Brussels, 03 March 2025
Case No: 93335
Document No: 1510389

ORIGINAL

IN THE EFTA COURT

DEFENCE

submitted, pursuant to Article 107 of the Rules of Procedure of the EFTA Court, by

THE EFTA SURVEILLANCE AUTHORITY

represented by
Claire Simpson, Daniel Vasbeck, Sigrún Ingibjörg Gísladóttir
and Melpo-Menie Joséphidès,
Department of Legal & Executive Affairs,
acting as Agents, in

CASE E-32/24

SKEL fjárfestingafélag hf.

Applicant

v

EFTA Surveillance Authority

Defendant

regarding the application, pursuant to Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("**SCA**"), for the annulment of Decision No 159/24/COL of 3 October 2024 of the EFTA Surveillance Authority in Case No 91392, requiring SKEL fjárfestingafélag hf. together with all undertakings directly or indirectly, solely or jointly controlled by it, including Lyfjaval ehf. ("**SKEL**"), to submit to an inspection pursuant to Article 20(4) of Chapter II of Protocol 4 to the SCA.

Table of Contents

1 INTRODUCTION

1.1 OVERVIEW

1. The Authority hereby responds to the application ("**the Application**") of SKEL fjárfestingafélag hf. ("**the Applicant**"), for the annulment of Decision No 159/24/COL of 3 October 2024 of the EFTA Surveillance Authority in Case No 91392 ("**the Decision**").

2. The Decision requires the Applicant to submit to an inspection ordered by the Authority under Article 20(4) of Chapter II of Protocol 4 to the SCA.[1]

3. The Applicant requests the Court to: (i) annul the Decision; (ii) adopt a measure of organisation of procedure ordering the Authority to produce the information and indicia on the basis of which the Authority adopted the Decision; and (iii) order the Authority to pay the costs of the proceedings.

4. In support of its action for annulment, the Applicant raises four pleas: (i) that the Decision contains insufficient reasoning; (ii) that there was not the required effect on trade; (iii) that the Authority did not have sufficiently serious indicia to suspect the Applicant's involvement in an infringement of the competition rules; (iv) that the conduct relied on by the Authority to justify the inspection had already been approved as mergers by the Icelandic Competition Authority (*Samkeppniseftirlitið*) ("**ICA**").

5. In the Authority's submission, and for the reasons given below, the Application should be dismissed in its entirety.[2] Before addressing the four pleas, the Authority makes the following preliminary remarks.

1.2 PRELIMINARY REMARKS AND FACTUAL BACKGROUND

6. At its heart, the Application is based on two erroneous factual presumptions, namely that the Authority: (i) seeks merely to reinvestigate an asset swap agreement of 26 April 2022 ("**the asset swap agreement**") in relation to "*two small, local shopping centres in Reykjavík municipality*";[3] and (ii) did not have sufficiently serious indicia

[1] "**Chapter II Protocol 4 SCA**".
[2] To the extent that this Defence does not expressly address points set out in the Application, this does not constitute acceptance of the Applicant's position.
[3] See e.g. Application ¶¶3, 36, 38, 46, 55, 57 and 61.

providing reasonable grounds for suspecting the Applicant's involvement in a competition law infringement. These factual presumptions are flawed, as follows.

7. First, the suspected infringement which forms the subject matter of the Decision is not the (local) asset swap agreement of 26 April 2022. Instead, the Decision clearly identifies the suspected infringement as *anticompetitive coordination* of the conduct of SKEL[4] (the operator of a pharmacy chain) with its competitor Toska[5] (the operator of a pharmacy chain) on the Icelandic retail pharmacy market.[6] Recital 4(a) of the Decision specifies that the asset swap agreement is *one of the ways* in which this anticompetitive coordination may have been *implemented*. In other words, the asset swap agreement and its execution constitute *indicia* of suspected wider anticompetitive collusive conduct, which is of a different geographic and temporal scope, pre- and post-dating the asset swap[7]. It is this wider suspected collusion which the Decision seeks to investigate. The Applicant's failure to acknowledge this means *inter alia* that: (i) its arguments on effect on trade (the Second Plea) in relation to the "*local*"[8] nature of the asset swap are misguided and ineffective (Section 3 below); (ii) its contention under the Third Plea that the Authority cannot have had sufficiently serious indicia that "*the asset swap agreement* […] *could constitute an infringement*"[9] is misdirected and ineffective (Section 4); and (iii) its arguments under the Fourth Plea that the Authority is seeking to investigate "*the very same conduct*"[10] as that assessed under the Icelandic merger rules by ICA are unfounded (Section 5).

8. Second, the Decision is based on sufficiently serious indicia. The fact that the Authority was in possession of such indicia was sufficiently disclosed in the Decision, which also precisely defined the presumed facts the Authority wished to investigate and the matters to which the inspection related. The Applicant has failed to cast doubt on the reasonableness of the Authority's grounds or indicia for suspecting an infringement of EEA law. Accordingly, the Authority submits that there is no need for the Court to order

[4] This includes (as defined in the Decision, in particular Recitals 1-2) all undertakings directly or indirectly, solely or jointly controlled by it, including, in particular, Lyfjaval ehf.
[5] This includes (as defined in the Decision, in particular Recital 3) all undertakings directly or indirectly, solely or jointly controlled by it, including, in particular, Lyf og heilsa hf.
[6] Recitals 2-6 and Article 1 of the Decision, and see in particular paragraphs 48, 49 and 67 below.
[7] Recital 6 of the Decision specifies that the anticompetitive conduct may have started at least in May 2021, and may still be ongoing. The asset swap agreement is dated 26 April 2022.
[8] Application ¶¶35, 36 and 38.
[9] Application ¶46.
[10] Application ¶¶57, 61.

the further disclosure of such indicia (Sections 2.3, 4 and 6 below). In the interests of the expeditious execution of these proceedings however, and to assist the Court, the Authority nevertheless provides, in Section 1.2.1 below, a more detailed description of its indicia. The Authority respectfully submits that, on any view, this more detailed description sufficiently enables the Court to determine, without the need for a measure of organisation of procedure, that the Authority possessed sufficiently serious indicia justifying the adoption of the Decision.

9. Further and more generally, various parts of the Application (in particular the First Plea) raise arguments contesting the very existence of the suspected coordination. While such arguments may be relevant at the second, *inter partes*, stage of the administrative proceedings,[11] or in the context of any eventual finding of infringement, they: (i) are irrelevant to whether the duty to give reasons was complied with (Section 0); and (ii) fail to take into account the correct legal standard for inspection decisions, namely whether the Authority had reasonable grounds to *suspect* the existence of an infringement (Section 4). In short, it is important to bear in mind that, at this exploratory stage, the Authority has made no finding of infringement. Instead, the Authority had information and indicia reasonably leading it to *suspect* unlawful conduct. The inspection seeks to verify whether these suspicions were well-founded.

1.2.1 The Authority had sufficiently serious indicia to suspect the Applicant's involvement in an infringement

10. The Decision is based on sufficiently serious indicia, reflecting information drawn from various sources, including information received from ICA, publicly available documents and information (such as investor presentations, annual reports, and newspaper articles) and the Authority's own monitoring of market conduct. The Authority examined these indicia carefully and critically.

11. Based on these indicia, the Authority had reasonable grounds for suspecting that SKEL and Toska have been and may still be participating in anti-competitive agreements and/or concerted practices related to coordination of their conduct on the Icelandic retail pharmacy market.

[11] See paragraphs 54-55 below for a description of the distinct and successive stages of the administrative procedure under Chapter II Protocol 4 SCA. Inspections form part of the preliminary investigation stage.

12. The Authority had indicia suggesting that: (i) SKEL and Toska eliminated direct competition between each other in certain locations; and (ii) SKEL concentrates on drive-through pharmacies, while Toska does not open any such pharmacies; and that (iii) this conduct reflected anti-competitive coordination between these undertakings rather than their independent commercial behaviour.

13. The Authority's indicia included the following information:[12]

    (i) The competitors, Toska and SKEL, exchanged retail locations in Reykjavík through the asset swap agreement of 26 April 2022.[13] Toska sold SKEL its retail property in the Glæsibær shopping centre. In that retail property, Toska operated a traditional walk-in pharmacy in direct competition with a traditional walk-in pharmacy of SKEL in the same centre. SKEL sold Toska its retail property in the Mjódd shopping centre. In that retail property, SKEL operated a traditional walk-in pharmacy in direct competition (next door) with a traditional walk-in pharmacy of Toska. Subsequently, Toska closed its pharmacy in Glæsibær (while SKEL's pharmacy remained) and SKEL closed its pharmacy in Mjódd (while Toska's pharmacy remained).[14] This resulted in the elimination of direct competition between Toska and SKEL in each of these shopping centres.

