og heilsa hf.’s traditional walk-in pharmacies” and “Lyfjaval ehf. concentrates on drive-through pharmacies, while Lyf og heilsa hf. does not enter the drive-through pharmacy segment”.
- 74 In addition, recital 3 of Decision 158/24 and recital 4 of Decision 159/24 provide further details of the nature of the suspected restriction of competition by indicating that the suspected practices may have involved an asset swap agreement of 26 April 2022, coordination on the realisation of Lyfjaval/SKEL’s new drive-through pharmacy strategy, as well as restrictions on the undertakings’ opening of drive-through or walk-in pharmacies.
- 75 It may further be observed that the alleged infringement was delimited in time in recital 5 of Decision 158/24 and recital 6 of Decision 159/24, both of which indicate that the alleged anti-competitive conduct “may have started at least in May 2021 and could still be ongoing”.
- 76 Thirdly, regarding the supposed degree of involvement in the suspected infringement of the undertakings concerned, recitals 1 to 4 and Article 1(1) of Decision 158/24 and recitals 1 to 5 and Article 1(1) of Decision 159/24 specify that the undertakings involved are suspected of participating in anti-competitive agreements and/or concerted practices related to coordination of their conduct with a competitor active on the Icelandic retail pharmacy market, either directly or through a subsidiary.
- 77 Fourthly, the powers conferred on ESA’s inspectors are indicated in Article 2 of each contested decision, which sets out the requirements imposed upon the applicants during the inspection and reflects ESA’s powers of inspection set out in Article 20 of Chapter II of Protocol 4 to the SCA.
- 78 The applicants submit that ESA should have provided more detailed and precise reasoning in the contested decisions, given the volume of information already available from public sources and the merger proceedings before the ICA concerning the Asset Swap Agreement.
- 79 In this regard, the Court observes that ESA’s obligation to state reasons is not as such affected by the information in ESA’s possession, referred to in recitals 2 to 5 of Decision 158/24 and recitals 3 to 6 of Decision 159/24 (compare, to that effect, the judgment in

České dráhy v Commission, Joined Cases C-538/18 P and C-539/18 P, cited above, paragraph 50).

- 80 Furthermore, SKEL contends that it is not clear what may have happened in May 2021, a date before Toska and SKEL were competitors. However, the Court recalls, as found above at paragraph 69, that ESA was not required to indicate a period during which the suspected infringements were committed.
- 81 It follows from the foregoing that ESA has stated the essential features of the suspected infringement in the contested decisions and fulfilled the requirement to specify the subject matter and purpose of the inspection under Article 20(4) of Chapter II of Protocol 4 to the SCA. Accordingly, in so doing, ESA satisfied the requirements of Article 16 SCA and, consequently, the second part of Toska’s second plea and SKEL’s first plea must be rejected.
- 82 For the sake of good order, the Court observes that, in the context of its first plea, SKEL has submitted a number of arguments relating to the temporal scope of the inspection in support of its claim that ESA did not fulfil its obligation to state reasons. However, the Court considers that these arguments in reality concern the pleas regarding ESA’s alleged lack of sufficiently serious indicia to suspect an infringement of Article 53 EEA, the lack of an effect on trade between the Contracting Parties to the EEA Agreement, and ESA’s lack of competence to investigate the infringement.
- 83 The Court is not precluded from examining whether the arguments put forward in support of one plea are capable of supporting another plea (see the judgment of 1 June 2022 in *Sýn hf. v ESA*, E-4/21, paragraph 69 and case law cited). As these arguments are not capable of challenging the Court’s conclusion that ESA has fulfilled its obligation to state reasons, as stated above, the Court will address these arguments in relation to its examination of the other pleas.

Possession of sufficiently serious indicia

- 84 The Court turns to the third pleas advanced by Toska and SKEL, respectively, namely, whether ESA was in possession of sufficiently serious indicia to suspect an infringement of Article 53 EEA.
- 85 The applicants argue, in essence, that the contested decisions are arbitrary interferences with their right to private life under Article 8 of the European Convention on Human Rights (“ECHR”), as ESA did not have sufficiently serious indicia to suspect an infringement of the competition rules and that the inspection decision was disproportionate.
- 86 ESA contends that the applicants’ pleas are unfounded.