    (ii) Toska and SKEL ambiguously described the real nature of this asset swap in their interactions with ICA, presenting it in some instances as a retail

[12] For some of these indicia, the Authority is in possession of documents that are similar for SKEL and Toska. In this Defence, the Authority will however only refer to, and annex, supporting documents that can be shared with SKEL, excluding documents that are or may be confidential for Toska.
[13] Asset swap agreement: Application, **Annexes A.2** (English translation) and **A.1** (Icelandic original).
[14] The closure of these pharmacies is a fact, which the Authority assumes to be not contested. See also ICA's Statement of Objections ("**SO**"): Application, **Annexes A.20** (English translation) and **A.19** (Icelandic original), ¶¶93 and 241, where ICA preliminarily concludes that the asset swap agreement will result in the disappearance of (i) the pharmacy of SKEL in Mjódd and (ii) the pharmacy of Toska in Glæsibær, leaving only one pharmacy operated by either SKEL or Toska in each shopping centre.

pharmacy market transaction,[15] and in others as a pure real estate transaction.[16]

(iii) Under the asset swap agreement, SKEL sold its Mjódd retail property to Toska for a total consideration of ISK 352.5 million, which consisted of a ISK 280 million cash payment and the transfer of ownership of Toska's Glæsibær premises (valued at ISK 72.5 million). The total consideration appeared excessive when compared with the 2023 public property valuation of the Mjódd retail property (ISK 135.9 million)[17] and the property value appraisal (ISK 87.9 million) attributed in a Lyfjaval investor presentation,[18] suggesting that it was in part a payment to SKEL for possibly wider restrictive actions, to the benefit of Toska.[19]

(iv) Direct competition between Toska and SKEL was eliminated in Keflavík (Reykjanesbær),[20] through the closure in early 2023 by SKEL of its traditional walk-in pharmacy located at Hringbraut 99 (Apótek Suðurnesja),[21]

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[15] Merger notification form submitted by SKEL on 25 October 2022 to ICA, **Annexes B.1** (English translation; all translations submitted in English are unofficial translations of the Authority) and **B.1a** (Icelandic original): ¶33 explains that it can be assumed that the position of SKEL will likely be strengthened due to the closure of the pharmacy of Toska in Glæsibær (which is referred to as the pharmacy in Álfheimar, as Glæsibær is the name of the shopping centre and Álfheimar is the name of the area in Reykjavík); ¶¶37 and 41-42 set out the competitive impact which the asset swap transaction will, in the submission of SKEL, produce on the retail pharmacy market (the pharmacy in Glæsibær is referred to as Apótekarinn, as it was operated under this brand name); Merger notification form submitted by Toska on 22 September 2022 to ICA (confidential).

[16] ICA SO, Application, **Annexes A.20** (English translation) and **A.19** (Icelandic original) ¶¶91-92, where ICA preliminarily concludes that the title of the asset share agreement (i.e. "*purchase agreement of real estate*") and other descriptions or references in the agreement are misleading as the scope of the agreement appears to encompass not just real estate but also pharmacy operations. Reply of 27 February 2023 of SKEL to the ICA SO, **Annexes B.2** (English translation) and **B.2a** (Icelandic original), where SKEL argues that the mergers are particularly concerned with real estate transactions between competitors and not the acquisition of part of a business (¶56), contests that the scope of the agreement is broader than a purchase of real estate (¶60) and submits that there is no causal relationship between the real estate transactions and the closures of the relevant pharmacies (¶¶61-63). Reply of 27 February 2023 by Toska to the ICA SO (confidential).

[17] ICA SO, Application, **Annexes A.20** (English translation) and **A.19** (Icelandic original) ¶242, where ICA observes that Toska will pay ISK 352.5 million to SKEL, despite the public property valuation of the Mjódd premises in 2023 representing only ISK 135.9 million, resulting in a difference of ISK 216.6 million.

[18] Lyfjaval investor presentation (information memorandum) for bids to purchase Lyfjaval by 17 May 2021, **Annexes B.3** (English machine translation, apart from page 16, translated by the Authority) and **B.3a** (Icelandic original), page 16, where the Mjódd premises are given an estimated value of ISK 87.9 million (highlight added by the Authority), resulting in a difference of ISK 264.6 million.

[19] Presentation of Toska (confidential).

[20] In Application ¶19, SKEL refers to the old location of the closed pharmacy as being in Reykjanesbær, which area includes Keflavík (where the closed pharmacy was located).

[21] Newspaper article of 24 February 2023 published in Víkurfréttir, **Annexes B.4** (English translation) and **B.4a** (Icelandic original). This article shows that SKEL's original pharmacy, Apótek Suðurnesja, moved its operations from Hringbraut to a new area. While the pharmacy representatives interviewed describe the new location as the new centre of the town for the future, the fact remains that the new

within 550 metres of Toska's traditional walk-in pharmacy (with the Keflavík hospital being in between).

(v) There were indications that SKEL implemented its drive-through strategy by prioritising the opening of drive-through pharmacies and the closure of its traditional walk-in pharmacies in locations where those traditional pharmacies competed directly with Toska's traditional walk-in pharmacies (e.g. Mjódd and Keflavík (Reykjanesbær)).[22]

(vi) Documentation showing that the actions of SKEL in closing two of Lyfjaval's pharmacies in Mjódd and Keflavík were actions which SKEL's competitor Toska had assessed and considered highly beneficial to itself.[23]

(vii) 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[24] (despite indicia suggesting that the operation of such pharmacies could be considered desirable).[25]

14. These indicia[26] provided reasonable grounds for the Authority to suspect SKEL and Toska's involvement in a competition law infringement, as described in the Decision. To gather evidence in order to verify the validity of the Authority's suspicions,[27] the Authority considered it necessary to order an unannounced inspection at the premises of SKEL and Toska.

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location is further away from the Keflavík hospital and SKEL's competitor Toska than the traditional walk-in pharmacy that was closed.

[22] This pattern of behaviour was observed by the Authority in particular from publicly available information on openings and closings of these pharmacies.

[23] Confidential documents of Toska.

[24] This pattern of behaviour was observed from publicly available information on openings and closings of these pharmacies. The absence of openings by Toska ("*one of the two big players in the Icelandic retail pharmacy sector*": Application ¶29) of any drive-through pharmacies in Iceland must be viewed in a context where there is significant and growing demand for this service, as highlighted by a SKEL investor presentation for the second half of 2023 (**Annex B.5** slide 19) and a newspaper interview of 22 March 2024 with a representative of Lyfjaval who is describing Lyfyaval's position on this market as unique (**Annexes B.6** (English translation) and **B.6a** (Icelandic original)).

[25] Confidential documents of Toska.

[26] The various indicia on the basis of which an infringement may be suspected must be assessed not in isolation but as a whole and they may reinforce each other: Case T-249/17 *Casino* v *Commission*, EU:T:2020:458 ("***Casino GCEU***"), ¶223.

[27] Cases C-538/18 P and C-539/18 P, *České dráhy* v *Commission*, EU:C:2020:53 ("***České dráhy CJEU***"), ¶43.

2 FIRST PLEA: THE DECISION COMPLIES WITH THE OBLIGATION TO STATE REASONS

15. Section II of the Application (¶¶11-33) claims: (i) that the Decision was insufficiently reasoned and (ii) that, if the Court should nevertheless find the Decision to be sufficiently reasoned (¶33) "*the Court therefore must review the merits of the decision*".

16. For the reasons given below, these claims are without basis and should be rejected.

17. Before addressing the individual arguments raised in the First Plea (Sections 2.2.2 and 2.3 below), the Authority sets out the legal principles it must respect when drafting an inspection decision (Section 2.1).[28] For the reasons given in Section 2.2.1, the Decision satisfies these requirements.

2.1 LEGAL PRINCIPLES GOVERNING THE REQUIREMENT TO STATE REASONS: INSPECTION DECISIONS IN COMPETITION CASES

18. The statement of reasons required under Article 16 SCA is a fundamental requirement. It enables affected parties to understand the reasons behind a measure, their obligations (for example the scope of their duty to cooperate[29]), and to exercise their rights of defence.[30] It enables the Court to ensure that the principle of protection against arbitrary and disproportionate intervention is respected, in so far as the statement of reasons makes it possible to show that the intervention envisaged on the premises of the undertakings concerned is justified.[31]

19. As the Court has held, the statement of reasons must be appropriate to the measure in question, and therefore depends 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 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

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[28] Application ¶¶12 and 14 present these principles in only a truncated manner.

[29] See e.g. *České dráhy CJEU* ¶40, referring to the duty to cooperate during inspections in competition cases. In this Defence, the Authority refers extensively to case-law of the EU Courts. While this case-law concerns the powers of the European Commission, the Authority considers that it applies *mutatis mutandis* to its own powers, given the need to ensure a homogeneous interpretation of *inter alia* the substantively identical provisions of Article 20 of Council Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p.1) and Article 20 of Chapter II Protocol 4 SCA.

[30] Case E-1/22 *Modiano Ltd and Standard Wool (UK) Ltd* v *ESA* ("***Modiano***"), ¶¶84-85; *Casino GCEU* ¶111.

[31] Case T-325/16 *České dráhy a.s.* v *Commission*, EU:T:2018:368 ("***České dráhy GCEU***"), ¶51.