- 87 The Court recalls that protection against arbitrary or disproportionate intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, is recognised as a general principle of EEA law. These principles and that protection must be observed in all proceedings initiated against, and may be invoked by, a relevant person in respect of a measure adversely affecting them in all situations governed by EEA law (see the judgment of 9 August 2024 in *X*, E-10/23, paragraph 71 and case law cited, and compare the judgment of 20 June 2018 in *České dráhy v Commission*, T-325/16, EU:T:2018:368, paragraph 34 and case law cited).
- 88 Consequently, with a view to observing that general principle, an inspection decision must be directed at gathering the necessary documentary evidence to check the actual existence and scope of a given factual and legal situation concerning which ESA already possesses certain information, constituting sufficiently serious indicia for suspecting an infringement of the competition rules (compare the judgment in *Symrise v Commission*, T-263/23, cited above, paragraph 58 and case law cited).
- 89 In other words, having reasonable grounds for suspecting infringement of the competition rules is a prerequisite for ESA to order an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the SCA (compare the judgments in *Symrise v Commission*, T-263/23, cited above, paragraph 59 and case law cited, and of 22 October 2002 in *Roquette Frères*, C-94/00, EU:C:2002:603, paragraph 61).
- 90 In this regard, the Court recalls that inspections take place at the beginning of an investigation, where ESA still lacks precise information to make a specific legal assessment. The inspection is intended to enable ESA to gather all the relevant evidence confirming the existence or non-existence of an infringement of the competition rules and to adopt an initial position on the approach to be taken and the subsequent procedure to be followed (compare the judgment in *Nexans and Nexans France v Commission*, C-37/13 P, cited above, paragraph 37 and case law cited).
- 91 It must also be borne in mind that the various indicia which make suspecting an infringement possible must not be assessed separately but as a whole, and can be mutually supportive (compare the judgment in *Symrise v Commission*, T-263/23, cited above, paragraph 60 and case law cited).
- 92 When the Court is called upon to review an inspection decision for the purposes of ensuring that it is in no way arbitrary, it must satisfy itself that there are reasonable grounds for suspecting an infringement of the competition rules by the undertakings concerned (compare the judgment in *Symrise v Commission*, T-263/23, cited above, paragraph 61 and case law cited).
- 93 It is therefore necessary to determine the indicia in ESA's possession on the basis of which it ordered the inspections at issue, assess whether those indicia were sufficiently serious for it to suspect that the infringements at issue had been committed and ascertain whether

those indicia make it possible to suspect that the undertakings concerned were involved (compare the judgment in *Symrise v Commission*, T-263/23, cited above, paragraph 62).

- 94 The Court notes that the contested decisions state that ESA was in possession of information in relation to the elements of the alleged infringement. Thus, ESA claims to be in possession of information regarding the suspected conduct itself, the market and geographical area of this suspected conduct, and the possible temporal scope of the suspected conduct.
- 95 Regarding the suspected conduct itself, ESA states in the contested decisions that it has information indicating that Toska and SKEL eliminated competition between each other that took place using traditional walk-in pharmacies in Iceland. The contested decisions state that, according to that information, Lyf og heilsa benefits from Lyfjaval's closure of certain of its traditional walk-in pharmacies, which previously directly competed with Lyf og heilsa's own traditional walk-in pharmacies. Furthermore, the contested decisions allege that Lyfjaval concentrates on drive-through pharmacies, while Lyf og heilsa does not enter the drive-through pharmacy segment. ESA claims to possess information indicating that the suspected conduct may have started at least in May 2021 and could still be ongoing.
- 96 In its defences in Cases E-31/24 and E-32/24, ESA listed and produced a non-exhaustive list of some of the indicia making up this information.
- 97 These indicia include, first, the Asset Swap Agreement produced in Annex A.5a in Case E-31/24 and Annex A.2 in Case E-32/24, regarding the exchange of retail locations in Mjódd and Glæsibær. According to Annex A.20 in Case E-32/24, the Asset Swap Agreement would lead to the disappearance of Lyfjaval's pharmacy in Mjódd and Lyf og heilsa's pharmacy in Glæsibær. According to ESA, the Asset Swap Agreement would thus eliminate direct competition between Toska and SKEL at these two shopping centres.
- 98 Second, ESA asserts that, according to publicly available information, Lyfjaval's pharmacy in Mjódd and Lyf og heilsa's pharmacy in Glæsibær were subsequently closed, which eliminated direct competition between these undertakings in each of these two shopping centres. According to Annex B.1 in Case E-31/24, Lyf og heilsa decided to close its pharmacy in Glæsibær. According to Annex A.13a in Case E-31/24, Lyf og heilsa planned to discontinue the operations of the Lyfjaval pharmacy in Mjódd if acquired through the Asset Swap Agreement.
- 99 Third, ESA contends that Toska and SKEL ambiguously described the real nature of the asset swap in their interactions with the ICA, presenting it in some instances as a retail pharmacy market transaction and in others as a pure real estate transaction. In this respect, ESA refers to the ICA's SO, Annex A.9a in Case E-31/24 and Annex A.20 in Case E-32/24, in which the ICA considered that Toska and SKEL described the Asset Swap Agreement misleadingly as a real estate transaction when it also included pharmacy operations. According to Annex A.13a in Case E-31/24 and Annex B.1 in Case E-32/24,

the Asset Swap Agreement was described as a retail pharmacy market transaction and, according to Annex B.2 in Case E-31/24 and Annex B.2 in Case E-32/24, it was described as a pure real estate transaction.

- 100 Fourth, according to Annex A.9a in Case E-31/24 and Annex A.20 in Case E-32/24, the payment for the property in Mjódd in the Asset Swap Agreement was higher than the 2023 property value appraisal. According to Annex B.3 in both Case E-31/24 and Case E-32/24, the price in the Asset Swap Agreement was also higher than the property value appraisal attributed in an investor presentation. According to Annex B.4 in Case E-31/24, Lyf og heilsa had considered the closure of Lyfjaval's pharmacies in Mjódd and Keflavík (Reykjanesbær) beneficial for its operations. ESA infers that these documents suggest that the apparently excessive price may have been a payment to SKEL for possibly wider restrictive actions to Toska's benefit.
- 101 Fifth, a newspaper article produced in Annex B.5 in Case E-31/24 and Annex B.4 in Case E-32/24 reports Lyfjaval's closure of its traditional walk-in pharmacy located at Hringbraut 99 (Apótek Suðurnesja). According to ESA, this indicates that competition was eliminated in Keflavík (Reykjanesbær).
- 102 Sixth, according to publicly available information, ESA alleges that it had indications that SKEL prioritised opening drive-through pharmacies and closing traditional walk-in pharmacies in locations where those traditional walk-in pharmacies competed with Toska, e.g. Mjódd and Keflavík (Reykjanesbær).
- 103 Seventh, according to documents from May 2021, Annex B.4 and Annex B.6 in Case E-31/24, Lyf og heilsa intended to close Lyfjaval's two pharmacies in Mjódd and Keflavík (Reykjanesbær), which were in direct competition with its own pharmacies, if Lyf og heilsa's bid for Lyfjaval had been accepted. ESA notes that these closures were subsequently executed by Toska's competitor SKEL after SKEL acquired Lyfjaval.
- 104 Eighth, ESA asserts that, according to publicly available information, SKEL has not opened any traditional walk-in pharmacies in Iceland since May 2021 and Toska has not opened any drive-through pharmacies in Iceland. This alleged conduct of Toska is notwithstanding the circumstance that, firstly, according to Annex B.4 and Annex B.6 in Case E-31/24, Lyf og heilsa intended to continue the operation of Lyfjaval's Hæðasmári drive-through pharmacy had it been successful in buying Lyfjaval, and, secondly, according to Annex B.5 and Annex B.6 in Case E-32/24, there is an increasing and significant demand for such services, placing Lyfjaval in a unique position.
- 105 The Court finds that this evidence is capable of demonstrating that, prior to the contested decisions, ESA possessed sufficiently specific and clear indicia for it to suspect that Toska and SKEL, together with all undertakings directly or indirectly, solely or jointly controlled by them including Lyf og heilsa and Lyfjaval, may have been and may still be participating

in anti-competitive agreements/and or concerted practices coordinating their conduct in the Icelandic pharmaceutical retail market.