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.[32]

20. Inspection decisions of the Authority take place within the legal framework of Articles 4 and 20 of Chapter II Protocol 4 SCA. These confer powers of inspection on the Authority, which are designed to enable it to perform its task of protecting the internal market from distortions of competition and to penalise any infringements of the competition rules on that market.[33]

21. Article 20(4) of Chapter II Protocol 4 SCA provides (emphasis added): "[u]*ndertakings 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***. […]"

22. It is settled case-law that, to comply with these requirements, the Authority must state in its inspection decision "*as precisely as possible the presumed facts which it intends to investigate, namely what it is looking for and the matters to which the inspection must relate*."[34] The case-law requires "[m]*ore specifically*"[35] that the inspection decision must contain four "*essential features of the suspected infringement*", by stating: (i) the market thought to be affected; (ii) the nature of the suspected restrictions of competition; (iii) the supposed degree of involvement of the undertaking concerned; and (iv) the powers conferred on the Authority.[36]

23. The degree of precision, and the extent of the reasoning required in an inspection decision is moderated by the fact that inspections, by definition, take place at a *very*

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[32] *Modiano* ¶¶84, 85, *Casino GCEU* ¶¶107-108; Case C-264/16 P, *Deutsche Bahn AG a.o.* v *Commission* ("***Deutsche Bahn CJEU***"), EU:C:2018:60, ¶41.
[33] *Casino GCEU* ¶108; Case C-37/13 P *Nexans and Nexans France* v *Commission*, EU:C:2014:2030 ("***Nexans CJEU***"), ¶33.
[34] *Casino GCEU* ¶110 and case-law cited; Case T-402/13 *Orange v Commission*, EU:T:2014:991 ("***Orange***"), ¶80.
[35] *Casino GCEU* ¶110 and case-law cited. In ***České dráhy GCEU*** ¶39 and Cases T-289/11, T-290/11 and T-521/11, *Deutsche Bahn a.o. v Commission*, EU:T:2013:404 ("***Deutsche Bahn GCEU***"), ¶171 the phrasing is similar: "*To that end*".
[36] ***České dráhy GCEU*** ¶39, *Casino GCEU* ¶110, and the case-law cited.

preliminary stage of the investigation. It is settled case-law that, at such a stage, the Authority does not yet have precise information allowing it to make a specific legal assessment of whether the conduct in question may be characterised as an infringement, and must first verify the validity of its suspicions and the scope of the facts that occurred, "*the purpose of the inspection being precisely to gather evidence relating to a suspected infringement*."[37]

24. Accordingly, in order to safeguard the effectiveness of an inspection, it is settled case-law that the Authority is not required to communicate to the addressee of an inspection decision all the information at its disposal concerning the presumed infringements, or to delimit precisely the relevant market, or to set out the exact legal nature of the infringements, or to indicate the period during which those infringements are alleged to have been committed.[38] The fact that the products/services or geographic scope are described in "*general terms*" does not mean that the decision is insufficiently reasoned, provided the description allows the undertaking to understand the full scope of the decision.[39]

25. Given the preliminary stage of the investigation, the Authority is also not required to inform the undertaking in its inspection decision of the information or indicia which justified the inspection: that is to say, the material which leads it to suspect an infringement of Article 53 EEA.[40] The only information which must be supplied in the inspection decision is that showing that the Authority had sufficiently serious indicia of an infringement, but without disclosing those indicia themselves. The decision must therefore disclose whether the Authority was in possession of information and indicia providing reasonable grounds for suspecting the infringement in question.[41]

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[37] *České dráhy CJEU* ¶43; see also *Nexans CJEU* ¶37 and *Casino GCEU* ¶112.
[38] *České dráhy CJEU* ¶¶41-42; Case T-254/17 *Intermarché* v *Commission*, EU:T:2020:459 ("***Intermarché GCEU***"), ¶111; *Casino GCEU* ¶112; *Deutsche Bahn GCEU* ¶170.
[39] For example, in *Nexans CJEU* the CJEU found (¶¶38-39) that an inspection decision indicating that the suspected agreements/practices "*probably have a global reach*" had a sufficient statement of reasons regarding the geographical scope of the suspected infringement.
[40] *Casino GCEU* ¶¶85, 91, 113 and case-law cited: the rationale being that earlier disclosure could compromise the effectiveness of the inspection, and that the undertaking will have the opportunity to challenge evidence relied upon by the Authority at the *inter partes* stage: see ¶¶87, 88.
[41] *Casino GCEU* ¶114, *Deutsche Bahn GCEU* ¶172, Case T-339/04 *France Télécom* v *Commission*, EU:T:2007:80 ("***France Télécom***"), ¶60. The Decision met this requirement: see Section 4 below.

2.2 NO FAILURE TO STATE REASONS

26. Contrary to the Applicant's claims at Application ¶¶15 and 32, the Decision was sufficiently reasoned and meets the legal requirements set out in Section 2.1 above.

27. In the following, the Authority first sets out, by reference to the requirements in Section 2.1 above, how the Decision complies with the obligation to state reasons. The Authority then addresses the complaints raised at Application ¶¶16-31, which complaints are irrelevant to the First Plea, and/or unfounded.

2.2.1 The Decision was sufficiently reasoned

28. The Decision precisely specifies the subject matter and purpose of the inspection, in accordance with the requirements set out in Section 2.1 above.

29. The Decision clearly identifies each of the four essential features of the subject matter and purpose of the inspection, as required by case-law.[42]

30. First, the market thought to be affected: Recital 3 and Article 1(1) of the Decision identify this as "*the Icelandic retail pharmacy market*" and "*the retail pharmacy market in Iceland*." Recital 5 specifies that the involved undertakings operate pharmacy chains both within and outside the Reykjavík capital area, an area which "*represents almost 70% of all retail sales of pharmaceuticals in Iceland*", and that the alleged anti-competitive conduct therefore "*covers a significant part of the Icelandic market*."

31. Second, the nature of the suspected restrictions of competition: Recitals 3-5 and Article 1(1) of the Decision describe this as "*anti-competitive agreements and/or concerted practices related to coordination of their conduct with Toska*"; the undertakings under investigation "*eliminated direct competition between each other that took place using traditional walk-in pharmacies*"; "*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*"; possible implementation of the suspected practices involving "*an asset swap*

[42] The Applicant (Application ¶12) appears to agree that these four features must be shown, yet does not allege (at least not clearly) that any feature was missing from the Decision.

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"; "*coordination on the realisation of Lyfjaval/SKEL's new drive-through pharmacy strategy*"; "*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*".

32. Third, the supposed degree of involvement of the undertaking concerned: Recitals 1 and 2 of the Decision identify the Applicant and its activities in the Icelandic retail sector, and its subsidiary Lyfjaval, which subsidiary is identified as "*active in the Icelandic retail pharmacy market*", to which the suspected infringement(s) relate. Recitals 3-5 and Article 1(1) of the Decision describe the supposed degree of involvement of these undertakings, while Recital 6 specifies that the conduct "*may have started at least in May 2021 and could still be ongoing*."

33. Fourth, the powers conferred on the Authority: Recitals 12 and 13 and Article 2 of the Decision recall the powers conferred on the Authority in conducting the inspection.

34. Further, page 5 of the Decision indicates the penalties provided for in Articles 23 and 24 of Chapter II Protocol 4 SCA and the right to have the Decision reviewed by the EFTA Court, while Article 3 appoints the date on which the inspection was to begin (or shortly thereafter).

2.2.2 The complaints raised at Application ¶¶16-31 are irrelevant to the First Plea and/or unfounded

35. The complaints made in Application ¶¶16-31 are irrelevant to the First Plea and/or unfounded. While the Application (¶¶11-14) purports to set out the key case-law criteria which must be followed, it fails to apply these (or any relevant legal principles) to the Decision. Rather than identifying any insufficiency in the reasoning itself, the complaints made at Application ¶¶16-31 in essence challenge the *merits* of the reasons and information given in the Decision – in other words, whether there was unlawful conduct at all. However, the Applicant's disagreement with potential anti-competitive inferences which might be drawn from matters described in the Decision,

and its alternative explanations for certain facts, are not relevant to the question of whether the obligation to state reasons has been complied with.[43]

36. Further, while the Applicant maintains that certain aspects of the Decision are "*difficult to understand*"[44] or "*puzzling*",[45] the arguments made at Application ¶¶16-31 reveal that the Applicant has indeed been able to "*grasp the reasons for th*[e] *decision* […] *without excessive interpretative effort*."[46] In short, while the First Plea alleges defective reasoning, in reality the arguments made therein simply disagree with the *substance* of whether there may have been anti-competitive conduct.

37. The following matters are therefore irrelevant and ineffective for the purposes of the First Plea:

    (i) The claim (Application ¶18) that the Applicant's decision to open a pharmacy in a new location with a drive-through option and close its traditional walk-in pharmacy[47] in Mjóddin (where its competitor Lyf og heilsa had a traditional walk-in pharmacy[48]) was commercially motivated[49] and that the new location did not prevent it competing directly with Lyf og heilsa.[50]

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[43] Thus, as the GCEU held in T-340/04 *France Télécom*, EU:T:2007:81 at ¶97 (emphasis added): "*The fact that the Commission may, at a later stage of the procedure, be unable to establish the existence of* [the suspected infringement] *is not relevant. First of all, that question involves* ***an analysis of the merits****, which is made on the basis of the information collected during the inspection in question, and* ***is not therefore to be examined in the context of a review of the Commission's observance of the obligation to give reasons***. […]" See also T-486/11 *Orange Polska* v *Commission*, EU:T:2015:1002 at ¶70: "*a distinction should be made between the question of the obligation to state reasons, which requires that the contested decision contain the key factual and legal elements in order to show clearly and unequivocally the reasoning of the institution which adopted the measure, and the merits of the reasons given by that institution.*" Further, given the still open-ended nature of the Authority's inquiry into the alleged facts and circumstances, 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 the Authority is plausible: *Intermarché GCEU* ¶234; T-296/11 *Cementos Portland Valderrivas* v *Commission*, EU:T:2014:121 ("***Cementos***") ¶59; *Casino GCEU* ¶222. The question whether the Authority was in possession of sufficiently serious indicia to suspect an infringement, which is separate from the question of the sufficiency of the statement of reasons, is addressed in the context of the Third Plea, below.

[44] Application ¶¶16, 17, 22.

[45] Application ¶29.

[46] *Casino GCEU* ¶111; see similarly *České dráhy CJEU* ¶40.

[47] The Applicant has plainly understood what is meant by the use of the term "*traditional walk-in pharmacy*" as compared with a drive-through pharmacy (i.e. one with a drive-through option). See further paragraph 43 below.

[48] The Applicant does not expressly accept that its competitor Lyf og heilsa had a traditional walk-in pharmacy in Mjóddin, but this description is not challenged and appears implicitly to be accepted.

[49] No evidence is adduced by the Applicant to support this claim.

[50] The Applicant claims, *inter alia* by reference to a hyperlink in footnote 6 to the Application, that the new location was sufficiently close that direct competition was not lost with Lyf og heilsa. The hyperlink leads to a Google Maps page. A similar hyperlink approach is adopted by the Applicant in footnotes 7, 8, 9, 10, 11, 12 and 13 (and, in respect of the introduction and other pleas, at footnotes 1, 2, 3, 4, 18

(ii) The claim (Application ¶19) that the Applicant's closing of its traditional walk-in[51] pharmacy in Reykjanesbær (Keflavík) and the opening of a new pharmacy with a drive-through option did not prevent it continuing to compete directly with Lyf og heilsa's pharmacy in Reykjanesbær.

(iii) The assertion in Application ¶21 that Lyfjaval opened a new pharmacy in direct competition with those of Lyf og heilsa in Miklabraut.

(iv) The assertion in Application ¶28 that the Applicant continues to seek opportunities to open traditional walk-in pharmacies.[52]

(v) The question raised in Application ¶29, as to why (large) Lyf og heilsa would wish to coordinate with (small) Lyfjaval, to restrict its ability to open drive-through pharmacies. Further, the implication that this – the concrete motive or incentive for engaging in coordination – should have been explained in the Decision must be rejected. The case-law does not require such an assessment at this preliminary stage of the investigation.[53]

38. The following arguments also fail to demonstrate that the Decision was insufficiently reasoned.

39. The Applicant (¶20) states that (apart from the walk-in pharmacies in Mjóddin and Reykjanesbær) no other Lyfjaval pharmacies have been closed, and that it is "*at a loss as to what exactly ESA is referring to*." This statement simply demonstrates that the Applicant *has* understood this part of Recital 4 of the Decision, which refers to "*Lyfjaval's closure of* ***certain of its traditional walk-in pharmacies*** […]." In other words, the Decision refers to those of Lyfjaval's traditional walk-in pharmacies which were closed.

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and 19) of the Application. If the Applicant wishes to rely on the hyperlinked documents or pages, and have them admissible as evidence, it must annex these to its Application: Rules of Procedure of the EFTA Court, Articles 54(5) and 101(1)(e). In any event, the hyperlinked documents in footnotes 6-13 are referred to in support of arguments related to whether or not there was anti-competitive conduct, which is not relevant to the First Plea.

[51] Again, the term used in the Decision appears to have been understood and is not challenged.

[52] This counter-argument (asserting that the Applicant's ability to open walk-in pharmacies was not restricted) demonstrates that the Applicant has perfectly understood the nature of the suspected restriction, and that that restriction has been adequately described.

[53] See paragraphs 23-24 above and the case-law cited.

40. Application ¶22 claims that because every move, opening and closure of any Lyfjaval pharmacy is a matter of public record, "*it is difficult to understand ESA's allegation*."[54] The Application fails to specify how the fact of publicity is relevant to the plea of failure to give reasons. In any event, the fact that certain events are public does not preclude undertakings from colluding on their commercial strategy in private, and the existence of collusion (or not) is what the inspection seeks to uncover: see Recitals 3, 4 and 10 of the Decision.

41. Application ¶¶23-26 refer to Recital 4(b) of the Decision. The Applicant claims to "*struggle* […] *to identify*" with the description "*SKEL's new drive-through pharmacy strategy*", but does not explain with any precision why, nor does it explain how this claim is relevant to the alleged failure to give reasons. In any event, the matters raised in Application ¶¶23-26 do not cast doubt on the description used, but rather tend to confirm that it was accurate, as follows.

42. The complete description used in the Decision reads (emphasis added) "***Lyfjaval**/SKEL's new drive-through pharmacy strategy*." That is, the <u>combined</u> strategy of these undertakings (or of this company group). Application ¶¶24-26 explain how <u>in 2021</u> Lyfsalinn ehf. bought Lyfjaval, and how later Skeljungur ehf. gained control of Lyfjaval and was, as "*an Icelandic petrol station operator with about 70 petrol stations in the country* […] *in a good position to continue with Lyfjaval's strategy to emphasise the use of drive-through windows to improve services to their retail customers*". This is precisely the strategy to which Recital 4(b) refers,[55] and in relation to which (Recitals 3 and 4) the Decision states that SKEL may have coordinated with its competitor, Toska.[56]

43. Application ¶27 observes that customers may also "*walk-in*" to "*drive-through*" pharmacies. This misses the point: the terms used in the Decision of "*traditional walk-in*" versus "*drive-through*" pharmacies seek simply to distinguish those pharmacies with

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[54] The Applicant does not specify which allegation. The Authority assumes it means this reference in Recital 4 of the Decision: "*Lyf og heilsa benefits from Lyfyaval's closure of certain of its traditional walk-in pharmacies*."

[55] Whether or not Lyfjaval can properly be said to have had a pre-existing drive-through 'strategy' is, in the Authority's view, open to debate. As Application ¶23 acknowledges, Lyfjaval previously opened only one drive-through pharmacy, in 2005.

[56] Application footnote 11 (and the hyperlinked documents) indicate that another Icelandic petrol station operator may also commence drive-through pharmacy activities. This is irrelevant to the plea of failure to give reasons.

a drive-through option (which may be a factor of competition) compared with those which do not. The arguments made by the Applicant make plain that it has understood this distinction (see in particular paragraph 37(i) and (ii) and the related footnotes 47, 48 and 51 above).

44. Application ¶30 refers to Recital 6 of the Decision, which provides: "[a]*ccording to the information available to the Authority, the alleged anticompetitive conduct may have started at least in May 2021 and could still be ongoing*." The Applicant complains that no indication is given as to what might have happened at that date, or at any other time that year, so as to initiate an infringement of Article 53 EEA. The Authority recalls that neither Article 20 of Chapter II Protocol 4 SCA, nor the related case-law require it to indicate the period during which the infringements are alleged to have been committed, still less the exact date at which the alleged infringement may have commenced.[57] As a consequence, the Authority may not be reproached when it decides, notwithstanding such jurisprudence, to state that it had information in its possession which indicated a date by reference to which the anticompetitive conduct may "*at least*" have commenced. For example, in ***České dráhy*** the GCEU held that: "*the Commission cannot be criticised for having simply stated, in the contested decision* […], *that 'such alleged anti-competitive practices* ***may have existed at least since*** **2011** […] **and *could still be ongoing***'" (emphasis added).[58] Further and in any event, at the time of adopting the Decision, the Authority had information that Lyfjaval was offered for sale in May 2021 and was purchased by SKEL (via Lyfsalinn ehf.) in June 2021.[59]

45. Application ¶31 simply asserts, without further precision, that the remainder of Recitals 3 to 6 are an ill-founded attempt of the Authority to assert jurisdiction. This vague and unsupported claim must be dismissed. The Applicant refers in passing to its arguments under the Fourth Plea, but its notification of the asset swap agreement to the national competition authority is not relevant to the Authority's duty to give reasons.[60]

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[57] *Intermarché GCEU* ¶¶111 and in particular 127; ***České dráhy CJEU*** ¶¶41-42; *Casino GCEU* ¶112; *Deutsche Bahn GCEU* ¶170; and see more generally paragraph 24 above.
[58] ***České dráhy GCEU*** ¶47.
[59] See Investor Teaser for the sale of Lyfjaval (bids to be received by 17 May 2021: see page 1), **Annexes B.7** (English translation) and **B.7a** (Icelandic original) and SKEL company announcement dated 25 June 2021 **Annexes B.8** (English translation) and **B.8a** (Icelandic original).
[60] See ***České dráhy CJEU*** ¶50: the CJEU held that the fact that the Commission in that case had "*information collected by the Czech competition authority* […] *cannot, as such, have any consequences for the Commission's obligation to state reasons.*"

2.3 NO REQUIREMENT TO ASSESS ON THE MERITS

46. Contrary to Application ¶33 ("*the Court therefore must review the merits*"), there is no legal requirement for the Court to review the merits of the Decision, should it consider it to be sufficiently reasoned. The Court's jurisdiction under Article 36 SCA involves a review of *legality*.[61] If by "*merits*" the Applicant means that the Court must, if it concludes that the decision is sufficiently reasoned, then call for and check the content of the Authority's indicia, this too, is incorrect. It is settled case-law that the Court may conclude that an inspection decision was not arbitrary without it being necessary to check the content of the Authority's indicia, if the facts which the Authority wishes to investigate and the matters to which the inspection relates are defined sufficiently precisely in the decision.[62] This point is addressed further in Sections 4 and 6 below.

3 SECOND PLEA: THE STANDARD FOR EFFECT ON TRADE WAS MET

47. The Second Plea essentially contends that there is "*no effect on trade*"[63] within the meaning of Article 53 EEA, and that therefore the Authority was not competent to adopt the Decision. This plea is without basis and must be rejected. As a preliminary point, the Authority recalls that, at the preliminary stage of an inspection decision, all that is required are reasonable grounds for suspecting that the conditions of Article 53 EEA are met,[64] and thus for suspecting an actual or potential effect on trade (see Section 2.1 above).[65] It is in no way a requirement for the Authority at this stage to provide evidence which establishes the existence of even a potential effect on trade between Contracting Parties.