- 106 The fact that the material taken into consideration may be open to different interpretations does not preclude it from constituting sufficiently serious indicia, provided that the interpretation favoured by ESA is plausible. When assessing such plausibility, it is necessary to bear in mind that ESA's power of inspection implies the ability to search various items of information which are not yet known or fully identified (compare the judgment of 14 March 2014 in *Cementos Portland Valderrivas v Commission*, T-296/11, EU:T:2014:121, paragraph 59, and the judgment of 14 November 2012 in *Nexans France and Nexans v Commission*, T-135/09, EU:T:2012:596, paragraph 62 and case law cited).
- 107 The applicants argue, in essence, that the information relied on by ESA can be given an alternative interpretation which precludes a suspicion of anti-competitive behaviour by Toska and SKEL.
- 108 First, Toska notes that Decision 158/24 alleges that the Asset Swap Agreement was entered into between Lyf og heilsa and Lyfjaval when it in fact was entered into by Faxar and Lyfjaval.
- 109 Second, both Toska and SKEL contend that it is impossible that the alleged anti-competitive conduct may have started at least in May 2021, as alleged in Decision 158/24 and Decision 159/24, since SKEL first gained a majority shareholding in Lyfjaval on 1 October 2021. Furthermore, SKEL contends that ESA is wrong in alleging in its defence that SKEL gained control over Lyfjaval in June 2021. SKEL asserts that May 2021 seems to be a random definition of the temporal scope.
- 110 Third, Toska and SKEL contend that the competition between them was not restricted by the closure of SKEL's pharmacies in Mjódd and Keflavík (Reykjanesbær), because SKEL opened new pharmacies in close proximity to the old locations. According to the newspaper article produced in Annex B.5 to Case E-31/24 and Annex B.4 to Case E-32/24, the customers from the old location in Keflavík (Reykjanesbær) followed to the new location.
- 111 Fourth, SKEL argues that there are no indications why Lyf og heilsa, a big player in the Icelandic retail pharmacy sector, would coordinate with a small player like Lyfjaval.
- 112 Fifth, SKEL contends that the transaction in the Asset Swap Agreement was not described ambiguously. In this regard, SKEL submits that Lyfjaval never referred to the asset swap in any other way than as a real estate transaction and refers to Lyfjaval's appeal to the CAC produced as Annex C.5 to Case E-32/24.
- 113 Sixth, Toska argues that the price in the Asset Swap Agreement for the pharmacy in Mjódd was not excessive but included goodwill. Moreover, SKEL argues that Annex B.3 in Case

E-32/24 states that the property value appraisal was set low and does not reflect the actual value of the property in Mjódd.