48. First, the Decision (Recital 3, Article 1) clearly identifies that the suspected infringement relates (emphasis added) to the "***Icelandic*** *retail pharmacy market*." Recital 5 states that, according to 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***

[61] E-12/20 *Telenor* v *ESA,* ¶¶79-80, and see further Section 4 below, in particular paragraphs 56-57.
[62] *České dráhy GCEU* ¶51; *Orange* ¶91.
[63] See also Application ¶8.
[64] *České dráhy GCEU* ¶¶36, 43, 48; *Cementos* ¶43; Case T-251/12, *EGL and Others* v *Commission*, EU:T:2016:114, ("***EGL***"), ¶149. See also *Casino GCEU* ¶230.
[65] The Authority recalls that, even at the stage of a final finding of infringement, potential (rather than actual) effects on trade are enough: see Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich AG and others*, EU:T:2006:396, ¶166.

pharmaceuticals in Iceland*.* […].” These matters are not disputed by the Applicant. Recital 5 concludes: *“*[t]*he alleged anti-competitive conduct therefore covers a* ***significant part of the Icelandic market***.” The Decision therefore identified the nature and scope of the suspected infringement(s) in such a way that there were reasonable grounds for suspecting that there would be an actual *or potential* effect on trade between Contracting Parties. It is settled case-law that an agreement or practice covering all or part of a territory may be capable of affecting trade between Member States.[66] The geographic dimension of the markets affected by the conduct is therefore not in itself determinative, since even conduct that affects part of a territory may be capable of affecting trade between Contracting Parties.[67] The Applicant’s insistent claims about the “*local nature of competition in retail pharmacy operations*” (¶35), some of which are wholly unsubstantiated,[68] are therefore not decisive.

49. Connected to this point and second, the Application wrongly fixates on the asset swap agreement, thus mischaracterising the extent of the Authority’s concerns. The Decision (Recital 4(a)) makes plain that the asset swap is merely one example of how the suspected infringement may have been *implemented*. As explained in paragraph 48 above, the concerns expressed in the Decision were broader, also in geographic scope. The Applicant’s claims in relation to the asset swap agreement being “*local in nature*” and not having the “*required effect on trade*” (¶38), or to what occurred in “*small, local shopping centres*” under that agreement (¶36), or to the “*harmful local competitive effects*” of that agreement (¶35) therefore miss the point and are ineffective.[69]

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[66] Case C-211/22, *Super Bock Bebidas*, EU:C:2023:529, ¶¶59-65, and case-law cited. See also Case E-14/15 *Holship* ¶76.

[67] The suspected conduct relates at least to an area representing almost 70% of sales of pharmaceuticals in Iceland. In such circumstances, the Authority had reasonable grounds to suspect that the conduct may have had an influence, direct or indirect, actual or potential, on the pattern of trade between EEA States: see e.g. *EGL* ¶64; and ¶23 of the Authority’s *Guidelines on the effect on trade concept contained in Articles 53 and 54 of the EEA Agreement* (“***Effect on Trade Guidelines***”) (OJ C 291, 30.11.2006, p.46), and the case-law cited. Further, while the Authority was not required to disclose such information in the Decision (see paragraphs 24-25 above), it refers to figures from the European Federation of Pharmaceutical Industries and Associations (2022 and 2023) at **Annexes B.9 and B.10**, in each case at p. 19, which indicated, together with other publicly available data, that a significant amount of the pharmaceuticals sold in Iceland were imported.

[68] E.g. Application ¶34 contains various claims without offering any evidence or substantiation in support.

[69] The Applicant repeatedly asserts (¶¶34, 39) that retail pharmacy markets are (very) local in nature, but notably fails to address the point that the suspected conduct as a whole relates at least to an area covering almost 70% of all retail sales of pharmaceuticals in Iceland (Recital 5 of the Decision). The reference in Application footnote 15 to *Sbarigia*, Case C-393/08, EU:C:2010:388, which concerned the effects of the regulatory treatment of a *single* pharmacy in Rome (¶¶ 6, 24, 28, 32 of the judgment),

50. Third, the Applicant's inference from ICA's merger assessment (¶¶ 35-36) that only very local markets were affected (thus there could be no effect on trade) is also flawed, because the Authority is legally required to make its *own* assessment, under Article 53 EEA, of the relevant market and any related effects.[70] As explained above, this assessment is based on different facts and has a wider scope.

51. Fourth, Application ¶37 cites case-law but fails correctly to apply it. Paragraph 80 of ***České dráhy*** provides that it is not essential in an inspection decision to show the "*appreciable nature*" of any effect on trade,[71] yet this is precisely what Application ¶38 appears to reproach the Authority for not having done.[72]

4 THIRD PLEA: SUFFICIENTLY SERIOUS INDICIA WERE PRESENT

52. The Third Plea alleges that the Authority did not have sufficient indicia providing reasonable grounds for suspecting an infringement and therefore for ordering an inspection. For the reasons set out in this Section 4, this allegation is unfounded. The Authority first sets out the relevant legal principles, as the summary at Application ¶¶40-43 omits certain important elements (Section 4.1 below). The Authority then addresses the individual arguments raised in the Third Plea, alleging that it: (i) was not in possession of sufficient indicia to order an inspection (Section 4.2); (ii) chose its indicia selectively while failing to take account of exculpatory evidence (Section 4.3); and (iii) seized documents outside the temporal scope of the inspection (Section 4.4).

4.1 LEGAL PRINCIPLES

53. While the exercise of the powers of inspection conferred on the Authority by Article 20(4) of Chapter II Protocol 4 SCA *vis-à-vis* an undertaking interferes with the latter's rights of privacy,[73] an inspection decision is arbitrary "*only when it has been adopted*

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therefore misses the point and is irrelevant to the effects of the suspected conduct in the present case, which involves chains of pharmacies on the Icelandic retail pharmacy market, within and outside the Reykjavík capital area. See further footnote 67 above.

[70] E-12/20 *Telenor* v *ESA*, ¶97; Joined Cases T-125/97 and T-127/97, *Coca-Cola* v *Commission*, EU:T:2000:84, ¶82.

[71] *České dráhy CJEU* ¶80.

[72] In any event, where the suspected conduct relates at least to an area covering almost 70% of all retail sales of pharmaceuticals in Iceland (Recital 5 of the Decision), the Authority submits that it is reasonable to conclude that any appreciability threshold would be met: see e.g. ¶90, *Effect on Trade Guidelines*.

[73] *České dráhy GCEU* ¶169; *Deutsche Bahn GCEU* ¶65. The right to respect for private life is recognised as a general principle of EEA law, enshrined also in Article 8 ECHR: Case E-11/23 *Låssenteret AS* v

in the absence of any facts capable of justifying an inspection."[74] That is not the case where it is aimed at collecting the documentation necessary to check the actual existence and scope of a specific factual and legal situation in respect of which the Authority already "*has reasonable grounds to suspect an infringement of the competition rules by the undertaking concerned*."[75]

54. As noted in Section 2.1 above, inspections form part of the **preliminary investigation stage**.[76] As the Applicant acknowledges (Application, ¶¶41-43), to justify inspections therefore, it is not necessary for the information in the Authority's possession to be of such a kind as to establish the existence of an infringement. It is sufficient that the Authority is in possession of information and indicia providing "*reasonable grounds for suspecting an infringement*"[77] (also referred to as "*sufficiently serious indicia*"[78]). Further, the Authority is not required to inform the undertaking in its inspection decision of the information or indicia which justified the inspection. As the GCEU has held, the Commission is:

> "***under no obligation to indicate**, at the preliminary investigation stage* [when an inspection is ordered]*, apart from the suspicions of an infringement which it proposes to verify, **the indicia, that is to say, the material** that leads it to consider that there may have been an infringement of Article 101 TFEU, since such an obligation would upset the balance which the legislature and the Courts of the European Union have sought to establish between preserving the efficiency of the investigation and preserving the rights of defence of the undertaking concerned*."[79]

55. It is not until the beginning of the ***inter partes*** **administrative stage** that the undertaking concerned is informed, by notification of a statement of objections ("**SO**"), of all the essential evidence on which the Authority relies at that stage of the procedure and that that undertaking has a right of access to the file to ensure that its rights of defence are effectively exercised.[80] If those rights were extended to the period

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Assa Abloy Opening Solutions Norway AS, ¶46; *České dráhy GCEU* ¶34; *Orange* ¶83; *Intermarché GCEU* ¶141. Interference by a public authority can, however, "*go further for professional or commercial premises or activities than in other cases*:" see *Deutsche Bahn CJEU* ¶20, and the case-law cited.

[74] *České dráhy GCEU* ¶108; Case T-135/09, *Nexans France and Nexans v Commission*, EU:T:2012:596 ("***Nexans GCEU***"), ¶43 and the case-law cited.

[75] *České dráhy GCEU* ¶108; *Nexans GCEU* ¶43; *Casino GCEU* ¶¶165-166.

[76] *Casino GCEU* ¶182. See generally *Orange* ¶¶77-78.

[77] *České dráhy GCEU* ¶66 (emphasis added); *Cementos* ¶43; *EGL* ¶149. See also *Casino GCEU* ¶221.

[78] See e.g. *Casino GCEU* ¶165 and the case-law cited.

[79] *Casino GCEU* ¶¶164 (emphasis added) and 91; *České dráhy GCEU* ¶¶38, 45; *Deutsche Bahn GCEU* ¶170.

[80] *České dráhy GCEU* ¶46; *Orange* ¶78 and the case-law cited.

preceding the notification of the SO, the effectiveness of the Authority's investigation would be compromised, since the undertaking concerned would already be able, at the preliminary investigation stage, to identify the information known to the Authority, hence the information that could still be concealed from it.[81]

56. When the Court is called upon, as in the present case, to review an inspection decision for the purposes of ensuring that it is not arbitrary, it must therefore satisfy itself that there were, at the time, "*reasonable grounds for suspecting an infringement of the competition rules by the undertaking concerned*."[82] Contrary to how matters are presented in Application ¶¶41-43, the Court *may* however conclude that an inspection decision was not arbitrary without it being necessary to check and examine substantively the content of the Authority's indicia, *provided* that the facts the Authority wishes to investigate and the matters to which the inspection relates are defined sufficiently precisely in its Decision.[83] Thus, the Court may conclude (as the GCEU did in ***Orange***) that the statement of reasons alone is sufficient for it to presume that, on the date of adoption of the Decision, the Authority did indeed have reasonable grounds to suspect an infringement and order an inspection.[84]

4.2 EXISTENCE OF SUFFICIENTLY SERIOUS INDICIA

57. The Authority submits (paragraph 58 below) that the Decision sufficiently precisely stated the information required by case-law, namely showing that the Authority considered it was in possession of *serious indicia* of the existence of the suspected anti-competitive conduct.[85] In other words, the statement of reasons alone sufficiently disclosed that the Authority was in possession of information and indicia providing *reasonable grounds* for suspecting the infringement in question.[86] The Authority submits (see paragraphs 59-60 below) that the Applicant has failed to "*produce evidence casting doubt*" on whether the Authority had reasonable grounds for adopting its Decision, and that the Court is not therefore required to examine those grounds and

[81] *Casino GCEU* ¶87-88, *Orange* ¶78 and the case-law cited.
[82] *České dráhy GCEU* ¶¶43,48-49; *Nexans GCEU* ¶43; *Casino GCEU* ¶166.
[83] *České dráhy GCEU* ¶¶49-51; *Orange* ¶91.
[84] *Orange*, ¶¶91-93; *České dráhy GCEU* ¶¶49-51.
[85] *Casino GCEU* ¶114; *Deutsche Bahn GCEU* ¶172; *France Télécom* ¶60.
[86] *České dráhy GCEU* ¶¶49-51; *Orange*, ¶¶87, 91-93.

determine whether they are reasonable.[87] The Authority accordingly submits that it is not necessary for the Court to adopt measures of organisation of procedure to check the content of the Authority's indicia, as sought by the Applicant in Section VI of its Application (see further paragraphs 72-73 and Section 6 below).

58. First, the Decision sufficiently precisely specified that the Authority was in possession of information (indicia) in relation to all essential elements of the suspected infringement,[88] and therefore that the Authority had *reasonable grounds* for suspecting the infringement in question. The Decision describes the information as follows:
    (i) Recital 3 (nature of suspected conduct and relevant market) states that the Authority had "*information in its possession indicating that*" the Applicant may have been and may still be participating in anti-competitive agreements and/or concerted practices related to coordination of its conduct with Toska on the Icelandic retail pharmacy market;
    (ii) Recital 4 (further details of suspected conduct) states that "*according to information in the Authority's possession*" SKEL and Toska eliminated direct competition between each other using traditional walk-in pharmacies, and explains how "[a]*ccording to that information*" Lyf og heilsa benefits from Lyfjaval's conduct, and Lyfjaval concentrates on drive-through pharmacies while Lyf og heilsa does not enter that segment. Sub-paragraphs (a)-(c) of the Recital further explain how the suspected practices may have been implemented, by reference *inter alia* to "*an asset swap agreement of 26 April 2022*";
    (iii) Recital 5 (geographical area of suspected conduct) states that "[a]*ccording to the information available to the Authority*" the involved undertakings operate pharmacy chains within and outside the Reykjavík capital area. It states that this capital area "*represents almost 70% of all retail sales of pharmaceuticals in Iceland*" and that the suspected conduct therefore covers a significant part of the Icelandic market;

[87] *Nexans GCEU* ¶72; *České dráhy GCEU* ¶49. See also *Orange* ¶88: "*Only when a request to that effect is brought before the Court and the undertakings to which a*[n] [inspection] decision […] *is addressed have put forward certain arguments liable to cast doubt on the reasonableness of the grounds on which the Commission relied in order to adopt that decision may the Court take the view that it is necessary to carry out such a* [review of the indicia and determination whether the Commission had reasonable grounds for suspecting an infringement]." Emphasis added, and see the case-law cited.
[88] See in particular paragraph 22, and paragraphs 23-25 and 29-34 above.

(iv) Recital 6 (possible temporal scope of suspected conduct) states that "[a]*ccording to the information available to the Authority*", the alleged anticompetitive conduct may have started at least in May 2021 and could still be ongoing.

Thus in these Recitals of the Decision, the Authority disclosed in detail that it considered that it had in its possession serious information/indicia that led it to suspect the anticompetitive conduct at issue.[89]

59. Second, nothing raised by the Applicant calls the sufficiency of these indicia (i.e. whether the Authority had reasonable grounds for ordering the inspection) into question. Application ¶¶44-46 simply cross-refer to other pleas, which the Authority has addressed: no further arguments are made. As set out in Sections 0, 3 and 5 of this Defence, the Decision was properly reasoned, all essential features of the suspected anticompetitive conduct were properly described, and the Applicant's arguments under the First, Second and Fourth Pleas must be rejected.[90]

60. Moreover, many of the key matters described in the Decision are undisputed. The Applicant does not dispute that certain of its walk-in pharmacies (which were closely located to Lyf og heilsa pharmacies) were closed, that Toska is its competitor, that it and Toska are active on the Icelandic retail pharmacy market, both within and outside the Reykjavík capital area, or that the asset swap agreement of 26 April 2022 was entered into.[91] The Applicant accepts that it is in a good position (as a petrol station operator) to continue with the strategy of emphasising the use of drive-through pharmacies.[92] What the Applicant disputes is essentially that it coordinated with its competitor Toska in relation to such a strategy and certain other conduct, and/or that competition (or trade) was eliminated or adversely affected by such conduct. It therefore advances alternative explanations or interpretations of matters described in the Decision, unsupported by any evidence, or any evidence of probative value.[93] The

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[89] Such indicia must be assessed not in isolation but as a whole, and they may reinforce each other: *Casino GCEU* ¶223 and case-law cited.

[90] The argument in Application ¶44 (matters of public record) was addressed in paragraph 40 above.

[91] Application ¶46 claims "*ESA cannot have had sufficiently serious indicia that the asset swap agreement* […] *could constitute an infringement of Article 53 EEA*" because it was notified to/assessed by ICA. This misses the point: the Decision states that the implementation of the suspected practices may have involved, *inter alia*, the asset swap agreement. The Applicant's further claims in relation to this are addressed under the Fourth Plea below.

[92] Application ¶25.

[93] As set out in footnote 50 above, the Applicant has failed to annex any of the hyperlinked material referred to in its Application, as it must if it wishes to rely on such documentation in evidence. In any event, such material fails to cast doubt on the reasonableness of the Authority's grounds for ordering an

Authority however recalls the case-law according to which "*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 the* [Authority] *is plausible*. […]."[94] The Authority submits that this plausibility standard is met, and that, even if the Applicant's assertions were correct, they would not call into question the existence of sufficient indicia.

4.3 COOPERATION WITH NATIONAL COMPETITION AUTHORITY

61. As the Applicant observes (Application ¶¶47-48), it is standard practice and even a legal requirement for the Authority to work closely with the relevant national competition authority, here ICA, which was consulted before the Decision was adopted, as required by Article 20(4) of Chapter II Protocol 4 SCA.[95] The Applicant asserts (Application ¶¶47-50) that the Authority must have been in possession of exculpatory information from "*the merger cases*" when adopting the Decision, and that it has therefore 'cherry-picked' the information used as indicia in the Decision. It claims that such 'cherry-picking' would entail an arbitrary interference with the Applicant's right to private life. This claim must be rejected.

62. First, the Applicant simply asserts that "*information in the merger cases is effectively exculpatory for SKEL*." It fails to specify which information, which mergers, and why.[96] Assuming the Applicant refers to the concentration it notified to ICA under the asset swap agreement,[97] the Applicant has the relevant information available to it: there is no justification for its failure to specify and/or annex such information. This part of the Third Plea should therefore be rejected as inadmissible. Second and in any event, as set out at paragraphs 58-60 above, the Decision disclosed the existence of sufficiently

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inspection and is of no or doubtful probative value. For example Application ¶28: (i) refers to an offer of "*Lyfjaval*" made in April 2021, but it appears from **Annexes A.7-A.10** that the expression of interest was in fact that of Lyfsalinn, which at the time was not a SKEL subsidiary; (ii) states that: "[i]*n 2024, SKEL considered buying Borgarapótek*", but the short email chain (**Annexes A.17-A.18**), spanning four days, tends to suggest rather a lack of interest "[n]*o drive-through windows and much less expensive for us to open a new one*." No conclusion can in any event be drawn as the email chain is incomplete: no emails are provided after 10 September 2024.

[94] *Casino GCEU* ¶222. See also *Intermarché GCEU* ¶234; *Cementos* ¶59; *České dráhy CJEU* ¶64.

[95] Application ¶48's claim (that ICA has already investigated effectively the same conduct) is addressed in Section 5 below.

[96] Further, references elsewhere in the Application to the merger proceedings are not necessarily of an exculpatory nature: e.g. Application ¶60 notes how ICA identified "*market sharing*" concerns in connection with the concentrations.