- 114 Seventh, Toska contends that it has not considered pharmacies with a drive-through alternative an attractive option for its business. Similarly, SKEL contends that Lyfjaval's strategy to open drive-through pharmacies is not new.
- 115 Eighth, SKEL refers to Annex A.8 to Annex A.18 in Case E-32/24, concerning plans and offers by Lyfjaval to open and run other traditional walk-in pharmacies in Iceland.
- 116 Ninth, both SKEL and Toska contend that ESA has not assessed any exculpatory evidence. In this regard, SKEL explicitly refers to an interview by the ICA of Lyfjaval's CEO, in which the value of the property in Mjódd apparently was discussed. Both applicants submit that the lack of exculpatory information shows that ESA is "cherry picking" information.
- 117 Tenth, according to the confidential Annexes A.22 and A.24 in Case E-32/24, ESA seized documents stemming from before May 2021 during the inspection. According to SKEL, this fact shows that the inspection was a "fishing expedition".
- 118 Eleventh, since it is a legal requirement for all pharmacies to have a walk-in option, both Toska and SKEL contend that it is impossible to commit the alleged infringement as all pharmacies are traditional walk-in pharmacies.
- 119 Twelfth, the applicants contest ESA's designation of the relevant market as the Icelandic retail pharmaceutical market. Both argue that the retail pharmaceutical market in Iceland is by its nature local. According to the SO, Annex A.9a in Case E-31/24 and Annex A.20 in Case E-32/24, the ICA considered the local shopping centres in Mjódd and Glæsibær as separate competitive areas.
- 120 As stated above, the Court finds that the interpretation given by ESA to the information produced is plausible. The fact that the applicants may reasonably contest certain issues does not change this conclusion.
- 121 In this regard, the Court emphasises that it is specifically the role of the investigations to gather evidence to prove or dismiss ESA's reasonable suspicions. The possible existence of alternative interpretations and additional information will thus have to be taken into account at the later stages of the investigation.
- 122 At this stage of the proceedings, ESA cannot be required to assess equally all evidence pointing in the opposite direction. This is all the more true given that such indications may be put forward by the undertaking concerned in the exercise of its rights of defence in any subsequent administrative or, where appropriate, judicial proceedings against the decision terminating the investigation (compare the judgment in *České dráhy v Commission*, Joined Cases C-538/18 P and C-539/18 P, cited above, paragraph 64).

- 123 Moreover, it is settled case law that the way in which a decision ordering an inspection is applied has no bearing on the lawfulness of that decision and that an undertaking cannot therefore plead unlawfulness of the investigation procedures to support claims for annulment of the measure on the basis of which ESA carries out that investigation (compare the judgment in *České dráhy v Commission*, T-325/16, cited above, paragraph 22 and case law cited).
- 124 Furthermore, the Court finds that the distinction between a pharmacy with a drive-through and a pharmacy without such an option is a plausible way pharmacy operators may unlawfully share the retail pharmaceutical market in Iceland. That all pharmacies are legally required to offer the possibility of walk-in consultations does not alter the fact that ESA, at this stage, was permitted to consider it plausible that some sort of coordination in respect of drive-through options could have taken place.
- 125 Lastly, the Court recalls that the market definition must be carried out on a case-by-case basis. ESA is required to take the circumstances and facts of the specific case into account and carry out an individual appraisal of the circumstances of each case (see the judgment of 5 May 2022 in *Telenor v ESA*, E-12/20, paragraph 97 and case law cited). Furthermore, the nature of an *ex ante* review of a concentration necessarily differs from an *ex post* review of agreements between undertakings, decisions by associations and concerted practices referred to in Article 53 EEA (compare the judgment of 13 July 2023 in *Commission v CK Telecoms UK Investments*, C-376/20 P, EU:C:2023:561, paragraphs 81 to 85 and case law cited). Therefore, any potential divergence in the assessment of the anti-competitive effects of the merger by the ICA and ESA's preliminary assessment of the anti-competitive conduct under Article 53 EEA is not as such capable of making ESA's assessment implausible.
- 126 It follows from the above that the applicants have failed to demonstrate that the inspection was arbitrary.
- 127 Additionally, under its third plea, Toska also contends that Decision 158/24 was disproportionate because ESA was already in possession of the ICA's case file from the merger proceedings in relation to the Asset Swap Agreement. Toska asserts that ESA therefore could have restricted itself to a request for information.
- 128 The Court notes that it is, in principle, for ESA to decide whether a particular item of information is necessary to enable it to bring to light an infringement of the competition rules and even if it already has some indicia, or indeed proof, of the existence of an infringement, ESA may legitimately take the view that it is necessary to order further investigations enabling it to better define the scope of the infringement or to determine its duration to identify the circle of undertakings involved (compare the judgment in *České*

dráhy v Commission, Joined Cases C-538/18 P and C-539/18 P, cited above, paragraph 63 and case law cited).