[97] Referred to at Application ¶3 and the Fourth Plea.

serious indicia, which the Applicant has failed to call into question. The purpose of an inspection decision is not to set out in a balanced fashion all available information and evidence, including any potential exculpatory information (even if it existed, which is not admitted). At this preliminary stage of the investigation, the Authority is not required to have assessed exculpatory evidence, let alone disclose it in its inspection decision. This is confirmed by case-law of the CJEU, which has held that the Commission "*cannot be required to assess equally all evidence pointing in the opposite direction*."[98] Such case-law is relevant here: even more so since exculpatory evidence, if any, may be put forward by the Applicant in the context of its defence in any further *inter partes* administrative stage of the proceedings.[99]

4.4 AN UNDERTAKING MAY NOT PLEAD ALLEGED UNLAWFULNESS OF INSPECTION PROCEDURES IN SUPPORT OF A CLAIM FOR ANNULMENT OF THE INSPECTION DECISION

63. Application ¶¶ 51-53 appear to allege that the Authority seized documents outside the temporal scope of the subject-matter of the inspection ('fishing expedition'). The Authority denies that this is the case.[100] However, even if the Applicant were correct (which is not accepted), it is settled case-law that the *way* in which a decision ordering an inspection is *applied* has no bearing on the lawfulness of the inspection decision itself.[101] An undertaking may not therefore rely on the illegality of the manner in which inspection procedures were carried out in support of a claim for annulment of the act on the basis of which the Authority carried out that inspection.[102] Instead, it is settled case-law that the undertaking must challenge the way in which the inspection was conducted in an action for annulment of any final decision finding an infringement.[103]

64. Further and in any event, *firstly*, the Decision defines the alleged anti-competitive conduct as starting "*at least*" in May 2021, which makes clear that the conduct may

[98] *České dráhy CJEU* ¶¶ 52, 64.
[99] See paragraph 55 above.
[100] See further paragraph 44 above and the case-law cited: the Authority is not required to define precisely the temporal scope of the inspection.
[101] *Casino GCEU* ¶100; *České dráhy GCEU* ¶22; *Deutsche Bahn GCEU* ¶49 and the case-law cited.
[102] *České dráhy GCEU* ¶22; Cases T-125/03 and T-253/03, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, EU:T:2007:287, ¶55; and the case-law cited.
[103] See e.g. *Casino GCEU* ¶58; C-690/20 P, *Casino* v *Commission*, EU:C:2023:171, ¶¶28 (overview of potential remedies), 43, 45.

have started earlier. Any search for documents in a reasonable period[104] preceding May 2021 is not therefore disproportionate or arbitrary where the search remained within the subject-matter and purpose of the Decision (as it did). Further, case-law confirms that even evidence from outside an infringement period may be relied upon if it forms part of the body of evidence relied upon to prove the infringement.[105] *Secondly*, Application ¶52 makes much of the "*seemingly random*" date of May 2021. As the Applicant admits however,[106] Lyfjaval was sold to Skeljungur ehf. in 2021. Given the nature of the suspected anticompetitive conduct, it is not arbitrary or disproportionate to indicate a date in that (2021) time period in relation to which the conduct "*at least*" may have commenced.[107]

65. More generally, the Applicant (Application ¶52 and footnote 16) is inaccurate when it presents the screenshot excel list in Annexes A.21 and A.22 as proof that the Authority 'fished' for information going back to 2019. During the inspection, the Authority saw indications that the email account *jon.asgeir@me.com*, of the chairman of the board of directors of SKEL (Jón Ásgeir Jóhannesson), appeared to be used for SKEL business purposes and therefore contained SKEL business records. The Authority therefore sought access to this email account. The Applicant refused, on the basis that it was a private email account of Mr Jóhannesson. The Authority's IT inspectors therefore generated a list in excel format to demonstrate the extent of that email account's involvement in SKEL business. This excel file lists email correspondence of target people ('custodians') identified within SKEL, whose correspondence involved the email account "*jon.asgeir@me.com*" (as sender, addressee, or in copy). The excel list is not an export list showing documents copied by the Authority, nor does it support the Applicant's more general contention that the Authority was simply 'fishing' for information going back to 2019.

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[104] Application ¶52 and **Annexes A.23** and **A.24** for example refer to a very limited number of documents from 2020 and from 2021 (in the period prior to May 2021).
[105] See e.g. Case T-655/11 *FSL Holdings* v *European Commission*, EU:T:2015:383, ¶178.
[106] The Applicant is noticeably vague on the timing. Application ¶24 states "*the following year*, […] *Skeljungur later gained control of Lyfjaval*." It can however be deduced from the rest of the paragraph that this was in 2021, the year following 2020. More generally, as set out in paragraph 44 above, at the time of adopting the Decision, the Authority had information that Lyfjaval was offered for sale in May 2021 and was purchased by SKEL (via Lyfsalinn ehf.) in June 2021.
[107] See further paragraph 44 and the case-law cited in footnotes 57 and 58 above. The Authority is not required to specify the precise temporal scope of the suspected infringement.

5 FOURTH PLEA: THE AUTHORITY IS COMPETENT TO INVESTIGATE UNDER ARTICLE 53 EEA

66. By its Fourth Plea, the Applicant contends that, as the matters falling under the asset swap agreement were already approved by ICA under the Icelandic merger control regime, the Authority has no competence to investigate "*the very same conduct*" (Application ¶¶57, 61) again under Article 53 EEA. This claim is based on a number of inaccuracies, is unsupported by any legal authority and must, for the following reasons, be rejected.

67. First, as set out also in paragraphs 7 and 49 above, the suspected infringement which forms the subject matter of the Decision is not the asset swap agreement, which related to two retail locations in Reykjavík. Recitals 3, 4, 6 and Article 1(1) of the Decision make clear that: (i) the suspected infringement, commencing at least in May 2021, is *anticompetitive coordination* of SKEL's conduct with its competitor Toska on the Icelandic retail pharmacy market; and that (ii) the asset swap agreement of 26 April 2022 is one of the ways in which this anticompetitive coordination (which may still be ongoing) may have been implemented.[108] Thus, the conduct under investigation by the Authority is not "*the very same conduct*" as that assessed under the merger rules by ICA: it is of a different nature and geographical and temporal scope. Put differently, the asset swap agreement and its execution constitute *indicia* of suspected wider anticompetitive collusive conduct (pre- and post-dating the asset swap), which suspected collusion the Authority seeks to investigate.

68. Accordingly, second, even if the transactions under the asset swap agreement were approved by ICA as mergers,[109] this does not affect the Authority's competence to

[108] Recital 4(a) specifically refers to the asset swap agreement as being part of the "*implementation*" of the suspected practices. Recitals 4(b) and (c) of the Decision refer to other methods by which such implementation may have taken place.

[109] The Authority understands that there is some dispute between ICA and the Applicant about the extent to which the transactions were properly "*concentrations*" within the scope of the Icelandic merger regime, and therefore whether they were even capable of being approved (or prohibited) as mergers. Even however on the Applicant's view, the Authority understands that the mergers were approved not on the substance, but by default, because they were not approved (or remedies imposed) within the legal time limit imposed by Icelandic law: Application ¶¶4, 56. It appears from the rulings of the Icelandic Competition Appeals Committee referred to in Application footnote 20 (No 1/2023 and No 2/2023 respectively), in the Sections, V Verdict, Part 4, that the Applicant and other party to the mergers recognised and agreed that ICA's decision to terminate proceedings did not entail a substantive assessment, but was rather a procedural end to proceedings.

investigate whether such transactions were evidence of a broader anticompetitive conduct, distinct from the asset swap agreement itself, and of which the swap merely formed part.[110] As admitted by the Applicant, ICA's (merger) SO also identified the preliminary concern that the asset swap agreement "*may … provide for unlawful market sharing within the meaning of Article 10 of the Competition Act and, where applicable, Article 53 of the EEA Agreement*."[111] The Authority was fully entitled to investigate, on the basis of this and also its own information, whether anticompetitive coordination in breach of Article 53 EEA has taken, or is taking place. The system instituted by Chapter II Protocol 4 SCA is one of consultation, cooperation and information exchange between the Authority and the competition authorities of the EFTA States.[112] It is settled case-law that the Authority is entitled to conduct an inspection based *inter alia* on information obtained from a national authority.[113] Further, it is not prohibited from conducting an inspection solely because a national authority is (or has been) investigating the same conduct under Articles 53 or 54 EEA.[114] Contrary to the Applicant's claims, there is therefore nothing improper in the Authority taking into account information from an ICA investigation and commencing its own investigation.

69. Third, the fact that the Authority is investigating a broader concern than 'just' the merger transactions/asset swap means that the following arguments of the Applicant are ineffective and must therefore be rejected:[115]

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[110] In for example a recent case examined by the French Competition Authority (*Autorité de la concurrence*), Décision No 24-D-05 of 2 May 2024, **Annexes B.11** (English translation) and **B.11a** (French original), that authority reviewed under Article 101 TFEU exchanges between the parties *inter alia* prior to the relevant mergers (¶¶107-120). Specifically, the French Competition Authority analysed whether the information in the case file established the existence of an overall market allocation plan which included, but was not limited to, the merger transactions. On the facts of the case, it ultimately concluded that the existence of such a plan outside the scope of the mergers had not been proven (¶119).

[111] **Annex A.20** ¶101 (and see also ¶¶23, 67, 293 and 297).

[112] Article 11(1) of Chapter II Protocol 4 SCA provides: "[t]*he EFTA Surveillance Authority and the competition authorities of the EFTA States shall apply the EEA competition rules in close cooperation*." See further Articles 11(2)-(7) and 12 of Chapter II Protocol 4 SCA.