129 The Court further notes that Toska has not put forward any argument capable of calling into question ESA’s statement in recital 9 of Decision 158/24 that “there is a risk that if the information were collected by request for information or if the inspection were announced beforehand, relevant information might be compromised or destroyed”. Thus, the Court does not find that ESA acted disproportionately when adopting the inspection decision.

130 It follows from the foregoing that the third pleas put forward by Toska and SKEL respectively must be rejected.

131 For the sake of good order, the Court notes that the applicants have submitted further arguments in the context of their third pleas. Toska contends that the Asset Swap Agreement could not have affected trade between the Contracting Parties to the EEA Agreement. Furthermore, Toska and SKEL contend that the Asset Swap Agreement was the only actual indication relied on by ESA and that it was not allowed to base its investigation on this information due to the asset swap being cleared as a merger by the Icelandic authorities. As these arguments are not capable of challenging the Court’s conclusion that ESA was in possession of sufficiently serious indicia, the Court will address these arguments under the pleas relating to the effect on trade criterion and the pleas relating to ESA’s investigative competence, respectively.

The effect on trade criterion

132 The Court will now turn to the first plea advanced by Toska and the second plea advanced by SKEL.

133 The applicants claim that ESA did not have competence to adopt the contested decisions since the alleged infringements are not capable of affecting trade between the Contracting Parties within the meaning of Article 53 EEA. In essence, they argue that the competition in the retail pharmaceutical market in Iceland is local. Furthermore, the applicants contend that, since the contested decisions are based on the Asset Swap Agreement covering two pharmacies in Mjódd and Glæsibær, the alleged infringements only have local effects and cannot by their nature affect trade between EEA States.

134 ESA contends that the applicants’ pleas are unfounded.

135 Article 53 EEA prohibits certain agreements between undertakings “which may affect trade between Contracting Parties”. Similarly, Article 54 EEA prohibits the abuse by an undertaking of a dominant position “in so far as it may affect trade between Contracting Parties”. The concept of an agreement or an abuse of a dominant position which “may affect trade between Contracting Parties” is intended to define the boundary between the areas covered respectively by EEA law and national law. It is only to the extent to which

the agreement or the abuse may affect trade between EEA States that the deterioration in competition it causes falls under the prohibition laid down in Article 53 or Article 54 EEA (see the judgment of 19 April 2016 in *Holship*, E-14/15, paragraph 74 and case law cited).

- 136 It is sufficient for the purposes of Articles 53 and 54 EEA that trade between EEA States “may” be affected. For this condition to be fulfilled, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or of fact, that the practices under consideration may have an influence, direct or indirect, actual or potential, on the pattern of trade between EEA States (see the judgment in *Holship*, E-14/15, cited above, paragraph 75 and case law cited).
- 137 Moreover, Articles 53 and 54 EEA apply only to agreements and abuses of a dominant position whose effect on trade between EEA States may be appreciable. In that assessment, account must be taken of the position and the importance of the parties on the market for the goods or the services concerned. However, an agreement or an abuse of a dominant position confined to the territory of an EEA State, or to part of that territory, is capable of appreciably affecting trade between EEA States (see the judgment in *Holship*, E-14/15, cited above, paragraph 76, and compare the judgment of 29 June 2023 in *Super Bock Bebidas*, C-211/22, EU:C:2023:529, paragraphs 62 and 63 and case law cited).
- 138 Article 53 EEA does not require it to be proved that the anti-competitive conduct has in fact appreciably affected trade between the Contracting Parties to the EEA Agreement but that it is capable of having that effect (compare the judgment of 24 September 2009 in *Erste Group Bank and Others v Commission*, Joined Cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, EU:C:2009:576, paragraph 46).
- 139 It must also be recalled, as the Court set out regarding the third pleas advanced by Toska and SKEL, that inspection decisions take place at the preliminary stage of the infringement procedure. At this preliminary stage, ESA is not required to prove that the anti-competitive behaviour is capable of affecting trade between the EEA States. Rather, it suffices that ESA has reasonable grounds to suspect that the alleged anti-competitive conduct is capable of affecting trade between the EEA States (compare the judgment in *České dráhy v Commission*, Joined Cases C-538/18 P and C-539/18 P, cited above, paragraphs 42 and 80 and case law cited).
- 140 In the case at hand, ESA states in recital 4 of Decision 158/24 and recital 5 of Decision 159/24 that, according to information available to it, the undertakings involved operate pharmacies as pharmacy chains both within and outside the Reykjavík capital area. Furthermore, those recitals state that the Reykjavík capital area represents almost 70% of all retail sales of pharmaceuticals in Iceland. ESA asserts that the alleged anti-competitive