[113] See e.g. *České dráhy GCEU* ¶117; *Orange* ¶52: indeed in that case (¶55) the GCEU regretted that the Commission ordered an inspection without first examining the information obtained by the French competition authority "*in relation to similar conduct*". The Commission's inspection decision nevertheless remained lawful.

[114] *České dráhy GCEU* ¶¶117-119; *Orange* ¶¶26-27. The Authority understands that ICA has not opened any further investigation into the Article 53 EEA concerns identified in its merger SO.

[115] As for the descriptions in Application ¶55 of the circumstances and reasons (e.g. financial performance) surrounding the asset swap agreement, the Authority observes that these are largely unsupported by evidence and, as they relate to the substance of whether there was anti-competitive conduct, they are in any event not relevant to the question of the Authority's competence to act under Article 53 EEA (the Fourth Plea).

(i) Contrary to Application ¶¶58 and 62-63, the Authority's investigation does not undermine any legal certainty obtained under the merger regime, or impermissibly apply Article 53 EEA to conduct already assessed and approved under the merger rules: the conduct under assessment goes beyond the transactions under the asset swap agreement and therefore the Applicant can have no expectation that its broader conduct would not be investigated.[116] If the contrary were true, notifying a transaction between colluding businesses under the merger rules would, if cleared, remove or insulate any broader cartel behaviour from scrutiny. Further, contrary to Application ¶58, the 'one-stop shop' EEA merger regime is not relevant, because the asset swap transactions did not meet the relevant EEA merger thresholds.[117]

(ii) Similarly, the reference in Application ¶62 to Article 21(1) of the EUMR[118] does not advance the Applicant's case: there is no question of the Authority seeking to apply the competition rules solely to the merger transactions resulting solely from the asset swap. For this reason also, the matters considered in the ***Towercast*** judgment[119] (referred to at Application ¶63) are not relevant to the present case.

70. Finally, Application ¶60 asserts that ICA was already given sufficient material to assess the broader Article 53 EEA market sharing conduct ("*the same alleged infringement*") now under consideration. Even if this were correct, the Authority is entitled under Chapter II Protocol 4 SCA – especially at this preliminary stage – to investigate the same broader Article 53 conduct.[120]

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[116] French Competition Authority (Décision No 24-D-05 of 2 May 2024), **Annexes B.11** and **B.11a**, ¶¶107-120. See also the Opinion of Advocate General Kokott in Case C-449/21, *Towercast,* EU:C:2022:777, ¶60: where the conduct of the undertaking goes beyond that which was subject to merger review, the conduct may be subject to scrutiny under Article 101 or 102 TFEU.

[117] The asset swap transactions did not meet the thresholds for concentrations with an "*EFTA dimension"*: Article 1 of the act referred to at point 1 of Annex XIV to the EEA Agreement (Regulation (EC) No 139/2004, commonly referred to as "the EU Merger Regulation" or "**EUMR**"). Accordingly, the Authority did not have competence to act under the EEA merger rules (see Chapter IV Protocol 4 SCA for the relevant rules).

[118] In the EFTA pillar of the EEA Agreement, the correct legal reference is Article 21(1) Chapter IV Protocol 4 SCA.

[119] C-449/21 *Towercast*, EU:C:2023:207.

[120] *České dráhy GCEU* ¶119 et seq. The Applicant can therefore have had no legitimate expectation that only ICA would have investigated the Article 53 conduct: see *České dráhy GCEU* ¶¶151-156. Note that the Protocol 4 SCA mechanism is such that if the Authority formally initiates proceedings against the Applicant under Article 11(6) of Chapter II Protocol 4 SCA, this will have the effect of relieving ICA of its competence to apply Article 53 EEA. On this point, see Case T-589/22, *Silgan Holdings Inc* v *European Commission*, EU:T:2024:662 ¶¶41, 47, 60: the Commission was entitled to relieve the German national competition authority of its competence to apply Article 101 TFEU to a case, even at

6 REQUEST FOR A MEASURE OF ORGANISATION OF PROCEDURE

71. In respect of the Applicant's request for a measure of organisation of procedure (Application ¶¶65-68), the Authority submits that such a measure is unnecessary.

72. First, as submitted at paragraphs 57-60 above, the Decision's statement of reasons sufficiently disclosed that the Authority was in possession of information and indicia providing *reasonable grounds* for suspecting the infringement in question, and the Applicant has failed to "*produce evidence casting doubt*" on whether the Authority had reasonable grounds for adopting its Decision. Accordingly, and in line with settled case-law,[121] the Court may conclude that there is no need for it to order the further disclosure of such information and indicia.

73. Second and in any event, the Authority refers to the additional explanations and indicia provided, in Section 1.2.1 above, in the interests of the expeditious execution of these proceedings, and to assist the Court. The Authority respectfully submits that these explanations and indicia sufficiently enable the Court to determine, without the need for a measure of organisation of procedure, that the Authority possessed sufficiently serious indicia justifying the adoption of the Decision.

74. Should the Court nevertheless consider that a measure of organisation of procedure (or of inquiry) is necessary, the Authority: (i) recalls that certain documents in its possession emanate from SKEL's competitor Toska, and will therefore require confidential treatment; (ii) submits that the scope of such measure should be limited to verifying whether the Authority was in possession of information and indicia providing reasonable grounds for suspecting the infringement described in the Decision.

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a relatively late stage of the national proceedings, in particular where this was necessary to ensure the effectiveness of Article 101 TFEU.

[121] *Nexans GCEU* ¶72; *České dráhy GCEU* ¶49; *Orange* ¶88: "*Only when a request to that effect is brought before the Court and the undertakings to which a*[n] [inspection] decision […] *is addressed have put forward certain arguments liable to cast doubt on the reasonableness of the grounds on which the Commission relied in order to adopt that decision may the Court take the view that it is necessary to carry out such a* [review of the indicia and determination whether the Commission had reasonable grounds for suspecting an infringement]." Emphasis added, and see the case-law cited. Contrary to how matters are presented in Section VI of the Application (¶68 in particular), it is not "*settled case-law*" that it is in every case "*necessary*" for courts to call for a competition authority's information and indicia, in order to assess whether that authority had reasonable grounds for its decision. It is simply that in those cases the EU courts considered it necessary, on the facts, to do so.

7 CONCLUSION

Accordingly, the Authority respectfully requests the Court to:

1. Dismiss the Application in its entirety;

2. Order the Applicant to pay the costs of the present proceedings.

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Sigrún Ingibjörg Gísladóttir Melpo-Menie Joséphidès

Agents of the EFTA Surveillance Authority

8 SCHEDULE OF ANNEXES

Annex No	Description	Where Mentioned in Defence	Number of pages
B.1	Merger notification form submitted by SKEL to ICA (25 October 2022) - *Translation*	Fn. 15, p. 5	8
B.1a	Merger notification form submitted by SKEL to ICA (25 October 2022) - *Icelandic original*	Fn. 15, p.5	8
B.2	Reply of SKEL to the ICA Statement of Objections (27 February 2023) - *Translation*	Fn. 16, p. 5	18
B.2a	Reply of SKEL to the ICA Statement of Objections (27 February 2023) - *Icelandic original*	Fn. 16, p. 5	19
B.3	Lyfjaval investor presentation (information memorandum) for bids to purchase Lyfjaval by 17 May 2021 - *Translation*	Fn. 18, p. 5	38
B.3a	Lyfjaval investor presentation (information memorandum) for bids to purchase Lyfjaval by 17 May 2021 - *Icelandic original*	Fn. 18, p. 5	35
B.4	Newspaper article of 24 February 2023 published in Víkurfréttir – *Translation*	Fn. 21, p. 5	3
B.4a	Newspaper article of 24 February 2023 published in Víkurfréttir - *Icelandic original*	Fn. 21, p. 5	3
B.5	SKEL investor presentation for the second half of 2023 – *English original*	Fn. 24, p. 6	45
B.6	Newspaper interview of 22 March 2024 with representative of SKEL – *Translation*	Fn. 24, p. 6	3
B.6a	Newspaper interview of 22 March 2024 with representative of SKEL - *Icelandic original*	Fn. 24, p. 6	3
B.7	Investor teaser for the sale of Lyfjaval (bids to be received by 17 May 2021) - *Translation*	Fn. 59, p. 15	2
B.7a	Investor teaser for the sale of Lyfjaval (bids to be received by 17 May 2021) - *Icelandic original*	Fn. 59, p.15	2
B.8	SKEL company announcement that SKEL will acquire Lyfsalinn which will	Fn. 59, p.15	2

	acquire Lyfjaval (25 June 2021) – *English original*		
B.8a	SKEL company announcement that SKEL will acquire Lyfsalinn which will acquire Lyfjaval (25 June 2021) – *Icelandic original*	Fn. 59, p.15	2
B.9	European Federation of Pharmaceutical Industries and Associations, *The Pharmaceutical Industry in Figures*, Key Data 2022 – *English original*	Fn. 67, p. 17	28
B.10	European Federation of Pharmaceutical Industries and Associations, *The Pharmaceutical Industry in Figures*, Key Data 2023 – *English original*	Fn. 67, p. 17	28
B.11	French Competition Authority Décision No 24-D-05 of 2 May 2024 - *Translation*	Fn. 110, p.27 Fn.116, p.28	47
B.11a	French Competition Authority Décision No 24-D-05 of 2 May 2024 - *French original*	Fn. 110, p.27 Fn.116, p.28	47

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