conduct therefore covers a significant part of the Icelandic market. ESA also highlights that a significant share of the pharmaceuticals sold in Iceland are imported.

- 141 Based on the above, the Court finds that it was reasonable for ESA to consider that the anti-competitive behaviour under investigation was capable of having an appreciable effect on trade between EEA States.
- 142 The Court notes that the applicants' challenges to ESA's assessment are essentially based on the local effect of the Asset Swap Agreement. However, since it follows from the contested decisions that ESA is investigating alleged anti-competitive conduct which goes beyond the scope of the Asset Swap Agreement and the two pharmacies referred to by that agreement, these challenges cannot be successful.
- 143 It follows from the above that Toska's first plea and SKEL's second plea must be rejected.

ESA's competence to investigate the conduct at issue

- 144 The Court's will now consider the first part of the second plea advanced by Toska and the fourth plea advanced by SKEL.
- 145 The applicants submit that ESA lacked competence to apply Article 53 EEA to the alleged infringement. In essence, they argue that the implementation of the Asset Swap Agreement between Toska and SKEL by way of two mergers had been subject to an *ex ante* assessment by the ICA which reviewed and cleared the mergers under national law. Accordingly, they contend that the Asset Swap Agreement cannot be subject to *ex post* control by ESA under Article 53 EEA, as this would undermine the effectiveness, predictability and legal certainty that must be guaranteed to the parties to a concentration. In this regard, SKEL points, in particular, to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("the EU Merger Regulation").
- 146 Toska further argues that any such application of Article 53 EEA to mergers already cleared at the national level would undermine the prohibition of *ne bis in idem*.
- 147 ESA contends that the applicants' pleas are unfounded.

The merger control proceedings before the Icelandic Competition Authority

- 148 SKEL and Toska argue that the contested decisions are based on information and documentation already assessed and approved by the ICA and the CAC under Icelandic merger control rules. As a consequence, SKEL argues, that neither the ICA nor ESA has the competence to review the very same conduct again under Article 53 EEA. Therefore, ESA was not competent to adopt the contested decisions on the basis relied on in those decisions. SKEL submits that the principles underpinning this conclusion find expression, in particular, in Article 21(1), Article 3 and recitals 6 and 7 of the EU Merger Regulation.

- 149 In the applicants' views, most if not all of the contested decision in each case appears to be based on the same factual and legal allegations that the ICA put forward during the national merger control proceedings.
- 150 According to the contested decisions, the applicants are suspected of eliminating competition between each other that took place using traditional walk-in pharmacies in Iceland. Recital 3 in Decision 158/24 and recital 4 in Decision 159/24 make plain that the Asset Swap Agreement of 26 April 2022 is considered one of the ways in which the alleged coordination may have been implemented. In addition, ESA also suspects coordination on the realisation of Lyfjaval/SKEL's new drive-through pharmacy strategy and restrictions on Lyf og heilsa's ability to open drive-through pharmacies and Lyfjaval's ability to open traditional walk-in pharmacies. According to recital 5 in Decision 158/24 and recital 6 in Decision 159/24, the alleged anti-competitive conduct may have started at least in May 2021 and could still be ongoing.
- 151 The Court observes that it follows from the contested decisions that the conduct under investigation in those decisions is of a different nature and wider geographical and temporal scope than the merger control proceedings before the ICA.
- 152 Therefore, the applicants' submission that the contested decisions are investigating the very same conduct as that examined by the ICA in the context of the merger control proceedings in Iceland must be rejected.
- 153 Given that the rest of this line of argument is premised on the submission that the very same conduct is under investigation – and since the Court has held that this submission is unfounded – it is not necessary to examine the remainder of the arguments submitted in this respect.

Ne bis in idem

- 154 Toska submits that Decision 158/24 infringes upon its fundamental rights of legal certainty and no dual process, enshrined in the EEA Agreement. Further, Toska submits that it could legitimately expect that the transaction had been ruled lawful by the relevant authorities. Thus, the subsequent investigation by ESA infringes upon its right of *ne bis in idem*, protected by Article 4 of Protocol 7 to the ECHR, which Toska submits is also enshrined in the EEA Agreement.
- 155 The *ne bis in idem* principle, expressed in Article 4 of Protocol 7 to the ECHR and Article 50 of the Charter of Fundamental Rights of the European Union, is a fundamental right, which forms part of the general principles of EEA law. The *ne bis in idem* principle prohibits a duplication both of proceedings and of penalties of a criminal nature for the purposes of those articles the same acts and against the same person (compare the judgment

of 22 March 2022 in *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraphs 28 and 29 and case law cited).

- 156 The *ne bis in idem* principle must be observed in proceedings for the imposition of fines under competition law. That principle thus precludes an undertaking being found liable or proceedings being brought against it afresh on the grounds of anti-competitive conduct for which it has been penalised or declared not liable by an earlier decision that can no longer be challenged (compare the judgment of 14 February 2012 in *Toshiba Corporation and Others*, C-17/10, EU:C:2012:72, paragraph 94 and case law cited).
- 157 The application of the *ne bis in idem* principle in proceedings under competition law is subject to a twofold condition, namely, first, that there must be a prior final decision (the ‘*bis*’ condition) and, secondly, that the prior decision and the subsequent proceedings or decisions concern the same conduct (the ‘*idem*’ condition) (compare the judgment in *Nordzucker and Others*, C-151/20, cited above, paragraph 33).
- 158 As regards the criterion relating to the identity of the facts (the ‘*idem*’ condition), the question whether undertakings have adopted conduct having as its object or effect the prevention, restriction or distortion of competition cannot be assessed in the abstract, but must be examined with reference to the territory and the product market in which the conduct in question had such an object or effect and to the period during which the conduct in question had such an object or effect (compare the judgment in *Nordzucker and Others*, C-151/20, cited above, paragraph 41 and case law cited).
- 159 As the Court has concluded above at paragraph 151, the conduct under investigation is of a different nature and encompasses a wider geographic and temporal scope than that assessed in the merger control proceedings before the ICA. Hence, the ‘*idem*’ condition is not fulfilled in this case.
- 160 It is therefore not necessary for the Court to assess whether there is a prior final decision of a criminal nature in the context of the present cases. However, the Court observes that based on the information in the case file, the merger control proceedings before the ICA were not proceedings for the imposition of fines under competition law. Furthermore, the Court notes that for the purposes of the above assessment regarding the ‘*bis*’ condition, it is necessary not only for a prior decision to have become final, but also for it to have been given after a determination had been made as to the merits of the case (compare the judgment in *Nordzucker and Others*, C-151/20, cited above, paragraph 34 and case law cited).
- 161 Accordingly, on the same grounds, Toska’s arguments relating to legal certainty and legitimate expectations must be rejected.
- 162 In the light of the foregoing, the first part of the second plea advanced by Toska and the fourth plea advanced by SKEL must be rejected.

Conclusion

163 As none of the pleas advanced by Toska or SKEL have been successful, the applications must be dismissed.

VI COSTS

164 Under Article 121(1) RoP, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and those of ESA. The costs incurred by the Commission and the Icelandic Government are not recoverable.

On those grounds,

THE COURT

hereby:

- 1. Dismisses the applications.**
- 2. Orders the applicants to bear their own costs and those of ESA.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 5 March 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President